

CITY AND COUNTY OF SAN FRANCISCO
ED LEE, MAYOR

**GENEVA OFFICE BUILDING AND POWER HOUSE
LEASE DISPOSITION AND DEVELOPMENT AGREEMENT**

between the
CITY AND COUNTY OF SAN FRANCISCO,

acting by and through its
RECREATION AND PARKS COMMISSION

and

FRIENDS OF GENEVA OFFICE BUILDING AND POWER HOUSE,
a California nonprofit corporation

for the delivery of a leasehold estate in real property located at
2301 San Jose Avenue, in San Francisco, California
for the rehabilitation and development of a community center project

Dated as of _____

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GENEVA OFFICE BUILDING AND POWER HOUSE

LEASE DISPOSITION AND DEVELOPMENT AGREEMENT

THIS GENEVA OFFICE BUILDING AND POWER HOUSE LEASE DISPOSITION AND DEVELOPMENT AGREEMENT (this “Agreement”), dated for reference purposes as of _____, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“City”), acting by and through its RECREATION AND PARK COMMISSION, and the FRIENDS OF GENEVA OFFICE BUILDING AND POWER HOUSE, a California non-profit public benefit corporation (“Friends”).

RECITALS

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

A. City owns the Geneva Avenue Office Building and Power House (the “**Building**”) located at 2301 San Jose Avenue in San Francisco, California (the “**Property**”). The Property is adjacent to the Geneva Rail Yard and Carhouse, which is under the jurisdiction of City’s Municipal Transportation Agency (“**SFMTA**”). The north, east and south faces of the Building adjoin streetcar tracks, and the west face of the Building fronts San Jose Avenue. The Building is comprised of two adjoining structures: a two-story office building containing approximately 13,000 square feet of space and a single-story car shed, known as the Powerhouse, containing approximately 3,000 square feet of space. The Building was designated as City Landmark No. 180 by the San Francisco Board of Supervisors on January 26, 1986.

B. The Building was severely damaged in the 1989 Loma Prieta Earthquake, and fell into general disrepair. In 1998, it was proposed that the Property, then under the jurisdiction of City’s Municipal Transportation Agency (“**SFMTA**”), be demolished. The Friends of the Geneva Office Building and Power House, a nonprofit 501(c)3 organization, was formed as a neighborhood citizens group to halt the demolition plans. In response to these efforts, SFMTA halted plans for demolition, and in 1999 SFMTA designed and together with Caltrans and City’s Recreation and Park Department (the “**Department**”) partially funded a project to stabilize the Building in a manner designed to make the Building less likely to collapse in an earthquake. The stabilization project was completed in 2004. The stabilization work did not include the work required to make the Building seismically safe for occupancy, or necessary electrical, mechanical or plumbing upgrades or other refurbishment or renovations..

C. In 2004 jurisdiction of the Property was transferred from SFMTA to the Recreation and Park Commission (the “**Commission**”), subject to the condition subsequent that if the Commission determines that the Property is no longer necessary for a recreational purpose, jurisdiction will revert to the SFMTA. Because of the limited footprint of the Property, its adjacency to an active SFMTA rail yard operation, and presence of certain SFMTA facilities in the Building and on the Property, SFMTA and the Department entered into an interdepartmental agreement (the “**2004 MOU**”) governing SFMTA’s access to and management of the remaining SFMTA facilities in the Building and the Department’s ability to access the Property through the adjacent SFMTA property for contractors working on the renovation and improvement of the Building and for ongoing Building maintenance, operations and repairs.

E. The Department has identified the Building as a possible site for youth and teen arts and related uses consistent with the Department’s mission. The Friends desire to support the Department’s use and operation of the Building, and to work cooperatively with the Department to develop and manage the Building as a dedicated space where artists, youth, and community members convene, exchange, learn, create and exhibit artistic and cultural works, and the Department welcomes and encourages such cooperation.

F. Friends has proposed to preserve the Building for the public benefit by (1) rehabilitating the exterior and interior of the Building; (2) bringing the Building into compliance with current regulatory requirements, including the San Francisco Building Code and the Americans with Disabilities Act; (3) seismically strengthening the Building; and (4) developing the Building for use as a community center, including, among other things, classrooms, meeting rooms, a theater, a café, exhibition and event spaces and a limited amount of retail space (collectively, the “**Project**”). It is Friends’ intention to rehabilitate the Building in a manner consistent with the United States Secretary of the Interior’s Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (36 Code of Federal Regulations § 67.7; the “**Secretary’s Standards**”). It is the Parties’ goal that the Friends and the City share the cost of the Project in the manner described in this Agreement, with Project funds to be raised by the Parties from a variety of public and private sources including, without limitation, the Federal Historic Preservation Tax Credit Incentive program and philanthropic sources. Following completion of the Project, Friends proposes to operate the Building as a community center providing programming for youth and adults in the surrounding neighborhood, the City of San Francisco, and the region.

G. The proposed Project will have numerous public benefits. First, the Project will include the historic and seismic rehabilitation of the Building, a landmark structure that is currently in significant disrepair. Second, the Project will create a substantially improved use for the Building, which is currently unused. Third, the Project will provide educational and recreational opportunities in the Excelsior and Ocean View-Merced Heights-Ingleside neighborhoods, which neighborhoods have a low median family income relative to the remainder of the City of San Francisco and are underserved by community, cultural and youth-serving facilities and programs. Finally, the Project will support other efforts underway and in the planning process to revitalize the area surrounding the Balboa Park BART Station.

H. Between 2007 and 2013, the Friends received seed funding from the City of San Francisco and the Department to support the capital campaign for the rehabilitation of the Building as well as youth arts programming. In 2008, the California Cultural Historical Endowment provided funding for pre-design and schematic design activities. In 2009 the Friends hired its first staff members. Since 2009, substantial additional conceptual and schematic design services, legal services, and pre-construction services have been provided pro-bono. In 2010, the Building was listed on the National Register of Historic Places.

I. On December 4, 2008, the San Francisco Planning Commission certified the Balboa Park Station Area Plan Final Environmental Impact Report, Planning Department Case No. 2004.1059E (the “**FEIR**”), and after several years of analysis, community outreach, and public review, the Balboa Park Station Area Plan was adopted on April 7, 2009. The Building is located in the Transit Station Area Subarea of the Balboa Park Station Area Plan. The San

Francisco Planning Department determined that the Geneva Car Barn and Powerhouse project, which includes the work described herein to the Building, was consistent with the development density established by the Balboa Park Station Area Plan and that there were no project-specific effects that are peculiar to the project or its site that were not analyzed in the FEIR. Thus the San Francisco Planning Department concluded that the Geneva Car Barn and Powerhouse project, including all the work described herein, qualified for an exemption from further environmental review under California Environmental Quality Act (“CEQA”) Guidelines Section 15183 and issued a Certificate of Determination of Exemption from Environmental Review on November 14, 2013. Certain Project Mitigation Measures set forth in FEIR will apply to the Project.

J. On _____, 20___, the Recreation and Park Commission, by Resolution No. __-__, among other things, authorized and directed the General Manager to (i) enter into this Agreement, and (ii) seek approval from the Board of Supervisors to execute the Lease with Friends. *[Include BOS approval if received.]*

K. In light of the substantial public benefits afforded by the Project, the parties wish to enter into this Agreement to set forth the terms and conditions upon which City will lease the Property to Friends and Friends will develop the Property, subject to all of the terms and conditions set forth below.

AGREEMENT

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

1. THE SITE, TERM, DEFINITIONS, RELATIONSHIP TO LEASE, FEES

1.1 Site

(a) Generally. The Property occupies a portion of a City block (Block 6972, Lot 036), consisting of an approximately [___] square foot parcel of land located at 2301 San Jose Avenue, San Francisco, California. The Property is shown generally on the diagram attached hereto as Exhibit B (the “**Site**”), and, together with the adjacent property under the jurisdiction of the SFMTA, is within the real property described on Exhibit A attached hereto.

(b) Building. The Building is a two (2)-story structure with approximately 15,853 square feet of gross area, including approximately 12,754 square feet within the office building component and approximately 3,099 square feet of area within the power house component.

1.2 Term of this Agreement

The term of this Agreement shall be from the Effective Date until City records a Certificate of Completion for the Improvements pursuant to Section 6 below, substantially in the form of Exhibit D attached hereto, unless this Agreement is earlier terminated in accordance with its provisions (the “**LDDA Term**”).

1.3 Definitions

Initially capitalized terms used in this Agreement are defined in Section 13 below, or have the meanings given them when first defined. Any initially capitalized words or acronyms used but not defined in this Agreement shall have the meanings given them in the Lease.

1.4 Relationship of this Agreement to Lease

This Agreement (i) provides for an agreement to lease the Property subject to certain conditions precedent, and (ii) controls development of the Property during the LDDA Term. Specifically, it addresses, among other matters, the conditions to the Close of Escrow and the Delivery of the Property under the Lease, the scope of Friends' obligations to construct the Improvements, the Schedule of Performance for those obligations, certain Workforce Hiring Program and Prevailing Wage Provisions, and the financing for construction of the Improvements. If the conditions for the Close of Escrow set forth in Section 2 of this Agreement are satisfied, City will lease the Property to Friends, and Friends will lease the Property from City, pursuant to the terms and conditions of a lease in substantially the form and substance of the lease attached hereto as Exhibit E (the "**Lease**"). No leasehold interest in the Property shall be granted to Friends until the Close of Escrow. Before Completion of the Improvements (but after the Close of Escrow), both this Agreement and the Lease will apply, but this Agreement shall control in the event of any inconsistency between this Agreement and the Lease. Upon Completion of the Improvements, and subject to the other terms and conditions of this Agreement, this Agreement will terminate. From and after Completion of the Improvements, the Lease will govern the rights and obligations of the Parties with respect to use and occupancy of the Property. Completion of the Improvements will be conclusively evidenced by recordation of a Certificate of Completion as set forth in Section 6 below.

2. DISPOSITION OF LEASEHOLD ESTATE THROUGH ESCROW

2.1 Agreement to Lease

Subject to satisfaction of all applicable conditions to the Close of Escrow, City agrees to lease the Property to Friends, and Friends agrees to lease the Property from City, under the Lease for the development and operation of the Project, all in accordance with and subject to the terms, covenants and conditions of this Agreement.

2.2 Escrow

(a) **Opening of Escrow.** Friends shall open an escrow for the Delivery of the Property through the Lease (the "**Escrow**") with Chicago Title Company in San Francisco, or the local office of such other title company as Friends may select and City may find reasonably satisfactory ("**Title Company**"). Friends shall open the Escrow not later than the date specified in the schedule of performance attached hereto as Exhibit F (as extended from time to time in accordance with the terms hereof, the "**Schedule of Performance**").

(b) **Close Date.** Subject to Force Majeure or Litigation Force Majeure, the "**Close Date**" shall be the date set forth on the Schedule of Performance. Notwithstanding the foregoing, the Close of Escrow may not occur earlier than the date by which all of the

conditions precedent described in Sections 2.3 and 2.4 are either satisfied or waived by the Party which is benefited by such conditions. In the event that all of the conditions precedent described in Sections 2.3 and 2.4 are not satisfied or waived by the Close Date, City may extend the Close of Escrow by giving Friends prior written notice, but in no event shall such extension extend the Construction Completion Date set forth in the Schedule of Performance without City's prior written approval, which may be granted, withheld, or conditioned in City's sole discretion.

(c) Joint Escrow Instructions. Not later than thirty (30) days before the Close Date, Friends 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.

(d) Recordation of Memorandum of Lease. The joint escrow instructions referred to in Section 2.2(c) above shall, among other things, provide that the Title Company will record the Memorandum of Lease in the Official Records, in the form attached hereto as Exhibit G (the "**Memorandum of Lease**"), as well as any other documents provided for in this Agreement which are to be recorded upon Close of Escrow, as further provided in Section 2.5 below.

(e) Costs of Escrow. City shall not be required to pay any costs or expenses for or related to the Escrow. Friends 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 Friends, recording fees, if any, and transfer taxes, if any (together, "**Closing Costs**"). Friends 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.

2.3 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 Friends under the Lease:

(i) No uncured Event of Default (or Unmatured Event of Default) exists on Friends' part under this Agreement, and all of Friends' representations and warranties made in Section 12.20 of this Agreement shall have been true and correct when made and shall be true and correct as of the Close Date. At the Closing, Friends shall deliver to City a certificate to confirm the accuracy of such representations and warranties.

(ii) City shall have approved those aspects of the Construction Documents that are required under Section 5 below to be approved by City prior to the Close of Escrow, in accordance with the Schedule of Performance.

(iii) City shall have approved, under the standard set forth in Section 7 below, those aspects of the evidence of adequate financing for the Project (based on the Budget for Completion of the Improvements in accordance with the Construction Documents) that are

required under Section 7 below, including evidence of the Construction Contract described in Section 7.1(h) below, in accordance with the Schedule of Performance. In evaluating Friends' proposed Budget, City may obtain a third-party cost estimator's report at Friends' sole cost and expense if City, in its sole discretion, elects to do so.

(iv) Friends shall have submitted into Escrow the Lease, in the form attached hereto as Exhibit E, duly executed by Friends.

(v) Friends shall have submitted to City evidence that Friends has submitted an Historic Preservation Certification Application, Part 2 — Description of Rehabilitation (the "**Part 2 Application**") to the National Park Service ("NPS") and NPS shall have approved such application with conditions as is customary.

(vi) If applicable, Friends shall have submitted to City an executed operating agreement or limited partnership agreement with all related authority and governing documents or such other evidence that is reasonably satisfactory to City, indicating that Friends has entered or has a binding commitment to enter into an agreement with an investor to utilize in such partnership or limited liability company the Historic Preservation Tax Credit for eligible Project costs.

(vii) SHPO has approved all plans for which SHPO approval is required except documents necessary for Phase 3 Historic Preservation Tax Credit Approval.

(viii) Friends shall have obtained all Regulatory Approvals for construction of the Improvements 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 shall have been Finally Granted.

(ix) Title Company shall be irrevocably committed to issue to City the title insurance policy required by Section 2.7(a)(ii) to be delivered to City, if any.

(x) City shall have approved the submissions Friends is required to make regarding the Special City Requirements, in accordance with Section 11 below, and Friends shall have executed and delivered to City a certification of compliance with San Francisco Administrative Code Chapters 12B and 12C on the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101), together with supporting documentation, and shall have secured approval of the form by City's Human Rights Commission.

(xi) City shall have approved such evidence of Friends' authority to enter into the Lease, and this agreement and the transactions which the Lease and this Agreement contemplate, as City and the Title Company may reasonably require, including, without limitation, legal opinions regarding due authorization and execution.

(xii) Friends shall have in place all insurance required under this Agreement and the Lease and shall have deposited evidence thereof into Escrow.

(xiii) Friends shall have deposited into Escrow a duly executed and authorized Performance Bond.

(xiv) City shall have provided the Construction Documents required to be approved by Friends by the Close of Escrow in accordance with the Schedule of Performance.

(xv) City shall have approved the Construction Contract for Consistency.

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

(xvii) City and Friends shall have agreed upon the legal description for the Site.

(xviii) Friends shall have prepared and delivered to City and City shall have reasonably approved an updated Workforce Hiring Program that covers the workforce in connection with the construction of the Project.

(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 the provisions of Section 12.1, City, acting through the General Manager, 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) unless any such condition precedent is not satisfied due to City's breach of Section 5.8(b) hereunder, terminate this Agreement, and exercise all of its rights and remedies hereunder, or (iii) unless any such condition precedent is not satisfied due to City's breach of Section 5.8(b) hereunder, 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 upon the expiration of the period of any such extension if all such conditions precedent have not been satisfied, and to exercise all of its rights and remedies hereunder.

2.4 Conditions to Friends' Obligation to Close Escrow

(a) Friends' Conditions Precedent. The following are conditions precedent to Friends' obligation to approve the Close of Escrow and thereby accept Delivery of the Property under the Lease:

(i) No uncured Event of Default (or Unmatured Event of Default) exists on City's part under this Agreement.

(ii) Title Company shall be irrevocably committed to issue to Friends, upon payment by Friends of the premium thereunder, the title insurance policy required by Section 2.7(a)(i) to be delivered to Friends.

(iii) There shall have been no Adverse Change.

(iv) Friends shall have approved the Construction Documents required to be approved by the Close of Escrow in accordance with the Schedule of Performance.

(v) All Regulatory Approvals required to commence construction of the Project shall have been issued without conditions reasonably unacceptable to Friends, and such Regulatory Approvals shall be Finally Granted.

(vi) 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 shall have been Finally Granted, and City shall have executed any such permits which City is required to execute as co-permittee.

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

(viii) Friends shall have obtained commitments for, and City shall have approved the evidence of, the financing required to be approved by City under Section 7 of this Agreement by the Close of Escrow in accordance with the Schedule of Performance, and the Construction Contract.

(ix) City shall be irrevocably committed to contributing, and Friends shall have approved evidence of, the financing to be provided by City under Section 7 of this Agreement by the Close of Escrow in accordance with the Schedule of Performance.

(x) SFMTA shall have granted the Temporary Construction License and the Long-Term License in accordance with Section 4.2 of this Agreement.

(xi) NPS shall have conditionally determined that the Part 2 Application is consistent with the Secretary's Standards, and SHPO and the NPS shall have conditionally agreed on a treatment of the Project that will permit Friends to effectively utilize the Historic Preservation Tax Credit.

(xii) City shall have approved Friends' submissions in accordance with the Special City Requirements, as set forth in Section 11 below.

(xiv) City shall have relocated the high-tension electrical wire and alarm system in accordance with Section 3.4 to Friends' satisfaction, as determined by Friends in its sole and absolute discretion.

(xv) No Unknown Pre-Existing Environmental Conditions shall have been discovered that are unacceptable to Friends, in its sole and absolute discretion, that City has not Remediated to Friends' satisfaction by the date agreed to by City and Friends (if applicable) in accordance with the provisions of Section 3.3(g) below.

(b) Satisfaction of Friends' Conditions Precedent. The conditions precedent set forth above are intended solely for the benefit of Friends. If any such condition

precedent is not satisfied on or before the Close Date, subject to Force Majeure and Litigation Force Majeure, Friends 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, and exercise all of its rights and remedies hereunder, subject to the other provisions of this Agreement which expressly survive a termination hereof, or (iii) extend the Close Date for a reasonable period of time specified in writing by Friends not to exceed sixty (60) days, to allow such conditions precedent to be satisfied, subject to Friends' right to terminate this Agreement upon the expiration of the period of any such extension if all such conditions precedent have not been satisfied, and to exercise all of its rights and remedies hereunder, subject to the other provisions of this Agreement which expressly survive a termination hereof.

2.5 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 2.3 and the conditions to Friends' obligations with respect to Close of Escrow and acceptance of the Delivery of the Property as set forth in Section 2.4 have been satisfied or expressly waived on or before the Close Date, City and Friends shall instruct the Title Company to complete the Close of Escrow, as set forth below. Upon the Close of Escrow, City shall Deliver the Property to Friends, and Friends shall accept the Delivery of the Property, under the Lease.

(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 Lease, (2) the Memorandum of Lease, (3) the Temporary Construction License, (4) the Long-Term License, and (5) copies of the resolutions of the Board of Supervisors authorizing and approving the Lease and this Agreement.

(ii) On or before the Close of Escrow, Friends shall (A) pay into Escrow with the Title Company 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 Lease, (2) the Memorandum of Lease, and (3) the certificate as to the accuracy of the representations and warranties under this Agreement required by Section 2.3(a)(i).

(iii) City and Friends shall instruct the Title Company to consummate the Escrow according to the joint escrow instructions described in Section 2.2(c). Upon the Close of Escrow, the Title Company shall record in the Official Records the Memorandum of Lease, the Temporary Construction License, the Long-Term License, and any other documents reasonably required to be recorded under the terms of any Regulatory Approvals or under the terms hereof and shall deliver to the respective Parties executed counterparts of the applicable documents. In addition, on or before the Close of Escrow, a Memorandum of this Agreement in the form of Exhibit P attached hereto (a "**Memorandum of Agreement**") shall have been recorded in the Official Records.

(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.

(v) The Title Company shall issue a title policy to Friends and City as required under Section 2.7.

(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.

2.6 Condition of Title to the Property

(a) **Permitted Title Exceptions.** Except for those permitted title exceptions shown on Exhibit H attached hereto (collectively, the “**Permitted Title Exceptions**”), and such other matters as Friends shall cause to arise, which arise in connection with Friends’ use or operation of the Property, and which Friends agrees to hereunder, City shall Deliver to Friends the Property under and subject to the provisions of the Lease for the term specified in the Lease, free and clear of (i) possession and rights of possession of the Property by others, and (ii) liens, encumbrances, covenants, assessments, easements, leases and taxes.

(b) **Survey Review.** On or prior to the date set forth in the Schedule of Performance, Friends may, at Friends’ sole cost and expense, obtain a survey of the Property and deliver to City a notice identifying any matters that are not acceptable to Friends (a “Survey Defect”). If City elects to remove or cure the Survey Defect, City shall have up to thirty (30) days from receipt of such notice (the “Survey Defect Cure Period”) to remove or cure the Survey Defect. If by expiration of the Survey Defect Cure Period, subject to Force Majeure, unless the Parties mutually agree to extend such date, a Survey Defect still exists, Friends may by written notice to City terminate this Agreement within such seven (7) days after the expiration of the Survey Defect Cure Period. In the event that Friends does not accept terminate this Agreement within such seven (7) days after the expiration of the Survey Defect Cure Period, or any extension thereof as provided above, this Agreement shall continue in full force and effect and any Survey Defect will be deemed waived.

(c) **Title Defect.** If at the time scheduled for the Close of Escrow under Section 2.2, there remains (i) any possession and rights of possession of the Property by others, or (ii) any lien, encumbrance, covenant, assessment, easement, lease, tax, judgment, or other right, title or interest in the Property, which in either case, is not a Permitted Title Exception, that encumbers the Property and would materially and adversely affect the development or operation of the Project (a “**Title Defect**”), City will have up to thirty (30) days from the time scheduled for the Close of Escrow under Section 2.2 to remove the Title Defect (the “**Title Defect Cure Period**”). In such event, the time scheduled for the Close of Escrow under Section 2.2 will be extended to the earlier of seven (7) business days after the Title Defect is removed or the expiration of the Title Defect Cure Period. If the Title Defect can be removed by bonding and City has not so bonded within the Title Defect Cure Period, Friends may in its sole discretion cause a bond to be issued. If Friends causes a bond to be issued in accordance with this Section 2.6(c), City, at its option, shall reimburse Friends for the cost of such bond

within thirty (30) days of demand therefor or offset such amounts against any rent due under the Lease.

(d) Friends' Remedies for an Uncured Title Defect. If by expiration of the Title Defect Cure Period, subject to Force Majeure, unless the Parties mutually agree to extend such date, a Title Defect still exists and all other of City's Conditions Precedent have been satisfied, Friends may by written notice to City either (i) terminate this Agreement or (ii) accept Delivery of the Property under the Lease. If Friends elects to accept Delivery, the Title Defect will be deemed waived but solely with respect to any action by Friends against City. If Friends does not accept Delivery and fails to terminate this Agreement within seven (7) 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 Friends. If the Agreement is terminated under this Section, Friends shall have no further remedies against City with respect to such termination. In the event that Friends does not accept Delivery and fails to terminate this Agreement within such seven (7) days after the expiration of the Title Defect Cure Period, or any extension thereof as provided above, and City elects not to terminate this Agreement as set forth in this Section, this Agreement shall continue in full force and effect and any Title Defect will be deemed waived and City shall have all of its rights and remedies under this Agreement, at law and in equity.

(e) Covenants of City Regarding the Site Before the Close of Escrow. In addition to its obligations under Section 2.6(a) above, and not in limitation of Friends' rights under Section 2.4, City will not intentionally take any actions that materially alters the condition of title to the Property existing as of the date of this Agreement except as specifically contemplated hereunder or under the Lease. 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 Property except as expressly contemplated by this Agreement or (ii) enter into any lease, license or other agreement for the use or occupancy of the Property, in each case without Friends' prior written consent.

2.7 Title Insurance

(a) Title Insurance to be Issued at the Close of Escrow. The joint escrow instructions described in Section 2.2(c) will provide that concurrently with the Close of Escrow, the Title Company will issue and deliver:

(i) to Friends, an A.L.T.A. extended coverage title insurance policy (or, at Friends' election, a C.L.T.A title insurance policy) issued by the Title Company, with such coinsurance or reinsurance and direct access agreements as Friends may request reasonably, in an amount reasonably designated by Friends which is satisfactory to the Title Company, insuring that the leasehold estate in the Property is vested in Friends subject only to the Permitted Title Exceptions, and with such C.L.T.A. form endorsements and such other endorsements as may be requested reasonably by Friends, all at the sole cost and expense of Friends; and

(ii) to City an A.L.T.A. extended coverage title insurance policy (or, if Friends 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 Property subject to the 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 2.7(c) below, 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.

(b) Surveys. Friends 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 or as otherwise required to consummate the transactions contemplated by this Agreement. Friends shall provide City with complete and accurate copies of all such final surveys (which shall be certified to City in a form reasonably satisfactory to City) and engineering studies.

(c) Construction Endorsement. In the event that the title insurance policy described in Section 2.7(a)(ii) above is issued to City, and in the event that Friends obtains an endorsement to its title insurance policy with respect to the Property insuring Friends that the Improvements have been completed free and clear of all mechanics' and materialmen's liens, Friends shall also obtain such an endorsement for City with respect to City's title insurance policy, all at the sole cost and expense of Friends.

2.8 Taxes and Assessments

(a) Ad Valorem Taxes and Assessments Before and After Delivery. For any period before the Close of Escrow, Friends is responsible for any ad valorem taxes (including, but not limited to, possessory interest taxes) assessed by reason of this Agreement, its entry upon the Property under a Permit to Enter, or otherwise. Ad valorem taxes and assessments levied, assessed, or imposed for any period on or after the Close of Escrow, including but not limited to, possessory interest taxes, are the sole responsibility of Friends, as further provided in the Lease.

(b) Possessory Interest Taxes. Friends recognizes and understands that this Agreement may create a possessory interest subject to property taxation and that Friends may be subject to the payment of property taxes levied on such interest. San Francisco Administrative Code Sections 23.38 and 23.39 require that City and County of San Francisco report certain information relating to this Agreement, and any renewals of this Agreement, to the County Assessor within sixty (60) days after any such transaction, and that Friends report certain information relating to any assignment, sublease or transfer under this Agreement to the County Assessor within sixty (60) days after such assignment transaction. Friends agrees to provide such information as may be requested by City to enable City to comply with this requirement.

2.9 Compliance with Laws

(a) Compliance with Laws and Other Requirements. Friends shall comply (taking into account any variances or the terms of other Regulatory Approvals properly obtained) at all times throughout the LDDA Term, with: (i) all Laws; (ii) all of the Mitigation Measures described in Section 11.2 below; (iii) all requirements of all policies of insurance required under Section 5.14 hereof, and under Section 18 of the Lease and such other insurance

policies of Friends which may be applicable to the Site, the Improvements or Friends' personal property; (iv) the Lease (to the extent that it is then in effect); (v) all applicable requirements for qualification of the Project for the Historic Preservation Tax Credit; and (vi) all other applicable Project Requirements. It is expressly understood and agreed that the performance required of Friends by the preceding sentence shall include the obligation to make all additions to, modifications of, and installations on the Property that may be required by any Laws regulating the Site or any insurance policies covering the Site, the Improvements or Friends' personal property; provided, however, that if City elects to perform the Remediation of Unknown Pre-Existing Hazardous Materials pursuant to the provisions of Section 3.3(g) below, Friends shall have no obligation to cause the Property to comply with Hazardous Materials Laws to the extent that any failure to comply is a result of Unknown Pre-Existing Hazardous Materials. Friends shall, promptly upon request, provide City with evidence of compliance with Friends' obligations under this Section.

(b) Regulatory Approvals.

(i) Friends understands and agrees that City is entering into this Agreement in its capacity as a landowner with a proprietary interest in the Property and not as a regulatory agency with certain police powers. Friends 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 Friends will obtain any required approvals from City departments, boards or commissions which have jurisdiction over the Property. By entering into this Agreement, City is in no way modifying or limiting the obligations of Friends to develop the Project in accordance with all Laws, as provided in this Agreement.

(ii) Friends understands that its Construction of the Improvements on the Site and development of the Project will require approvals, authorizations and permits from governmental agencies with jurisdiction, which may include, without limitation, City's Planning Commission and/or Zoning Administrator, the Recreation and Park Commission, the Department of Building Inspection, the Art Commission, the Department of Public Health and SHPO. Friends shall use good faith efforts to obtain and shall be solely responsible for obtaining any Regulatory Approvals required for the Project in the manner set forth in this Section. Friends shall not seek any Regulatory Approval without first notifying City. Throughout the permit process for any Regulatory Approval, Friends shall consult and coordinate with City in Friends' efforts to obtain such permits. City shall cooperate reasonably with Friends in its efforts to obtain such permits, including executing any letters of authorization as owner of the Property. However, Friends shall not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a permit from any other regulatory agency if City is required to be a co-permittee under such permit and the conditions or restrictions could create any obligations on the part of City whether on or off of the Site, or the conditions or restrictions could otherwise encumber, restrict or change the use of the Site, unless in each instance City has previously approved such conditions in writing and in City's sole and absolute discretion. No such approval by City shall limit Friends' obligation to pay its share of the costs of complying with such conditions under this Section. Subject to the conditions of this Section, City shall join any application by Friends for any required Regulatory Approval and in executing such permit where required, provided that City shall have no obligation to join in any such application or sign any such permit if City does not approve the conditions imposed by the regulatory agency under such

permit as set forth above. Friends shall bear all costs associated with applying for and obtaining any necessary Regulatory Approval. Friends shall comply with any and all conditions or restrictions imposed by regulatory agencies as part of a Regulatory Approval, whether such conditions are on-site or require off-site improvements as a result of the Project. Friends shall have the right to reasonably appeal or contest any adverse decision and/or imposition of any condition in any manner permitted by Law imposed upon any such Regulatory Approval. Friends shall pay or discharge any fines, penalties or corrective actions imposed as a result of the failure of Friends to comply with the terms and conditions of any Regulatory Approval. Without limiting any other indemnification provisions of this Agreement, Friends shall Indemnify City and the other City Indemnified Parties from and against any and all Losses which may arise in connection with Friends' failure to seek to obtain in good faith, or to comply with, the terms and conditions of any Regulatory Approval or to pursue in good faith the appeal or contest of any conditions of any Regulatory Approval initiated in connection with the Project, except to the extent such Losses are caused by the gross negligence or willful misconduct of City acting in its proprietary capacity. The provisions of this Section shall survive any termination of this Agreement.

2.10 Period to Cure Defaults Prior to the Close of Escrow

If Escrow is not in condition to close at the Close Date due to an Event of Default, either Party who has performed fully the acts to be performed by it before Close of Escrow, or whose performance has been excused, may terminate this Agreement by written notice, demand the return of its money, papers or documents deposited in Escrow and exercise all of its rights and remedies hereunder; *provided, however*, the other Party will have sixty (60) days after such notice to perform any acts required of it to permit Close of Escrow or such other additional time as reasonably agreed to by the Parties in writing. If neither City nor Friends has performed fully with respect to the Close of Escrow before the time established therefor, the Title Company will have been instructed in the joint instructions described in Section 2.2(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

3.1 Site As Is; Risk of Loss

(a) **Acceptance of Site in “AS IS WITH ALL FAULTS” Condition; Risk of Loss.** Except as set forth in Sections 3.3 and 3.4, City shall not prepare the Property for any purpose whatsoever related to Friends' obligations to Construct the Improvements. Except as set forth in Sections 2.6(a), 3.3 and 3.4, Friends 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, however, that, between the Effective Date and the Close of Escrow, there is no discovery of a physical condition of the Property not created by the acts or omission of Friends or its Agents that was not known to Friends prior to the Effective Date that would materially, adversely interfere with Construction of the Project for its intended uses or the operation of the

Site for its intended uses (an “**Adverse Change**”). It shall be a condition precedent to Friends’ obligation to Close of Escrow and to accept Delivery of the Property, that there be no such Adverse Change. Notwithstanding the foregoing, City will not under any circumstances be liable to Friends for any monetary damages caused by an Adverse Change.

(b) Independent Investigation by Friends. Within fifteen (15) days of the Effective Date, City will provide Friends a full opportunity to inspect all of the public records of City in the possession of City’s project manager for the Building and the General Manager that relate to the physical condition of the Property. City makes no representation or warranty as to the accuracy or completeness of any matters contained in such records. If such records disclose any information that is unacceptable to Friends, as determined by Friends in its sole discretion, Friends shall have the right to terminate this Agreement upon thirty (30) days prior written notice to City given within ninety (90) days of receipt of such materials.

(c) DISCLAIMER OF REPRESENTATIONS AND WARRANTIES. FRIENDS AGREES THAT, EXCEPT AS SET FORTH IN SECTIONS 3.3 AND 3.4, THE PROPERTY IS BEING DELIVERED BY CITY AND ACCEPTED BY FRIENDS IN ITS “AS IS WITH ALL FAULTS” CONDITION. FRIENDS SPECIFICALLY ACKNOWLEDGES AND AGREES THAT, EXCEPT AS SET FORTH IN SECTIONS 3.3 AND 3.4, 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 PROPERTY, THE SUITABILITY OR FITNESS OF THE PROPERTY OR APPURTENANCES TO THE PROPERTY 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 PROPERTY, OR ANY OTHER MATTER WHATSOEVER PERTAINING TO THE PROPERTY 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, Friends, on behalf of itself and its successors and assigns, shall be deemed to waive any right to recover from, and forever release, acquit and discharge, City, and its Agents of and from any and all Losses, whether direct or indirect, known or unknown, foreseen or unforeseen, that Friends 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, including, without limitation, any Hazardous Materials in, on, under, above or about the Property (including, but not limited to, soils and groundwater conditions), and (ii) any Laws applicable thereto.

In connection with the foregoing release, Friends 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.

Friends agrees that the release contemplated by this Section includes unknown claims. Accordingly, Friends 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.

3.3 Environmental Matters

(a) **Environmental Assessment.** Ecology and Environment, Inc. (“E&E”), prepared a Phase I Environmental Site Assessment for Geneva Car Barn and Powerhouse, dated February 2012 (the “**Phase I ESA**”). The Phase I ESA identified environmental conditions which were the basis of a Field Sampling Plan for Targeted Brownfields Assessment, Geneva Car Barn and Powerhouse, San Francisco, California, dated April 2012 (the “**FSB**”), and a Field Sampling Plan Addendum, Geneva Car Barn and Powerhouse, dated November 15, 2012 (the “**FSP Addendum**”). The FSP and FSP Addendum describe proposed soil sampling; indoor air mercury vapor monitoring; indoor air sampling for volatile organic compounds, and assessment of suspected asbestos-containing building materials and lead-based paint. Following the monitoring and sampling recommended in the FSP and FSP Addendum, E&E prepared a Targeted Brownfields Assessment Report for Geneva Car Barn and Powerhouse, 2301 San Jose Avenue, San Francisco, California, dated June 2013 (the “**Phase II ESA,**” and together with the FSB the “**Environmental Assessment**”), a copy of which has been made available to City and Friends. Friends received a Targeted Brownfields Assessment award to fund the monitoring and assessment effort. Based on the conclusions reached in the Environmental Assessment, E&E made a number of recommendations regarding the handling of certain material during the Project, which recommendations are set forth in the Phase II ESA and in the attached Exhibit C (the “**Recommendations Regarding Environmental Conditions**”). The Hazardous Materials present (or likely present) on the Property as identified by the Environmental Assessment are referred to herein collectively as the “**Disclosed Pre-Existing Hazardous Materials**”).

(b) **Implementation of Recommendations Regarding Environmental Conditions.** Friends shall Remediate the Disclosed Pre-Existing Hazardous Materials following Close of Escrow as a Project cost. Friends shall cause such Remediation to be performed in accordance with the Recommendations Regarding Environmental Conditions and applicable Laws, regulations and agency requirements and standards, in each case, taking into account the construction and operational activities anticipated at the Property. In order to ensure that the scope of Remediation is sufficient for the development of the Project, Friends shall consult with City prior to entering into a contract for and prior to commencing the Remediation.

(c) **Post Remediation Environmental Assessment.** Following Remediation of the Disclosed Pre-Existing Hazardous Materials, Friends shall deliver to City an

environmental assessment evidencing that the Property is clear of Disclosed Pre-Existing Hazardous Materials, which environmental assessment shall be satisfactory to City in its reasonable discretion.

(d) Compliance with Hazardous Materials Laws. From and after the Close of Escrow, Friends shall comply with the provisions of all Hazardous Materials Laws and all conditions for Regulatory Approval of Hazardous Materials Remediation applicable to the Property, including the Improvements, and the activities conducted on the Site, and all uses, improvements and appurtenances of and to the Property, as further provided in the Lease.

(e) Remedies Against Other Persons. Nothing in this Agreement is intended in any way to preclude or limit Friends from pursuing any remedies Friends may have with regard to the existence of Hazardous Materials in, on, under or about the Property against any Person other than City Indemnified Parties; provided, however, Friends may pursue such remedies only with the advance written consent of City, which consent shall not be unreasonably withheld, conditioned or delayed.

(f) Condition of Property. Between the Effective Date and the Close of Escrow, City shall not introduce new Hazardous Materials to the Property other than such types typically associated with any maintenance or protection of the Property by or on behalf of City.

(g) Unknown Pre-Existing Hazardous Materials. If prior to or during the course of construction of the Improvements, the Parties discover environmental conditions other than the Disclosed Pre-Existing Environmental Conditions that are unacceptable to Friends (“**Unknown Pre-Existing Environmental Conditions**”), the Department and Friends shall use best efforts to develop a plan for Remediation of the Unknown Pre-Existing Environmental Conditions and to identify a funding source for such Remediation, taking into consideration that certain funds available to the Department are or will be dedicated to other projects or programs as well as City budget limitations, and subject in all events to the budgetary and fiscal provisions of City’s Charter. If after using best efforts to identify a funding source for the Remediation (i) the Parties do not identify grant funding or other funding sufficient to cover the entire cost of the required work, or (ii) City, at its sole election, elects to perform the Remediation of the Unknown Pre-Existing Hazardous Materials (“**City’s Remediation Election**”) and City fails to Remediate the Unknown Pre-Existing Hazardous Materials to Friends’ satisfaction (which may, to the extent reasonably required by Friends, include the requirement that City deliver to Friends an environmental assessment evidencing that the Property is clear of such Unknown Pre-Existing Hazardous Materials) by the date agreed to by City and Friends for the performance thereof (as extended by delays resulting from Force Majeure), then Friends shall have the right to terminate this Agreement upon thirty (30) days’ prior written notice to City given not later than one hundred twenty (120) days after the date the condition triggering such termination right occurs, provided that if construction of the Improvements commenced prior to discovery of the Unknown Pre-Existing Environmental Conditions, then prior to the effective date of such termination Friends shall remove any construction debris from the Property.

3.4 SFMTA Facilities Matters

The parties acknowledge and agree that a high-tension electrical wire benefitting the SFMTA Property has been mounted to eastern wall of the Building and an alarm system serving the SFMTA Property is located, in part, within the Building. Friends acknowledges that the 2004 MOU provides that certain SFMTA facilities may remain on the Property and that SFMTA will have continuing access to such facilities. The General Manager shall use good faith efforts to reach an agreement with the Director of SFMTA requiring the relocation of the SFMTA facilities on terms and conditions reasonably acceptable to Friends and acceptable to the General Manager and the Director of SFMTA in their respective sole discretion (the "Updated MOU"). On or prior to the respective dates set forth in the Schedule of Performance, City shall (i) deliver to Friends evidence that City and/or SFMTA has entered into a contract for removal of the high-tension electrical wire and alarm system from the Building or notify Friends that City and/or SFMTA shall perform such relocation itself, and (ii) cause the removal of such high-tension electrical wire and alarm system from the Building. In no event shall such high-tension electrical wire or alarm system be relocated to any other portion of the Property or in a manner that would interfere with the Project. Friends acknowledges that the Updated MOU may provide that part or all of the cost of such relocation shall be borne by the Recreation and Park Department, and in such event City may elect to terminate this Agreement unless a source of funds for such relocation costs is found that is acceptable to City. City shall have no obligation hereunder to pay for any such relocation.

3.5 Indemnification

(a) Indemnification by Friends Before Close of Escrow. Without limiting any indemnity contained in any Permit to Enter, Friends shall Indemnify City and the other City Indemnified Parties from and against any and all Losses incurred in connection with or arising prior to the Close of Escrow out of the conduct of Friends or its Agents on the Property or related to the Project, including, without limitation, (i) the death of any person or any accident, injury, loss or damage whatsoever caused to any person or to the property of any person which may occur on or adjacent to the Property and which may be caused directly or indirectly by any acts done on the Property, or any acts or omissions of Friends or its Agents; (ii) any default by Friends in the observation or performance of any of the terms, covenants or conditions of this Agreement to be observed or performed on Friends' part; and (iii) the entry by Friends, its Agents or Invitees or any Person claiming through or under any of them, upon the Property. Notwithstanding the foregoing, Friends shall not be required to Indemnify City or other City Indemnified Parties against Losses if such Losses (A) are caused by the gross negligence or willful misconduct of any of City or any of the other City Indemnified Parties, including in the exercise of police powers; (B) arise from the satisfaction by Friends of the obligations of Friends under Section 11.1 below; or (C) are caused by third party claims arising from the condition or use of the Property prior to the date hereof, to the extent not arising from the negligence or willful misconduct of Friends or its Agents.

(b) Indemnification On and After Delivery. Friends shall Indemnify City and the other City Indemnified Parties for Losses arising after the Close of Escrow in accordance with the provisions of the Lease.

(c) General Provisions Regarding Indemnities.

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

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

(iii) **Not Limited by Insurance.** The insurance requirements and other provisions of this Agreement shall not limit Friends' indemnification obligations under this Agreement, any Permit to Enter or the Lease.

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

(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 which Friends may have to City in this Agreement, any Permit to Enter or applicable Law.

(vi) **Defense.** Friends 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 indemnified matter through counsel of Friends' own choice; provided, however, in all cases City shall be entitled to participate in such defense, compromise, or settlement at its own expense. If Friends 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 or to hire outside counsel (reasonably satisfactory to Friends) to carry out such defense, which expense shall be due and payable to the City within ten (10) days after receipt of an invoice therefor.

3.6 No Representation Regarding Adjacent Property

The Parties acknowledge and agree that certain SFMTA-controlled parcels adjacent to and in the immediate vicinity of the Property may be sold or otherwise made available for private development, and that such development may adversely affect the Project.

4. ACCESS BY FRIENDS

4.1 Access and Entry by Friends 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 Friends and its Agents before the Close of Escrow.

(i) City hereby grants to Friends and its Agents the right of access to and entry upon and around the Property for purposes associated with the Project from and after the Effective Date, including showing the Property to potential donors and investors and developing construction documents, provided Friends first obtains a Permit to Enter from City in substantially the form as the Permit to Enter attached hereto as Exhibit Q (the “**LDDA Permit to Enter**”), but excluding the work described in clauses (ii) through (iii) below.

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

(iii) Friends 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 Property authorized in accordance with the foregoing, Friends shall not materially interfere with or obstruct the permitted, lawful use of the Property by City, or its invitees.

(v) City may require any contractor performing the work under a 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 Property in the same or better condition than exists as of the date hereof, provided that City shall have no obligation to maintain any portion of the Property upon which Friends has commenced Construction, and provided further that Friends, at Friends’ expense, shall maintain in the same or better condition than exists as of the date immediately preceding commencement of Construction those portions of the Property on which Construction has commenced.

4.2 **Access and Entry by Friends on SFMTA Property**

(a) **Temporary Construction License.** The Parties acknowledge and agree that access to City-owned property located immediately adjacent to the Site to the south and the east (the “**SFMTA Property**”), which property is under the control and jurisdiction of the San Francisco Municipal Transportation Agency (“**SFMTA**”), will be necessary during Construction of the Improvements for ingress, egress and staging. Access to the SFMTA Property is presently governed by the 2004 MOU. City and Friends shall use good faith efforts to obtain from SFMTA a more comprehensive temporary construction license or other right of access, in form and substance acceptable to the General Manager and Friends in their respective

reasonable discretion, for purposes of ingress, egress, and staging during Construction of the Improvements (the “**Temporary Construction License**”).

(b) **Long-Term License.** The Parties acknowledge and agree that access to the SFMTA Property will be necessary during the term of the Lease for purposes of ingress and egress to the freight elevator and loading dock to be located on the eastern wall of the Building. Access to the SFMTA Property is presently governed by the 2004 MOU. City and Friends shall use good faith efforts to obtain from SFMTA a more comprehensive license or other right of access, in form and substance acceptable to the General Manager and Friends in their respective reasonable discretion, for purposes of ingress and egress during the term of the Lease (the “**Long-Term License**”), and to obtain the right to record the Long-Term License or a memorandum thereof against title to the SFMTA Property upon the Close of Escrow.

5. DEVELOPMENT OF THE SITE

5.1 Friends’ Construction Obligations

(a) **Scope of Development; Schedule of Performance.** Friends shall Construct or cause to be Constructed the Improvements on the Site within the times and in the manner set forth in this Section 5 and as more particularly set forth in the Schedule of Performance, the Scope of Development attached hereto as Exhibit I, the Schematic Drawings, and the approved Construction Documents.

(b) **Timing and Extensions.** The satisfaction of the matters set forth in the Schedule of Performance by the required completion dates is an essential part of this Agreement, time being of the essence. Friends shall use its best efforts to complete the milestone tasks, including, without limitation, commencing and completing construction of each phase of the Project, by the respective dates specified in the Schedule of Performance or within such extension of time, if any, as the City may grant in writing or as otherwise permitted by this Agreement.

(i) Force Majeure.

(A) The Schedule of Performance shall be extended for delay caused by Force Majeure.

(B) If Friends determines that Force Majeure will or may prevent Friends from commencing Construction of any phase in accordance with the Schedule of Performance or performing any other act in accordance with the Schedule of Performance, then Friends shall notify City in writing of the event or condition constituting Force Majeure and shall propose equitable adjustments to the Schedule of Performance, together with a written explanation of how the proposed adjustments were calculated.

(C) Within thirty (30) days after receipt of Friends’ written notice, City shall provide a written response to Friends either (1) requesting additional information as reasonably required to analyze Friends’ request, or (2) agreeing with or disputing Friends’ determination of the occurrence of Force Majeure, and, in the event City agrees with Friends’ determination of Force Majeure, either approving Friends’ requested adjustments to the Schedule

of Performance or proposing alternative adjustments to the Schedule of Performance. Provided that Friends is not in default of its obligations under this Agreement and City agrees with Friends' determination of the occurrence of Force Majeure, then City shall approve a reasonable, equitable adjustment to the Schedule of Performance. If City fails or declines to respond to Friends within thirty (30) day period described above, then Friends may at Friends' election provide written notice to City that no notice was received, and provided that such notice displays prominently on the envelope enclosing such notice and the first page of such notice, substantially the following words: "REQUEST TO EXTEND SCHEDULE OF PERFORMANCE FOR GENEVA CAR BARN. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND COULD RESULT IN THE REQUEST BEING DEEMED APPROVED," the requested adjustment to the Schedule of Performance shall be deemed approved if City does not respond in writing within ten (10) days after such notice.

(D) If City requests additional information, Friends shall promptly provide such information, together with a renewed request for an adjustment to the Schedule of Performance, and the provisions of the foregoing subsection shall apply to such renewed request. If Friends and City disagree on the occurrence, duration or impact of Force Majeure or on the proposed adjustments to the Schedule of Performance, then Friends and City shall attempt in good faith to meet no less than two (2) times during the thirty (30) day period following City's written response to Friends, at a mutually agreed upon time and place, to attempt to resolve any such disagreement. During any such period, each Party shall promptly provide the other with additional information on request.

(ii) Other Extensions.

(A) If and at such time as Friends determines it will be unable, for reasons other than Force Majeure, to commence a phase in accordance with the Schedule of Performance or perform any other act in accordance with the Schedule of Performance, then, as soon as reasonably practicable, Friends shall prepare and submit to City in writing (1) the reasons Friends will be unable to commence such Construction or perform such other act in accordance with the Schedule of Performance; and (2) Friends' proposed adjustments to the Schedule of Performance (the "**Proposed Update**").

(B) Within sixty (60) days after receipt of Friends' Proposed Update, City shall provide a written response to Friends either (1) requesting additional information as reasonably required to analyze Friends' request, or (2) approving Friends' requested adjustments to the Schedule of Performance or (3) proposing alternative adjustments to the Schedule of Performance. If City proposes alternative adjustments to the Schedule of Performance, then City's notice to Friends shall include a written explanation of the reason(s) therefor. If City fails or declines to respond to Friends within the sixty (60) day period described above, then Friends may at Friends' election provide written notice to City that no notice was received, and provided that such notice displays prominently on the envelope enclosing such notice and the first page of such notice, substantially the following words: "REQUEST TO EXTEND SCHEDULE OF PERFORMANCE FOR GENEVA CAR BARN. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND COULD RESULT IN THE REQUEST BEING DEEMED APPROVED," the requested adjustment to the Schedule of Performance shall be deemed approved if City does not respond in writing within ten (10) days after such notice.

(C) If City requests additional information, Friends shall promptly provide such information, together with a renewed request for an adjustment to the Schedule of Performance. If Friends and City disagree on the proposed adjustments to the Schedule of Performance, then Friends and City shall attempt in good faith to meet no less than two (2) times during the thirty (30) day period following City's written response to Friends, at a mutually agreed upon time and place, to attempt to resolve any such disagreement. During any such period, each Party shall promptly provide the other with additional information on request.

(iii) Dispute Resolution. If Friends and City are unable to resolve any disagreement over the occurrence or duration of Force Majeure or the reasonable adjustments to the Schedule of Performance required in connection therewith, then Friends and City, by mutual agreement, may submit such dispute to non-binding arbitration, mediation or other alternate dispute resolution mechanism ("ADR") of non-judicial dispute resolution. The Party requesting ADR shall give written notice of its request, specifying the requested ADR procedure, to the other Party, who shall notify the requesting Party of its agreement or refusal to proceed within a reasonable time after receipt of the requesting notice. If the parties agree to proceed, they shall select a mutually acceptable individual, with qualifications appropriate to the subject matter of the dispute, to conduct the designated ADR, or, if the parties cannot agree on such individual, they shall submit the dispute for the applicable ADR to a commercial ADR service. In all events, the proceedings shall be conducted only in a manner acceptable to both parties. The parties may enter into operating memoranda from time to time to establish procedures for the initiation and conduct of such ADR mechanisms. Within thirty (30) days after selection of the individual conducting the ADR, such individual shall determine the resolution of the matter. In making this determination, such individual's review shall be confined to (i) the applicable terms and conditions of this Agreement; (ii) the parties' written notices to each other, as required by this Section, and (iii) any additional written information and correspondence exchanged between the parties during consultation period following City's decision to propose alternative adjustments to the Schedule of Performance.

(iv) Administrative Approval of Adjustment to Schedule of Performance. Amendment to the Schedule of Performance contemplated under this Section may be processed and approved administratively by the General Manager, and shall not require the approval of the Recreation and Park Commission or other legislative body, provided that the General Manager shall not have the right to extend the Close Date or the Completion Date by more than _____ months without approval of the Recreation and Park Commission. The granting of an extension of any date therein shall not be deemed to be a waiver of any other rights under this Agreement or imply the extension of any other dates. In the event the Schedule of Performance is amended prior to the Close of Escrow, the parties may agree to extend the Close Date by designating a new Close Date on such amended Schedule of Performance. In the event the Parties are unable to reach agreement with regard to an amended Schedule of Performance following a period of negotiation of not less than nine (9) months, then either party may terminate this Agreement upon one hundred eighty (180) days prior written notice to the other.

(c) Construction Standards. All Construction with respect to the Project shall be accomplished expeditiously, diligently within the time frames set forth in the Schedule of Performance and in accordance with good construction and engineering practices and

applicable Laws. Friends shall undertake commercially reasonable measures to minimize damage, disruption or inconvenience caused by such work and make adequate provision for the safety and convenience of all persons affected by such work. 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. Friends, 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 the Site and Improvements and the surrounding property, or the risk of injury to members of the public, caused by or resulting from the performance of such Construction.

(d) Costs. Friends shall bear any and all costs of the Project and Construction of the Improvements, including any and all cost overruns in relation to the Budget. Without limiting the foregoing, the Friends shall be responsible for performing all Property preparation work necessary for the rehabilitation and development of the Improvements. Such preparation of the Property shall include, among other things, Investigation and Remediation of Hazardous Materials required for development or operation of the Improvements, except to the extent City elects to perform such work, and all structure and substructure work.

(e) Character Defining Features. At all times during Construction of the Improvements and during the term of the Lease, Friends shall be solely responsible for the safekeeping and protection of the character defining features of the Building as designated by the Historic Structure Report. Friends shall take all commercially reasonable measures during such time to protect the character defining features from damage or injury. Friends shall make no changes to the character defining features of the Building except in strict accordance with the terms of this Agreement, the Construction Documents and the Regulatory Approvals.

(f) Phased Construction. City may at its sole discretion approve modifications to the Schedule of Performance and the review process and timeframes set forth in Section 5.8 herein to accommodate a request by Friends for phased construction of the Improvements.

5.2 Utilities

(a) Friends Responsibility. Friends, at its sole expense, shall arrange for the provision and construction of all on-site and off-site utilities necessary to Construct the Improvements on the Property, if any, as shown on the Construction Documents, and the cost thereof shall be included in the Budget.

5.3 Construction Documents

(a) Definition of Construction Documents. The Construction Documents shall consist of the following:

(i) Schematic Drawings prepared by Aiden Darling Design, comprised of those certain Schematic Drawings for the Project, dated July 12, 2010, as more particularly described on the attached Exhibit I, which generally include, without limitation (a) perspective drawings sufficient to illustrate the Project, (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, (c) building plans, floor plans and elevations sufficient to describe the development proposal for the Project, and the general architectural character, and the location and size of uses, of the Project, and (d) building sections showing height relationships of the areas noted above. City has approved the Schematic Drawings.

(ii) Preliminary Construction Documents in sufficient detail and completeness to show the Improvements and the construction thereof in compliance with the Project Requirements (as defined in Section 5.4 below), and which shall generally include, without limitation, (a) site plans at appropriate scale showing the building, streets, walks, and other open spaces, with all land uses designated and all site development details and bounding streets, and points of vehicular and pedestrian access shown, (b) all building plans and elevations at appropriate scale, (c) building sections showing all typical cross sections at appropriate scale, floor plans, (e) preliminary tenant improvement plans, if applicable, (f) plans for public access areas, (g) outline specifications for materials, finishes and methods of construction, (h) exterior signage and exterior lighting plans, (i) material and color samples, and (j) roof plans showing all mechanical and other equipment. The Preliminary Construction Documents shall be in conformance with the Schematic Drawings and the Scope of Development, and shall incorporate conditions, modifications and changes specified by City or required as a condition of Regulatory Approvals. At City's election, secondary structural systems, including curtain wall members, elevators, non load-bearing walls, skylights and exterior façade will be design/build by the contractor's specialty engineer and secondary stair required for means of egress will be design/build, and will not be included in the Preliminary Construction Documents.

(iii) Final Construction Documents, which shall include all plans and specifications required under applicable Laws to be submitted with an application for a Building Permit as provided in Section 5.15 below. The Final Construction Documents shall be a final development of, and be based upon and conform to, the approved Preliminary Construction Documents for the Improvements. The Final Construction Documents shall incorporate conditions, modifications and changes required by City for the approval of the Preliminary Construction Documents for the Improvements. The Final Construction Documents shall include all drawings, specifications and documents necessary for the Improvements to be constructed and completed in accordance with this Agreement.

(b) Exclusion. As used in this Agreement, "Construction Documents" does not mean any contracts between Friends and any contractor, subcontractor, architect, engineer or consultant.

5.4 Project Requirements

Friends shall construct all of the Improvements in compliance with the Construction Documents and in compliance with all applicable Laws, including, without limitation, Hazardous Materials Laws and Disabled Access Laws, and as further provided in Section 2.9. The Construction Documents shall conform to and be in compliance with applicable requirements of (i) this Agreement, including the Scope of Development, the Schematic Drawings and the Special City Requirements set forth in Section 11 below, (ii) the Mitigation Measures, (iii) City's

Building Code, (iv) any required Regulatory Approvals, and (v) the Preliminary Construction Documents, and shall be consistent with the project described and preliminarily approved by the NPS in the Part 2 Application. All of the requirements set forth in this Section 5.4 are referred to collectively as the “**Project Requirements.**” Notwithstanding any other provision of this Agreement or the Lease to the contrary, City’s approval of the Schematic Drawings and the Site Plan in the respective forms attached hereto is in no manner intended to, and shall not, evidence or be deemed to evidence City’s approval of any aspect of the Project with respect to the scope of review described in this Section 5.4 or in Section 5.7 below.

5.5 Preparation of Construction Documents; Role of Architect and Structural Engineer

(a) **Preparation by Licensed Architect.** The Construction Documents shall be prepared by or signed by an architect (or architects) duly licensed to practice architecture in and by the State of California, in consultation with a licensed historic preservation architect for purposes of complying with applicable historic preservation standards required by SHPO and NPS. A California licensed architect shall coordinate the work of any associated design professionals, including engineers and landscape architects.

(b) **Inspection.** A California licensed architect shall inspect all Construction of the Improvements and shall provide certificates in the form of the Architect’s Certificate attached hereto as Exhibit J when required by City.

(c) **Certification by Structural Engineer.** 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.

5.6 Submission of Construction Documents

(a) **Construction Documents.** Construction Documents shall be prepared as provided in Section 5.7 below in accordance with the Scope of Development and at the time or times established in the Schedule of Performance. As to all stages of the Construction Documents, each of the Construction Document stages is intended to constitute a further development and refinement from the previous stage. Thus, the Preliminary Construction Documents shall be in substantial conformance with the Schematic Drawings and the Scope of Development, and shall incorporate conditions, modifications and changes specified by City or required as a condition of Regulatory Approvals as approved by City. The Design Development Drawings and the Preliminary Construction Documents shall be in sufficient detail and completeness to show that the Improvements and the Construction of Improvements will be in compliance with the Project Requirements and matters previously approved. The Final Construction Documents shall be a final development of, and be based upon and conform to, the approved Preliminary Construction Documents. The Final Construction Documents shall incorporate conditions, modifications and changes required by City or Friends for the approval of the Preliminary Construction Documents. The Final Construction Documents shall include all drawings, specifications and documents necessary for the Improvements to be constructed and completed in accordance with this Agreement.

(b) Updated Budgets and Financing Plans. Within thirty (30) days of Friends' receipt of the Preliminary Construction Documents and of the Final Construction Documents, Friends' shall submit to City for City's review and approval an updated estimated Budget of total development costs for the Project, prepared at a level of detail commensurate with the stage of design expressed in the drawings then under review, and to the extent the Budget differs from the Budget previously submitted, shall also submit to City, for City's information, an updated Financing Plan setting forth anticipated sources and uses of funds within of the updated Budget.

5.7 Scope of Friends' Review of Construction Documents

(a) Preparation of Preliminary Construction Documents and Final Construction Documents. City shall cause the Preliminary Construction Documents to be prepared in accordance with the provisions of this Article 5. *[Note – edit this Section 5.7(a) if the Department has not entered into an agreement with Aidlin Darling Design for the Preliminary Construction Documents by the date this LDDA is approved by the Commission and the Board of Supervisors.]* By the date set forth in the Schedule of Performance, Friends shall proffer to City a gift of funds in an amount sufficient for City to amend City's agreement with Aidlin Darling Design as necessary for Aidlin Darling Design to complete Final Construction Documents with funds provided by Friends, provided that such amendment shall not require expenditure of any other City funds and shall be on such terms and conditions as City shall reasonably require. Any gift of funds from the Friends to the City to fund the completion of the Final Construction Documents shall be subject to acceptance and approval by the Commission and/or the City's Board of Supervisors as required under the City's Charter and Administrative Code.

(b) Scope of Review. Friends' review and approval of the Construction Documents under this Agreement shall address, among other matters of concern to Friends (i) conformity with the Project Requirements, and (ii) architectural appearance and aesthetics.

(c) Effect of Review. Except by mutual agreement with City, Friends will not disapprove or require changes subsequently in, or in a manner which is inconsistent with, matters which it has approved previously.

5.8 Construction Document Review Procedures

(a) Role of City Staff. City's review and approval of Construction Documents means and requires review and approval of required Construction Documents by City staff or consultants designated to review the Construction Documents by the General Manager ("Staff"). Notwithstanding any other provision of this Agreement or the Lease to the contrary, approval of the Schematic Drawings and the site plan by City in the respective forms attached hereto is in no manner intended to, and shall not, evidence or be deemed to evidence approval of the Preliminary Construction Documents or the Final Construction Documents by City. Approval of Construction Documents by City shall not be construed as approval of such documents by SHPO.

(b) Method of Friends Action/Prior Approvals for Construction Documents. Friends shall reasonably and in good faith approve, disapprove or approve conditionally the Construction Documents in writing, within thirty (30) days after submittal, so long as the applicable documents are properly submitted in accordance herewith and with the Schedule of Performance and/or the other terms of this Agreement. Failure by Friends to either approve or disapprove within such times will entitle City to an extension of time equal to the period of such delay.

(c) Timing of Friends Disapproval/Conditional Approval and City Resubmission for Construction Documents. If Friends disapproves of any of the Construction Documents in whole or in part, Friends in the written disapproval shall state the reason or reasons and may recommend changes and make other recommendations. If Friends conditionally approves the Construction Documents in whole or in part, the conditions shall be stated in writing and a reasonable time shall be stated for satisfying the conditions. City shall make a resubmittal as expeditiously as possible. City may continue making resubmissions until the approval of the submissions or the later of (i) the time specified in any conditional approval or (ii) the date specified in the Schedule of Performance, as either may be extended under the terms hereof. Failure to have a submission approved by such last date will permit termination of this Agreement by Friends on thirty (30) days' written notice to City, unless City cures such failure within such thirty (30)-day period.

(d) Method of City Action/Prior Approvals for Other Submissions. City shall reasonably and in good faith approve, disapprove or approve conditionally unless otherwise set forth herein, any submissions required under the terms of this Agreement, in writing, within forty-five (45) days after submittal, so long as the applicable documents are properly submitted in accordance herewith and with the Schedule of Performance and/or the other terms of this Agreement. Failure by City to either approve or disapprove within such times will entitle Friends to an extension of time equal to the period of such delay. Notwithstanding the foregoing, if Friends submits a full building permit application in accordance with Section 5.15(a), City's time for review shall be sixty (60) days. The Parties hereby acknowledge and agree that City and has approved the Schematic Drawings described Exhibit I.

5.9 Changes in Final Construction Documents

(a) Approval of Changes in Construction Documents. City shall not make or cause to be made any material changes in any approved Construction Documents without the express written approval in its reasonable discretion of the other Party as provided in Section 5.9(b) below. Prior to making any changes that City considers to be nonmaterial to any Friends-approved Construction Documents, City shall notify Friends in writing or verbally at the progress meetings pursuant to Section 5.11 hereof of such proposed changes. If Friends in its reasonable discretion determines that such noticed changes are material, then such changes shall be subject to Friends' approval under Section 5.9(b).

(b) Response in Connection with Construction Documents. City shall request in writing Friends' approval in connection with all material changes to previously approved Construction Documents. Friends shall respond to City in writing within thirty (30)

days after receipt of City's request. If Friends fails to respond to such request on or after twenty-five (25) days after City's written request, City may submit a second notice to Friends requesting Friends' approval or disapproval within five (5) days after City's second notice. If Friends fails to respond within such five (5)-day period, such changes will be deemed approved. Friends acknowledges that the submission, review, approval and dispute resolution process used in connection with the initial approval of the Construction Documents shall apply in connection with the approval of any changes to the Construction Documents.

5.10 Conflict Between Project Requirements and Other Governmental Requirements

(a) **Approval by City or Friends.** Neither Friends nor City shall withhold its approval, where otherwise required under this Agreement, of elements of the Construction Documents or changes in Construction Documents required by any governmental body with jurisdiction over the Project if all of the following have occurred: (i) such Party receives written notice of the required change; (ii) such Party is afforded at least thirty (30) days to discuss such element or change with the governmental body having jurisdiction over the Project and requiring such element or change and with City's architect; (iii) City's architect cooperates fully with such Party and with the governmental body having jurisdiction in seeking reasonable modifications of such requirement, or reasonable design modifications of the Improvements, or some combination of such modifications, all to the end that a design solution reasonably satisfactory to such Party may be achieved despite the imposition of such requirement; and (iv) any conditions imposed in connection with such requirements comply with Section 2.9(b).

(b) **Best Efforts to Attempt to Resolve Disputes.** Friends and City recognize that the foregoing kind of conflict may arise at any stage in the preparation or the Construction Documents, but that it is more likely to arise at or after the time of the preparation of the Final Construction Documents and may arise in connection with the issuance of building permits. Accordingly, time may be of the essence when such a conflict arises. Both Parties agree to use their best efforts to reach a solution expeditiously that is mutually satisfactory to Friends and City.

5.11 Selection of Contractor and Subcontractors

Friends' 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 Friends' submission to City of Friends' 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 Final Construction Documents (as evidenced by Friends' submission to City of a commitment or other writing satisfactory to City issued by a recognized surety company confirming that Friends' contractor is bondable for construction projects having a contract price not less than the contract price under the construction contract for the Improvements). Friends' architectural, surveying, engineering, legal, project management, construction, contracting, and other consulting services for the Project shall be subject to the requirements of Chapter 6 of City's Administrative Code, except for work performed by Aidlin Darling Design.

5.12 Progress Meetings/Consultation

During the preparation of Construction Documents and during the Construction of the Improvements, Staff and Friends shall hold periodic progress meetings to consider Friends' progress, and to coordinate the preparation of, submission to, and review of Construction Documents by Friends and of the Construction process by City. Staff and Friends will communicate and consult informally as frequently as is reasonably necessary to assure that the formal submittal of any Construction Documents to Friends and any matters regarding Construction can receive prompt and speedy consideration (subject to the terms of this Agreement). Friends shall keep City reasonably informed of all meetings taking place in connection with Construction and shall give City the opportunity to attend and participate in such meetings. City may at its own cost, but is not obligated to, have one or more individuals present on the Property at any time and from time to time during Construction, to observe the progress of Construction and to monitor Friends' compliance with this Agreement and any other approved submittals.

5.13 Construction Schedule

Friends shall use its best efforts to commence, prosecute and complete all Construction within the times specified in the Schedule of Performance or within such extension of time as City may reasonably grant in writing or as otherwise permitted by the Agreement, subject to Force Majeure and Litigation Force Majeure. During periods of Construction Friends shall submit written progress reports to City, and if requested by City, related or supporting information, in form and detail as may be required reasonably by City, but at least on a monthly basis.

5.14 Submittals After Completion

(a) As Built Documents. Friends shall furnish City as-built plans, specifications and surveys with respect to the Property within ninety (90) days after Completion of the Improvements. As used in this Section "as-built plans and specifications" means as-built field plans prepared during the course of construction. If Friends fails to provide such surveys and as-built plans and specifications to City within such period of time, City after giving notice to Friends shall have the right, but not the obligation, to cause the preparation by an architect of City's choice of final surveys and as-built plans and specifications, at Friends' sole cost, to be paid by Friends to City within thirty (30) days after City's request therefor.

(b) Certified Construction Costs. Within ninety (90) days after Completion of the Improvements, Friends shall furnish City with an itemized statement of all Construction Costs (which costs shall include all Friends improvement work, if any) incurred by Friends in connection with the construction of the Improvements in accordance with the final construction drawings, certified as true and accurate by a certified public accountant (the "**Certified Construction Costs**"). Friends shall keep accurate books and records of all Construction Costs incurred in accordance with accounting principles generally accepted in the construction industry. Within sixty (60) days after receipt of the statement of Certified Construction Costs, City shall have the right to inspect Friends' records regarding the construction of the Improvements and the costs incurred in connection therewith. If City disagrees with the

statement of Certified Construction Costs, City may request that such records may be audited by an independent certified public accounting firm mutually acceptable to City and Friends, 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. Such audit shall be binding on the Parties, except in the case of fraud, corruption or undue influence. The entire cost of the audit shall be paid by City unless the audit discovers that Friends has overstated the Construction Costs by more than three percent (3%), in which case Friends shall pay the entire cost of the audit.

5.15 Insurance Requirements

(a) Before Close of Escrow. Before Close of Escrow, Friends shall procure and maintain insurance coverage as required by any Permit to Enter given to Friends by City.

(b) After Close of Escrow. From and after Close of Escrow, Friends' obligation to maintain insurance with respect to the Site and the Project will be as set forth in the Lease, provided that Friends' shall require Friends' contractor to comply with the insurance requirements of the approved construction contract for the Project.

(c) City Self-Help Right to Obtain Insurance. After five (5) days' written notice to Friends, City has the right, but not the obligation, to obtain, and thereafter continuously to maintain, any insurance required by this Agreement that Friends fails to obtain or maintain, and to charge the cost of obtaining and maintaining that insurance to Friends; provided, however, if Friends reimburses City for any premiums and subsequently provides such insurance satisfactory to City, then City agrees to cancel the insurance it obtained and to credit Friends with any premium refund.

5.16 City and Other Governmental Permits

(a) Regular Track. As further provided in Section 2.9(b), Friends has the sole responsibility for obtaining all necessary permits for the Improvements and shall make application for such permits directly to the applicable regulatory agency (except with respect to work to be performed by City pursuant to Sections 3.3 and 3.4). Unless Friends elects to use the Site Permit method described in Section 5.15(b) below, Friends shall submit to City a complete application for a full building permit within a time adequate to obtain the same before the date set forth in the Schedule of Performance, taking into account normal processing time by City and notwithstanding the dates set forth in the Schedule of Performance for submission of Construction Documents. Upon any such submission, Friends shall use its best efforts to prosecute the application diligently to issuance.

(b) Site Permit. The so-called "Site Permit" method of permit approval for construction of improvements allows construction to begin with an approved site permit and addenda. Construction may continue to completion through the issuance of addenda covering

the remaining aspects and phases of construction not provided for under the initial approved portion of the building permit. City is willing to allow the Site Permit method for Construction of Improvements at the election of Friends, provided that Friends proceeds diligently and strictly in accordance with this Section and that the use of Site Permit will not delay the dates set forth in the Schedule of Performance for commencement or Completion of Construction.

(i) Under the Site Permit process, only the Site Permit and addenda required for commencement of Construction are required to satisfy the building permit condition to the Close of Escrow.

(ii) If Friends elects to use the Site Permit for any portion of the Improvements, the following provisions shall apply:

(A) Friends shall notify City in writing of its election to do so at any time after City's approval of Friends' Schematic Drawings, including submittal of a proposed sequence, scope and schedule of Site Permit addenda.

(B) City will review the schedule and sequence promptly, and within ten (10) days of receipt, will advise Friends in writing whether or not City believes that such schedule and sequence (i) comply with applicable building code requirements and provide City with adequate processing time, and (ii) would delay the construction commencement date or the Completion of the Improvements beyond the dates in the Schedule of Performance for commencement and Completion in accordance with a full building permit process. If City reasonably believes the schedule and sequence do not so comply or that such a delay would result, it will specify the basis for such belief. Failure of City to respond will be deemed to be approval of the schedule and sequence.

(C) If City disapproves of the schedule or sequence in accordance with this Section, City will meet and consult with Friends to revise the schedule or sequence to make them acceptable to City.

(D) If the schedule and sequence are approved, City will notify Friends in writing of City's required Final Construction Document submission schedule. Such schedule shall be consistent with the schedule for permit addenda submissions, advising which documents shall be approved by City as a condition of approving each permit addendum, commencing with the Site Permit. Friends acknowledges that City's approval of such submissions is a condition precedent to issuance of any permit addenda.

(iii) If Friends objects to City's schedule for Final Construction Documents submittal and review, Friends shall make its objections known to City in writing within seven (7) days of receipt of City schedule.

(iv) If the requirements above have been satisfied and if City and Friends have agreed to a Final Construction Documents submission schedule, Friends will be relieved of the requirement to submit a full set of Final Construction Documents at the time specified in the Schedule of Performance as a condition to the Close of Escrow. In lieu of such requirement, the Final Construction Documents shall be submitted sequentially in accordance

with the agreed-upon schedule established above. The Schedule of Performance will be deemed to be amended accordingly.

(v) Friends may request that City modify the Preliminary Construction Document submittal or approval process to accommodate the Site Permit schedule. If City agrees to such modifications, City will make its submission schedule consistent with the schedule for permit addenda submissions.

(vi) If the Site Permit or any addenda are not issued or will not be issued in accordance with City-approved schedule, Friends will advise City in writing within three (3) days of such fact and state what it believes to be the reason for the delay. City may then conduct its own investigation with Friends as to the reason for the delay. If City determines that the delay is due to acts or omissions of Friends or was contributed to by Friends, City will advise Friends. Friends shall then take all steps and prepare all documents required for the issuance of the permit addenda within forty-five (45) days of the original permit addenda issuance date.

(vii) If Friends so decides, it may change from the Site Permit to regular building permit at any time before commencement of construction by electing to do so in written notice to City. However, such a change may be made only if City determines that the change will not delay the commencement and completion of construction dates specified in the Schedule of Performance for the regular building permit process and that Construction Document review by City can be accommodated reasonably and in sufficient time for issuance of a full building permit and timely commencement of construction. City's determination will be final.

(viii) City's review of Final Construction Documents shall be limited to a determination of consistency with the Preliminary Construction Documents with respect to matters within the scope of City's review and approval as set forth in Section 5.7, including satisfaction of any conditions to City's approval of the Preliminary Construction Documents. Nothing herein shall limit City's review in its regulatory capacity as issuer of the Site Permit and addenda thereto under City's Building Code.

5.17 City Rights of Access

City and its Agents will have the right of access to the Property to the extent necessary to carry out the purposes of this Agreement, including, but not limited to, the inspection of Friends' maintenance of the Property (to the extent such obligation exists) and inspection of the work being performed by Friends in constructing the Improvements. To the extent reasonably practicable, City shall take reasonable action to minimize any interference with Friends' construction activities. City will not be estopped from taking any action (including, but not limited to, later claiming that the construction of the Improvements is defective, unauthorized or incomplete) nor be required to take any action as a result of any such inspection.

5.18 Wages and Working Conditions

Friends agrees that any person performing labor in the Construction of the Improvements shall be paid not less than the highest prevailing rate of wages as would be required by Section 6.22(E) of the San Francisco Administrative Code, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco, California. Friends shall include in any contract for Construction a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Friends shall require any contractor to provide, and shall deliver to City upon request, certified payroll reports with respect to all persons performing labor in connection with the Construction.

5.19 Construction Signs and Barriers

Friends shall provide appropriate construction barriers and construction signs and post the signs on the Site during the period of construction. 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 withheld, conditioned or delayed unreasonably.

5.20 Damage and Destruction

(a) **After Close of Escrow.** If at any time between the Close of Escrow and the end of the LDDA Term, a fire, flood, earthquake or other casualty damages or destroys the Site or the Improvements, or any portion of the Site or the Improvements, the obligations of the Parties shall be governed by Section 14 of the Lease.

(b) **Before Close of Escrow.** If any such casualty occurs during the LDDA Term but before the Close of Escrow, the obligations of the Parties shall be governed by Section 3.1(a) of this Agreement and this Section 5.20(b). If Friends elects not to accept the Delivery of the Property due to a fire, flood, earthquake or other casualty that damages or destroys the Site or the Improvements, or any portion of the Site or the Improvements, or due to an Adverse Change, this Agreement shall terminate and Friends shall have no further obligations hereunder.

6. CERTIFICATE OF COMPLETION

6.1 Certificate of Completion

(a) Issuance Process

(i) Before issuance by City of a Certificate of Completion, Friends may not occupy the Improvements on the Site, or any portion of the Improvements, except for construction purposes under this Agreement or the Lease, or in accordance with Section 6.4 below.

(ii) After Friends has Completed the Construction of the Improvements in accordance with all the provisions of this Agreement, including, but not limited

to, the Scope of Development and the Schedule of Performance, Friends may request a Certificate of Completion in writing. City shall act on Friends' request within thirty (30) days of receipt.

(iii) City's issuance of any Certificate of Completion does not relieve Friends or any other Person from any obligations to secure or comply with any Regulatory Approval of any agency (including City) that may be required for the occupancy or operation of the Improvements of the Project. Friends shall comply with all such requirements or conditions separately.

(b) Condition to Approval. If there remain uncompleted (i) customary punch list items, (ii) landscaping (to the extent (i) and (ii) are subject to City's approval), (iii) exterior finishes (to the extent Friends can demonstrate to City's reasonable satisfaction that such exterior finishes would be damaged during the course of later construction of interior improvements), or (iv) any other item that City approves in writing in its sole and absolute discretion (collectively "**Deferred Items**"), City may reasonably condition approval of a Certificate of Completion upon provision of security or other assurances in form, substance and amount satisfactory to City that all the Deferred Items will be completed in a timely fashion. Such security may include a letter of credit (in a form and issued by an institution acceptable to City) or funds in an escrow account acceptable to City (with joint escrow instructions acceptable to both Parties) in the amount of one hundred ten percent (110%) of the cost of completion of the Deferred Items as reasonably determined by City. The obligations set forth in this subsection shall survive a termination of this Agreement in the manner set forth in Section 6.1(c) below.

(c) Definition of Completed and Completion. For purposes of City's issuance of a Certificate of Completion in accordance with the provisions of Section 6.1(a), "**Completed**" and "**Completion**" mean completion of Construction by Friends of all aspects of the Improvements for which City's approval is required in accordance with the approved Construction Documents, and in compliance with all Regulatory Approvals needed for the occupancy and development of the Improvements, or provision of security satisfactory to City for Deferred Items under Section 6.1(b), and issuance of applicable certificates of occupancy for the portions of the Improvements that will not be leased to Friends of the Project pursuant to the Scope of Work attached to the Lease, together with completion of all such portions of the Improvements that are required for such occupancy of the Improvements.

6.2 Form and Effect of Certificate

(a) Form of Certificates. The Certificate of Completion will be in the form of Exhibit D attached hereto, and which permits it to be recorded in the Official Records. For purposes of this Agreement, the Certificate of Completion will be a conclusive determination of Completion of the Improvements (except for completion of Deferred Items) and of the right of Friends to occupy all of the Improvements in accordance with the terms of the Lease.

(b) Effect. The Certificate of Completion is not a notice of completion as referred to in Section 3093 of the California Civil Code, and is not in lieu of a certificate of

occupancy to be issued by City in its regulatory capacity, which is separately required for occupancy and is a condition precedent to issuance of a Certificate of Completion.

(c) Termination of Agreement Upon Recordation. Recording of the Certificate of Completion by City (or by Friends at the written request and authorization of City) will terminate this Agreement, and shall have the force and effect of a quitclaim deed by City of its interest in this Agreement; *provided, however*, that such termination shall not relieve Friends of its obligations to complete the Deferred Items as set forth in Section 6.1(b) above, nor shall such termination relieve Friends of its obligations pursuant to any of the other provisions of this Agreement which expressly survive such a termination. At the request of Friends, following recordation of a Certificate of Completion, City will execute and acknowledge a quitclaim, estoppel or other documentation, in form reasonably satisfactory to City, as may be required by any title company, Lender or Friends to confirm the complete termination of this Agreement.

6.3 Failure to Issue

If City refuses or fails to furnish a Certificate of Completion, City shall, within the thirty (30)-day period specified in Section 6.1(a)(ii) above, provide Friends with a written statement specifying the reasons City refused or failed to furnish the Certificate of Completion and identifying the items Friends shall complete or requirements it shall satisfy to obtain a Certificate of Completion.

6.4 Permission for Phased Occupancy

Friends may request in writing permission to occupy portions of the Property before issuance of a Certificate of Completion; provided that City has issued a certificate of occupancy for such space, which may be issued or withheld in City's sole and absolute discretion. Each such request shall specify the portions of the Site which Friends wishes to occupy and the intended date of occupancy. City will approve such occupancy and issue a written confirmation thereof in a form and substance reasonably satisfactory to the Parties within five (5) days of such request if Friends has obtained valid temporary certificates of occupancy for such portions of the Property, which may be issued or withheld in City's sole and absolute discretion, and no uncured Friends Event of Default exists.

7. CITY APPROVAL OF FINANCING; FUNDING OBLIGATIONS

7.1 Required Submittals

No later than the date specified in the Schedule of Performance for submission of evidence of financing, Friends shall have submitted the items listed below. Except with respect to Section 7.1(c) below, the sole purpose of City's review shall be to determine whether Friends has satisfied the criteria in Section 7.1(b)(i) and Section 7.1(b)(ii) below.

(a) A final budget of total development costs for the Site and the Improvements (the "**Budget**") in accordance with (i) the Final Construction Documents or the Preliminary Construction Documents if Friends is using the Site Permit process and (ii) the Scope of Development. The Budget shall be substantially in the form attached hereto as

Exhibit L and shall include, but not be limited to, line items for all pre-development costs, permits and fees, architectural and engineering costs, marketing costs, financing costs, hard construction costs, furniture, fixtures and equipment costs, and costs of Friends improvements to be constructed by Friends allocated between space to be occupied by Friends and by other subtenants.

(b) A statement and appropriate supporting documents certified by Friends to be true and correct and in form reasonably satisfactory to City showing sources and expected uses of funds and sufficient to demonstrate that (i) Friends has or will have adequate funds (including the funds to be contributed by City in accordance with this Agreement) to complete the Improvements in accordance with the Budget and (ii) such funds have been spent for uses described in the Budget or are committed and available for that purpose.

(c) An operating budget, including all anticipated gross revenues, all anticipated expenses, including required deposits into the Capital Maintenance Account, as required by the Lease, and including an estimate of net revenues anticipated to be realized for the period covered by such operating budget (the “**Operating Budget**”). The Operating Budget must also project expenses, gross revenues and net revenues for the four (4) year period after the initial budget year and must be approved by City as a condition to close Escrow. The scope of City’s review for such approval shall include whatever City reasonably determines is necessary to conclude that the Project is financially feasible, including, without limitation, City’s analysis of the assumptions underlying the Operating Budget and City’s determination regarding whether the anticipated debt service will negatively impact Friends’ positive cash flow and ability to operate the Project in accordance with the requirements of the Lease.

(d) With regard to all debt financing, a copy of a bona fide commitment or commitments, with no conditions other than standard and customary conditions (or as otherwise approved by City in its reasonable discretion) and no provisions requiring acts of Friends prohibited in this Agreement or the Lease or prohibiting acts of Friends required in this Agreement or the Lease, for the financing of that portion of the Budget intended to be borrowed by Friends, which must not reduce the anticipated cash flow of the Project below the level necessary to adequately fund operating expenses necessary to comply with the Approved Operating Standards, certified by Friends to be a true and correct copy or copies thereof. In evaluating the proposed Budget, City may consider whether the proposed Budget reflects a reasonable maximum loan to value ratio. The commitment or commitments shall be obtained from a Bona Fide Institutional Lender (or Lenders), and, if required by any construction lenders(s), shall include commitments for permanent financing. Friends covenants and agrees to perform any and all conditions to funding in accordance with such commitments.

(e) With regard to all grant financing, a copy of a bona fide commitment or commitments, with no conditions other than standard and customary conditions (or as otherwise approved by City in its reasonable discretion) and no provisions requiring acts of Friends prohibited in this Agreement or the Lease or prohibiting acts of Friends required in this Agreement or the Lease, for the funding of that portion of the Budget intended to be granted to Friends, certified by Friends to be a true and correct copy or copies thereof. The commitment or commitments shall be obtained from grant providers with reputations for fulfilling grant

commitments and reasonably approved by City. Friends covenants and agrees to perform any and all conditions to funding in accordance with such commitments.

(f) With regard to all unpaid capital campaign contributions or other unpaid contributions from individual donors designated as sources of funds for development of the Project, for each pledgee, a written pledge which meets the provisions for recording pledges under the Guide, executed by such pledgee, showing the name of the pledgee, the amount of the pledge and the date by which the pledge will be paid.

(g) With regard to all paid capital contributions or other paid contributions from the individual donors, a written statement with appropriate supporting documents certified by Friends to be true and correct and in a form reasonably satisfactory to City showing actual receipt of pledged contributions and describing in detail any expenditure thereof previously made.

(h) Evidence of a guaranteed maximum price contract or a stipulated sum contract for Construction of the Improvements consistent with the approved Budget and the financing for the Project as described in Section 7.1(c) through 7.1(g) above in form reasonably acceptable to City with a contractor reasonably acceptable to City (a “**Construction Contract**”). Except as otherwise specifically agreed by the General Manager in writing, the Construction Contract shall be a contract on commercially reasonable terms for construction of the Improvements described in the Final Construction Documents: (A) with a contract sum or guaranteed maximum price consistent with the approved Budget and financing, (B) requiring contractor to obtain performance and payment bonds guaranteeing in full the contractor’s performance and payment of subcontractors under the Construction Contract; (C) naming City and its boards, commissions, directors, officers, agents, and employees as co-indemnitees with respect to Tenant's contractor's obligation to indemnify and hold harmless Friends and its directors, officers, agents, and employees from all Losses directly or indirectly arising out of, connected with, or resulting from the contractor's performance or nonperformance under the Construction Contract; (D) requiring Friends and Contractor (as applicable) to obtain and maintain insurance coverages reasonably acceptable to City, including general liability and builder's risk insurance coverage that names City and its directors, officers, agents, and employees as additional insureds under the terms of the policies, (E) identifying City as an intended third party beneficiary of the Construction Contract, with the right to enforce the terms and conditions of the Construction Contract and pursue all claims thereunder as if it were an original party thereto; (F) consenting to the assignment of the Construction Contract to the City, in whole or in part, including but not limited to the assignment 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; and (G) providing for the contractor's(s') obligation, for a period of at least one (1) year after the final completion of construction of the Improvements, to correct, repair, and replace any work 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.

(i) Evidence of a performance bond approved by City, issued by a responsible surety company licensed to do business in California and acceptable to City, that guarantees in full (i) the Construction of the Improvements in accordance with this Agreement in an amount not less than the value of the completed Improvements and (ii) if the Project is not completed as required by this Agreement, the restoration of the Property to the condition required by SHPO, including, without limitation, the removal of any new construction or installation required to satisfy the Secretary's Standards (the “**Performance Bond**”).

The foregoing submissions required under this Section 7.1 may be in substantially final form (including the pricing under the Construction Contract) at the time of initial submission by Friends, but must be noted as such at the time of such submission and all material changes to such submission thereafter must be resubmitted to City for approval with all additions and deletions clearly noted by Friends. All such submissions must be in final form by no later than ten (10) days prior to the Close of Escrow.

7.2 Approval Process

Within thirty (30) days after Friends’ submission of all of the documents described in Section 7.1 above, City will notify Friends in writing of its approval or disapproval (including the reasons for disapproval) of the evidence of financing as described in Sections 7.1(b) and Section 7.1(c) above, provided that at least forty-five (45) days before the date of such request for approval, City shall have received Preliminary Construction Documents in accordance with Section 5 above in sufficient detail to allow City to obtain a cost estimator’s report if City, in its sole discretion and at its sole cost and expense, determines to obtain such a report.

7.3 Financing Plan

The Financing Plan approved by City is attached hereto as Exhibit M. Friends must keep City informed of Friends’ implementation of the Financing Plan in a written report submitted to City beginning six (6) months after the Effective Date and each six (6) months thereafter until the Close of Escrow. In connection with its submission of the financing submittals described in Section 7.1 above, Friends shall provide a detailed written explanation of all material differences between the components of the attached Financing Plan and the financing submittals described in Section 7.1 above.

7.4 Funding Obligations of the Parties

(a) **Friends’ Obligation.** Friends shall pay the cost of Construction of the Improvements, except to the extent specifically provided herein.

(b) **Cooperation.** It is the Parties’ goal that the Friends and the City share the cost of the Project in the manner described in this Agreement, with Project funds to be raised by the Parties from a variety of public and private sources. Accordingly, Department and Friends agree to work together to jointly raise funding for the Project. The Parties agree to identify and pursue private and public sources of funds for Construction of the Improvements. Specifically, the Parties will pursue (i) public sources of funding such as Historic Preservation Tax Credits and, to the extent available, New Markets Tax Credits (“Tax Credits”) and (ii) private sources of

funding including without limitation donations and/or pledges made to Friends, in the form of foundation and corporate grants, and individual gifts.

(c) Department Support. Department staff will spend reasonable time and resources to properly assist Friends' efforts in pursuing funds for the Construction of the Improvements. The Department will also present the Project to prospective funders as appropriate.

(d) Department Grant Funds and Other Grants. Friends will apply for a matching grant of up to \$3,000,000 from the Department's 2012 bond-funded Community Opportunity Fund to be applied towards the cost of Construction of the Improvements. Department staff shall keep Friends informed about the requirements of the Community Opportunity Fund application process. Notwithstanding the amount (if any) of Community Opportunity Fund grant funds shown on the proposed budget, Friends acknowledges that the selection process for the Community Opportunity Fund is the responsibility of an independent body and that, while Department staff will support the Friends' efforts to apply for the grant, City cannot make a commitment of an award from the Community Opportunity Fund for the Project.

(e) Failure to Receive Grant Funds. If Friends fails to secure a Community Opportunity Fund grant in the amount specified in Section 7.4(d) by the date specified in the Schedule of Performance, Friends may, at its sole discretion, elect to raise such funds from other sources or terminate this Agreement.

(f) Other City Funds. Separate and apart from the Community Opportunity Fund's matching grant program and Tax Credits programs, the Department and Friends will jointly pursue additional City funding to match latter and final stage private funds raised for the Project. Friends acknowledges that, while Department staff will pursue such additional matching funding, City cannot make a commitment of additional funding and any such funding shall be subject to the budgetary and fiscal provisions of the City's Charter.

7.5 Disbursement of Community Opportunity Fund Grant Funds and Other City Funds.

Community Opportunity Fund grant funds and any other funds provided by or through City will be held and disbursed in accordance with requirements of the applicable program. Without limiting the foregoing, Friends acknowledges that if Friends is awarded a grant from Community Opportunity Fund and the remaining necessary Project funds have not been raised by December 31, 2017, the Community Opportunity Fund grant funds will be released back into the Community Opportunity Fund for re-distribution. If the applicable program requires the City, the Department, or the Friends to enter into one or more additional agreements regarding use of the funds, construction management or coordination, or the like, Friends and Department staff shall reasonably cooperate to negotiate in good faith regarding the terms of such agreement. Friends acknowledges that any future agreement to which the City or the Department is a party would be subject to the prior approval of the then-Commission, or its designee, in its sole and absolute discretion.

8. ENCUMBRANCES AND LIENS

8.1 No Mortgage of Fee

Friends 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 allowed under the Lease.

8.2 Leasehold Liens

Following the Close of Escrow, Friends shall, pursuant to the terms and conditions of the 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 under a Mortgage permitted under the Lease. Friends may assign, mortgage or encumber its interest under this Agreement to any Mortgagee permitted under the Lease under a Mortgage permitted under the Lease, and in such event all of the provisions set forth in the Lease relating to the rights of Mortgagees shall also apply to the rights and obligations of Friends and City under this Agreement.

8.3 Mechanics' Liens

Friends 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 Friends or its Agents. If Friends does not, within twenty (20) days following 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 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 expenses incurred by City in connection therewith shall be payable to City by Friends within thirty (30) days following written demand by City. 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 Agents of City.

8.4 Contests

Friends may contest the validity or amount of any tax, assessment, encumbrance or 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 Lease, including, but not limited to, the provision of security.

9. ASSIGNMENT AND TRANSFER

9.1 Prohibition Against Transfer of the Agreement or Significant Change

Except as otherwise permitted under Section 8.2 or as required in connection with the utilization of Historic Preservation Tax Credits, Friends 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 Site, develop the Site or otherwise do any of the above or make any contract or agreement to do any of the same (collectively, a “**Transfer**”), or permit a Significant Change to occur, without in each instance obtaining the prior written approval of City, except that a Transfer or Significant Change shall be permitted on and after the Close of Escrow in conjunction with a Transfer or Significant Change permitted by the Lease or approved by City in accordance with the Lease. City’s consent to a Transfer or Significant Change prior to the Close of Escrow may be given, withheld, or conditioned in the City’s sole and absolute discretion, except that if such Transfer or Significant Change is requested solely in connection with obtaining Historic Tax Credits or New Markets Tax Credits, the City’s consent shall not be unreasonably withheld or conditioned. Consent to any one Transfer or Significant Change will not be a waiver of City’s right to require such consent for each and every Transfer or Significant Change. Friends shall reimburse City for its reasonable costs of reviewing a proposed Transfer or Significant Change, as provided in the Lease, even if such cost is incurred prior to Close of Escrow.

9.2 No Release of Obligations

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

10. DEFAULTS, REMEDIES AND TERMINATION

10.1 Events of Default — Friends

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

(a) Friends fails to use its good faith efforts to obtain all Regulatory Approvals or all the elements of the financing described in Section 7 above within the time frames set forth in the Schedule of Performance;

(b) Friends 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 Site under the Scope of Development on or before the required completion dates set forth in the Schedule of Performance, or abandons or substantially suspends Construction for more than thirty (30) 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;

(c) Friends 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 City to Friends;

(d) Friends does not accept Delivery of the Property in accordance with this Agreement within the times set forth in this Agreement, provided that all conditions to Friends' obligation to the Close of Escrow as set forth in Section 2.4 above have been satisfied or waived, and such failure continues for a period of fifteen (15) business days after written notice from City;

(e) Friends fails to perform its obligations under the Card Check Ordinance, Workforce Hiring Program, Prevailing Wage Provision or First Source Hiring Program set forth in this Agreement (together, the "**Special City Requirements**"); provided, however, that any rights to cure and City's remedies for any default under the Special City Requirements will be only as set forth in such Special City Requirements;

(f) Friends does not submit such of the Construction Documents 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 Friends does not cure such default within sixty (60) days after the date of written demand by City to Friends;

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

(h) Friends files a petition for relief, or an order for relief is entered against Friends, 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 Friends are not dismissed or stayed within sixty (60) days;

(i) A writ of execution is levied on this Agreement which is not released within sixty (60) days, or a receiver, trustee or custodian is appointed to take custody of all or any material part of the property of Friends, which appointment is not dismissed within sixty (60) days;

(j) Friends makes a general assignment for the benefit of its creditors;

(k) Friends fails to maintain the insurance required pursuant to Section 5.14, or fails to deliver certificates or policies as required pursuant to that Section, and such failure continues for fifteen (15) days following written notice from City to Friends;

(l) Without limiting any other provisions of this Section, Friends violates any other covenant, or fails to perform any other obligation to be performed by Friends under this Agreement or the Lease at the time such performance is due (including the expiration of any specified grace period), 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 Friends

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;

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

(n) Any Transfer or Significant Change made in violation of Section 9.1 above.

10.2 Remedies of City

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

(a) **Termination.** City may terminate this Agreement upon thirty (30) days' written notice to Friends; *provided, however*, in the case of an Event of Default under Sections 10.1(g) or (l), City may exercise such remedy only if such Event of Default involves a material or willful breach by Friends of Friends' covenants and obligations under this Agreement or the Lease, as applicable.

(b) **Specific Performance.** City may institute an action for specific performance.

(c) **Other Remedies.** City is entitled to all other remedies permitted by law or at equity or under this Agreement, including without limitation damages (but excluding punitive, incidental or consequential damages). Without limiting Section 10.5(c) below, the remedies provided for in this Agreement are in addition to and not in limitation of other remedies including, but not limited to, the remedies provided in the Lease or under the Special City Requirements.

(d) **Nonliability of Friends' Member, Partners, Shareholders, Directors Officers and Employees.** No member, officer, partner, agent, shareholder, director or employee of Friends will be personally liable to City in the event of an Event of Default by Friends or for any amount which may become due to City or with respect to any obligations under the terms of this Agreement or the 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) City fails to make Delivery of the Property in violation of this Agreement within the times set forth in this Agreement, provided that all conditions to City's obligation to the Close of Escrow as set forth in Section 2.3 above have been satisfied or waived by City, and such failure continues for thirty (30) days after written notice from Friends;

(b) Without limiting subsection (a) above, City violates any other covenant, or fails to perform any other obligation to be performed by City under this Agreement or the Lease at the time such performance is due (including the expiration of any specified grace period) and such violation or failure continues without cure for more than thirty (30) days after the written notice by Friends, 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 Friends to City.

10.4 Remedies of Friends

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

(a) **Termination.** Friends may terminate this Agreement upon thirty (30) days' written notice to City only if the Event of Default would make impossible Completion of Improvements in accordance with the Schedule of Performance or the Budget and the provisions of this Agreement.

(b) **Specific Performance.** Friends may institute an action for specific performance. 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.

(c) **Damages.** If an Event of Default occurs under Section 10.3(a) above, City will be liable for Friends' actual out-of-pocket damages, but shall not be liable for any consequential or incidental damages (including, but not limited to, lost profits). If an Event of Default occurs under Section 10.3(b) above, City will not be liable to Friends for any damages caused by such Event of Default.

(d) **Other Remedies.** Subject to the limitations in Section 10.4(c), Friends is entitled to all other remedies permitted by law or at equity.

(e) **Nonliability of City Members, Officials and Employees.** No member, official, commissioner or employee of City will be personally liable to Friends, or any successor in interest, in the event of an Event of Default by City or for any amount which may become due to Friends 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 Friends 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 Friends, service of process on Friends shall be made by personal service upon Friends at the address provided for notices or such other address as shall have been given to City by Friends 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 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.

10.6 Plans and Data

If either Party terminates this Agreement before Completion of the Improvements, Friends shall assign and deliver to City any and all copies of reports and studies in its possession of Friends or Friends' agents, employees, contractors, architects, engineers or consultants or reasonably obtainable by Friends or reports and studies prepared by or for Friends regarding the Property and all Construction Documents in the possession of Friends or Friends' agents, employees, contractors, architects, engineers or consultants or reasonably obtainable by Friends, or prepared for Friends, for the development of the Property within thirty (30) days after written demand from City, in each case if and to the extent assignable. City may use said reports, studies and Construction Documents for any purpose whatsoever relating to the Site, without cost or liability therefor to Friends or any other Person; provided, however, City shall release Friends and Friends' contractor, architect, engineer, agents, employees and other consultants from any Losses arising out of City's use of such reports and Construction Documents except to the extent such contractor, architect, engineer, agent, employee or other consultant is retained by City to complete construction. The Friends shall include in all contracts and authorizations for services pertaining to the planning and design of the Improvements an express agreement by the Person performing such services that the City may use such reports, studies or Construction Documents as provided in this Section 10.6 without compensation or payment from the City in the event such reports, studies or Construction Documents are delivered to the City under the provisions of this Section 10.6, provided that the City agrees (i) not to remove the name of the

preparer of such reports of Construction Documents without the preparer's written permission or (ii) to remove it at their written request.

10.7 Return of Site

If this Agreement terminates due to an Event of Default by Friends, Friends 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 Friends' Construction activities. In the event that Friends is required to return the Property as provided above in this Section 10.7, Friends 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. In such event, City shall cooperate with Friends in Friends' 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, Friends shall remain responsible for any obligations with respect to the Investigation and Remediation of Hazardous Materials arising after the Close of Escrow to the extent provided in this Agreement and the Lease; provided, however, that Friends shall have no responsibility for any obligations with respect to the Investigation and Remediation of Unknown Pre-Existing Hazardous Materials to the extent City made City's Remediation Election with respect thereto. The provisions of this Section shall survive any termination of this Agreement.

11. SPECIAL PROVISIONS

Friends 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 Lease Commencement Date.

11.1 Non-Discrimination in City Contracts and Benefits Ordinance.

(a) Covenant Not to Discriminate. In the performance of this Agreement, Friends covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Friends, in any of Friends' operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Friends.

(b) Subleases and Other Subcontracts. Friends shall include in all subleases and other subcontracts relating to the Property a non-discrimination clause applicable to such subtenant or other subcontractor in substantially the form of Section 11.1(a) above. In addition, Friends shall incorporate by reference in all subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k) and 12C.3 of the San Francisco Administrative Code and shall require all subtenants and other subcontractors to comply with such provisions.

Friends' failure to comply the obligations in this subsection shall constitute a material breach of this Agreement.

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

(d) **HRC Form.** On or prior to the Effective Date, Friends shall execute and deliver to City the “Nondiscrimination in Contracts and Benefits” form approved by the San Francisco Human Rights Commission.

(e) **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Friends shall comply fully with and be bound by all of the provisions that apply to this Agreement and the Lease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Friends understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of Fifty Dollars (\$50) for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Friends and/or deducted from any payments due Friends.

11.2 Mitigation Measures

In order to mitigate any significant environmental impacts of development of the Property, Friends agrees that the rehabilitation and construction of the Improvements will be in accordance with any mitigation measures imposed through a final environmental impact report certified by City.

11.3 MacBride Principles — Northern Ireland

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. City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Friends acknowledges that it has read and understands the above statement of City and County of San Francisco concerning doing business in Northern Ireland.

11.4 Tropical Hardwood Ban/Virgin Redwood Ban

Pursuant to § 804(b) of the San Francisco Environment Code, City urges Friends 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 expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Friends shall not provide any items to the rehabilitation or development of the Property, or otherwise in the performance of this Agreement or the Lease which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood products. In the event Friends fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Friends shall be liable for liquidated damages for each violation in any amount equal to the contractor's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

11.5 Tobacco Product Advertising Prohibition

Friends acknowledges and agrees that no advertising of cigarettes or tobacco products shall be allowed on the Property. The foregoing prohibition shall include 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, or on any sign. The foregoing prohibition shall not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

11.6 Drug-Free Workplace

Friends 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. Friends 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 Ordinance

Friends shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the “**Pesticide Ordinance**”) which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (iii) require Friends to submit to City an integrated pest management (“**TM**”) plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Friends may need to apply to the Property during the terms of this Agreement or the Lease, (b) describes the steps Friends will take to meet City’s 1PM Policy described in Section 300 of the Pesticide Ordinance, and (c) identifies by name, title, address and telephone number, an individual to act as Friends’ primary 1PM contact person with City. In addition, Friends shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance. Nothing herein shall prevent Friends, through City, from seeking a determination from the Agency on the Environment that it is exempt from complying with certain portions of the Pesticide Ordinance as provided in Section 307 thereof.

11.8 First Source Hiring Ordinance

City has adopted a First Source Hiring Ordinance (San Francisco Administrative Code Chapter 83), which established specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry level positions (“**First Source Hiring Program**”), and Friends agrees to duly execute and deliver to City simultaneously with the execution of this Agreement, and be bound by, the terms and conditions of the First Source Hiring Agreement attached hereto as Exhibit N, which includes the requirements of the First Source Hiring Ordinance.

11.9 Card Check Ordinance

City has adopted a Card Check Ordinance (San Francisco Administrative Code Sections 23.50-23.56). That ordinance requires employers of employees in hotel or restaurant projects on City property with more than fifty (50) employees to enter into a “Card Check” agreement with a labor union regarding the preference of employees to be represented by a labor union to act as their exclusive bargaining representative. Friends acknowledges and agrees that the Lease will require Friends and Friends’ subtenants to comply with the requirements of such Ordinance to the extent applicable.

11.10 Workforce Hiring Program

In furtherance of its covenant not to discriminate in Section 11.1 above, Friends is committed to affording opportunities for minority-owned enterprises, women-owned enterprises, and economically disadvantaged local businesses to participate in the architecture, design, engineering, and construction of the Improvements, and agrees as of the date of this Agreement to implement the Workforce Hiring Plan approved by City and attached hereto as Exhibit O as to the Site and Improvements.

11.11 Friends Conflicts of Interest

Friends 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 Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, certifies that it knows of no facts which would constitute a violation of such provisions and agrees that if Friends becomes aware of any such fact during the term of this Agreement Friends shall immediately notify City. Friends further certifies that it has made a complete disclosure to City of all facts bearing on any possible interests, direct or indirect, which Friends 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 Friends to make such disclosure, if any, shall constitute grounds for City’s termination and cancellation of this Agreement.

11.12 Prohibition of Political Activity with City Funds

In accordance with S.F. Administrative Code Chapter 12.0, 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**”). The terms of San Francisco Administrative Code Chapter 12.0 are incorporated herein by this reference. 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. In the event Friends, or any staff member in association with Friends, engages in any Political Activity, then (i) Friends shall keep and maintain appropriate records to evidence compliance with this section, and (ii) Friends shall have the burden to prove that no funding from this Agreement has been used for such Political Activity. Friends agrees to cooperate with any audit by City or its designee in order to ensure compliance with this Section. In the event Friends violates the provisions of this Section, City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement and any other agreements between Friends and City, and (ii) prohibit Friends from bidding on or receiving any new City contract for a period of two (2) years.

11.13 Resource-Efficient Building Ordinance

Friends acknowledges that City and County of San Francisco has enacted San Francisco Environment Code Chapter 7 relating to resource-efficient City buildings and resource-efficient pilot projects. Friends hereby agrees it shall comply with the applicable provisions of such code sections as such sections may apply to the Property. Upon the request of Friends, if the General Manager determines that compliance with certain provisions of the code section would prevent Friends from complying with the Secretary's Standards or otherwise warrants a waiver as set forth in such code, the General Manager will request a waiver of such code sections.

11.14 Sunshine Ordinance

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

11.15 Public Access to Meetings and Records

If Friends receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Friends shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, Friends agrees to open its meetings and records to the public in the manner set forth in Sections 12L.4 and 12L.5 of the Administrative Code. Friends further agrees to make good-faith efforts to promote community membership on its Board of Directors in the manner set forth in Section 12L.6 of the Administrative Code. Friends acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. Friends further acknowledges that such material breach of the Agreement shall be grounds for City to terminate and/or not renew this Agreement, partially or in its entirety.

11.16 Preservative Treated Wood Containing Arsenic

Friends may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term “preservative-treated wood containing arsenic” shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Friends 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 Friends 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.

11.17 Compliance with Disabled Access Laws

Friends 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 Friends or contractor, must be accessible to the disabled public. Friends shall not discriminate against any person protected under the Disabled Access Laws in connection with the use of all or any portion of the Property and shall comply at all times with the provisions of the Disabled Access Laws.

11.18 Nondisclosure of Private Information

Friends agrees to comply fully with and be bound by all of the provisions of Chapter 12M of the San Francisco Administrative Code (the “**Nondisclosure of Private Information Ordinance**”), including the remedies provided. The provisions of the Nondisclosure of Private Information Ordinance are incorporated herein by reference and made a part of this Agreement as though fully set forth. Initially capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in the Nondisclosure of Private Information Ordinance. Consistent with the requirements of the Nondisclosure of Private Information Ordinance, Contractor agrees to all of the following:

- (a)** Neither Friends nor any of its Subcontractors shall disclose Private Information to a Subcontractor, person, or other entity, unless one of the following is true:
 - (i)** The disclosure is authorized by this Agreement;
 - (ii)** Friends received advance written approval from the Contracting Department to disclose the information; or
 - (iii)** The disclosure is required by law or judicial order.
- (b)** Any disclosure or use of Private Information authorized by this Agreement shall be in accordance with any conditions or restrictions stated in this Agreement. Any

disclosure or use of Private Information authorized by a Contracting Department shall be in accordance with any conditions or restrictions stated in the approval.

(c) “Private Information” shall mean any information that: (1) could be used to identify an individual, including without limitation, name, address, social security number, medical information, financial information, date and location of birth, and names of relatives; or (2) the law forbids any person from disclosing.

(d) Any failure of Friends to comply with the Nondisclosure of Private Information Ordinance shall be a material breach of this Agreement. In such an event, in addition to any other remedies available to it under equity or law, City may terminate this Agreement, debar Friends, or bring a false claim action against Friends.

11.19 Graffiti Removal

Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with City’s property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on City and County and its residents, and to prevent the further spread of graffiti.

From and after the Close of Escrow, Friends shall remove all graffiti from the Property and any real property owned or leased by Friends in City and County of San Francisco within forty-eight (48) hours of the earlier of Friends’ (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This Section is not intended to require Friends to breach any lease or other agreement that it may have concerning its use of the real property. The term “graffiti” means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner’s authorized agent, and which is visible from the public right-of-way. “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.).

Any failure of Friends to comply with this section of this Agreement shall constitute an Event of Default of this Agreement.

11.20 Incorporation

Each and every provision of the San Francisco Administrative Code or any other San Francisco Code specifically described or referenced in this Agreement is hereby incorporated by reference, as it exists on the Effective Date, and as may be amended between the Effective Date and the Lease Commencement Date as though fully set forth herein. Failure of Friends to comply with any provision of this Agreement relating to any such code provision shall be governed by Section 10 of this Agreement, unless (i) such failure is otherwise specifically addressed in this Agreement or (ii) such failure is specifically addressed by the applicable code section.

11.21 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 Friends, City, nor any 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 Regulatory Approvals are governed by Section 12.1(d) below); 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 Friends’ 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 Friends has ordered such materials on a timely basis and Friends is not otherwise at fault for such inability to obtain materials); changes in state or federal law that would delay or materially adversely impair Friends' ability to construct the Project; or any Litigation Force Majeure or other administrative appeals, litigation and arbitration relating to the construction of the Project (provided that the Delayed Party proceeds with due diligence to defend such action or proceeding or take other appropriate measures to resolve any dispute that is the subject of such action or proceeding). In the event of the occurrence of any such delay, the time or times for performance of the obligations of Friends 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 Friends' 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) which seeks to challenge the validity of any action taken by City in connection with the Project, including City's approval, execution, and delivery of this Agreement or the Lease and its performance hereunder, or other action by City or any of its commissions approving City's execution and delivery of this Agreement, the performance of any action required or permitted to be performed by 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. With respect to an event of Litigation Force Majeure occurring after the Close of Escrow, such event will not be considered Litigation Force Majeure unless such event would (1) create a default under the loan documents or grant documents for any Mortgage approved under the Lease such that the lender will imminently discontinue funding the loan, as evidenced by a written notice from such lender's counsel (or other official representative of lender reasonably satisfactory to City), or a written legal opinion from experienced counsel reasonably satisfactory to City, and/or (2) result in the issuance of an injunction, temporary restraining order or writ of mandate (collectively, a "*writ*") and such writ is in effect or, if no writ has yet been issued as a result of the filing of such action, Friends obtains a written legal opinion from experienced counsel reasonably satisfactory to City that it is likely that writ will issue (except that if the challenge is procedural and City furnishes to Friends a written opinion of experienced counsel reasonably satisfactory to Friends that such defect is curable and City seeks to cure such defect, such event shall not constitute Litigation Force Majeure until such attempt to cure fails). Notwithstanding the foregoing, Litigation Force Majeure shall exclude any action or proceeding brought by an Affiliate of Friends, any of Friends' members or their Affiliates, any consultant of Friends, or any other third party assisted by Friends, directly or indirectly, in such action or proceeding. 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 such limitation is expressly waived by both Parties in each of their respective sole and absolute discretion. 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 Friends is diligently proceeding to obtain necessary building permits or addenda as required by Sections 5.15(a) or 5.15(b) or other Regulatory Approvals for the Improvements, Force Majeure includes Friends' inability to obtain building permits 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) above) 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. Notwithstanding the foregoing, necessary Project funds must be raised by December 31, 2017.

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 Friends 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 Friends 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 which is the subject matter of the notice.

In the event that a request for approval states a period of time for approval which 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 Friends: Friends of Geneva Office Building and Power House
755 Ocean Avenue
San Francisco, CA 94112
Attention: Daniel Weaver
Facsimile: (415) 586-8357

With a copy to: Gibson, Dunn & Crutcher LLP
555 Mission Street
San Francisco, CA 94105
Attention: Mary G. Murphy
Facsimile: (415) 374-8480

To City: Recreation and Park Department
McLaren Lodge Annex
San Francisco, California 94117
Attention: [_____]
Facsimile: [_____]

Office of City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4682
Attention: Real Estate/Finance Team
Facsimile: (415) 554-4755

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 which 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 at all reasonable times and from time to time, to inspect the books and records of Friends pertaining to Friends' compliance with its obligations under this Agreement, provided that City shall, to the maximum extent allowed by applicable

Law, keep strictly confidential any such information which Friends 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 which 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 subject to the cure provisions of Section 10.1(b).

12.6 Interpretation of Agreement

(a) **Exhibits.** Whenever an “Exhibit” 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, each Party has been represented by experienced and knowledgeable legal counsel. 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 General Manager or his designee, and the General Manager 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 Friends, subject to the limitations set forth in Section 9. Where the term “Friends” 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 Friends 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

Friends 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.

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 Exhibits attached hereto) 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, Friends agrees that all actions or proceedings arising directly or indirectly under this Agreement may, at the sole option of City, be litigated in courts having sites within the State of California, and Friends 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 Friends wherever Friends may then be located, or by certified or registered mail directed to Friends 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 Friends 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 Friends, City, acting through the General Manager, may, by written instrument, extend the time for Friends' performance of any term, covenant or condition of this Agreement or permit the curing of any default upon such terms and conditions as it determines appropriate, including but not limited to, the time within which Friends 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 Friends from, nor constitute a waiver of City's rights with respect to any of Friends' 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.

12.16 Further Assurances; Technical Corrections

The Parties hereto 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 General Manager 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 General Manager determines, in consultation with City Attorney, that the document is necessary or proper and in City's best interests. The General Manager'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 General Manager and Friends, to enter into memoranda of technical corrections hereto to reflect any non-material changes in the actual legal description and square footages of the Site and the Improvements, and upon full execution thereof, such memoranda shall be deemed to become a part of this Agreement.

12.17 Attorneys' Fees

If either Party fails to perform any of its respective obligations under this Agreement or if any material dispute arises between the Parties hereto concerning the meaning or interpretation of any provision of this Agreement, then the defaulting Party or the Party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other Party on account of such default or 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 Friends' business, or joint venturer or member in any joint enterprise with Friends.

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 Representations and Warranties of Friends

Friends represents and warrants as follows, as of the Effective Date:

(a) **Valid Existence; Good Standing.** Friends is a nonprofit corporation duly organized and validly existing under the laws of the State of California. Friends has all requisite power and authority to own its property and conduct its business as presently conducted. Friends has made all filings and is in good standing in the State of California.

(b) Authority. Friends has all requisite power and authority to execute and deliver this Agreement and the agreements contemplated by this Agreement and to carry out and perform all of the terms and covenants of this Agreement and the agreements contemplated by this Agreement.

(c) No Limitation on Ability to Perform. Neither Friends' articles of incorporation or bylaws, nor any other agreement or Law in any way prohibits, limits or otherwise affects the right or power of Friends to enter into and perform all of the terms and covenants of this Agreement. Friends is not party to or bound by any contract, agreement, indenture, trust agreement, note, obligation or other instrument which could prohibit, limit or otherwise affect the same. No consent, authorization or approval of, or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other Person is required for the due execution, delivery and performance by Friends of this Agreement or any of the terms and covenants contained in this Agreement. There are no pending or threatened suits or proceedings or undischarged judgments affecting Friends before any court, governmental agency, or arbitrator which might materially adversely affect the enforceability of this Agreement or the business, operations, assets or condition of Friends.

(d) Valid Execution. The execution and delivery of this Agreement and the agreements contemplated hereby by Friends has been duly and validly authorized by all necessary action. This Agreement will be a legal, valid and binding obligation of Friends, enforceable against Friends in accordance with its terms. Friends has provided to City a written resolution of Friends authorizing the execution of this Agreement and the agreements contemplated by this Agreement.

(e) Defaults. The execution, delivery and performance of this Agreement (i) do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default under (A) any agreement, document or instrument to which Friends is a party or by which Friends' assets may be bound or affected, or (B) the articles of incorporation or the bylaws of Friends, and (ii) do not and will not result in the creation or imposition of any lien or other encumbrance upon the assets of Friends.

(f) Meeting Financial Obligations. To Friends' knowledge, all financial information regarding Friends previously submitted to City is true and correct, and Friends is meeting its current liabilities as they mature; no federal or state tax liens have been filed against it; and Friends is not in default or claimed default under any agreement for borrowed money.

The representations and warranties in this Section shall survive any termination of this Agreement.

12.21 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, Friends and City shall reasonably cooperate with one another to achieve the objectives and purposes of this Agreement. In so doing, Friends 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 Friends’ obligations under the terms of this Agreement, Friends covenants that Friends 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 5.6 and any revisions required thereunder, all obligations to seek Regulatory Approvals and Building Permit or Site Permit and any addenda thereto as set forth in Section 2.9(b) and Section 5.15, 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:

Adverse Change as defined in Section 3.1(a).

Affiliate as defined in the 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 Geneva Office Building and Power House Lease Disposition and Development Agreement, as it may be amended from time to time in accordance with its terms.

Approved Operating Standards as defined in the Lease.

Arbiter as defined in Section 5.7(c)(i).

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), 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 shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney's Office.

Bona Fide Institutional Lender as defined in the Lease.

Budget as defined in Section 7.1(a) and a form of which is attached hereto as Exhibit L.

Building as defined in Recital A.

Building Permit(s) means a permit or permits issued by City which will allow Friends to commence Construction of the Improvements (see Section 5.15).

Card Check Ordinance as described in Section 11.9.

Certificate of Completion as described in Section 6 and a form of which is attached as Exhibit D.

Certified Construction Costs as defined in Section 5.13(b).

CEQA means the California Environmental Quality Act (California Public Resources Code, Section 21000 *et seq.*).

City as defined in the introductory paragraph of this Agreement.

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's Remediation Election as defined in Section 3.3(g).

Close Date as defined in Section 2.2(b).

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

Closing Costs as defined in Section 2.2(e).

Consistency means consistent in all material respects with this Agreement, the assumptions set forth in the Budget, the Operating Budget, the Regulatory Approvals and Project Requirements.

Completion or Completed as defined in Section 6.1(c).

Construction means all new construction, replacement, rehabilitation, and demolition occurring on the Site pursuant to this Agreement and the Lease.

Construction Contract as defined in Section 7.1(h).

Construction Documents as defined in Section 5.3(b).

Core Benefits as defined in Section 11.1(c).

Deferred Items as defined in Section 6.1(b).

Delayed Party as defined in Section 12.1(a).

Delivery means execution and delivery of the Lease and the delivery through Escrow by City of leasehold estate in the Property under the Lease.

Friends as defined in the introductory paragraph of this Agreement and includes Friends' permitted successors and assigns.

Friends Indemnified Parties means Friends and its directors, employees and agents.

Disabled Access Laws means all Laws 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 disabled access laws under City's building code.

Disclosed Pre-Existing Hazardous Materials as defined in Section 3.3(a).

E&E means Ecology and Environment, Inc.

Effective Date as defined in Section 12.21.

Environmental Assessment as defined in Section 3.3(a).

Escrow as defined in Section 2.2(a).

Event of Default as defined in Section 10.

Final Construction Documents as defined in Section 5.3(a)(iii).

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.

Financing Plan means the financing plan attached hereto as Exhibit M, which includes (i) a detailed description of all sources and uses of funds for the construction of the Project, the timing for receipt of such funds and a description of conditions that Friends must meet to receive such funds, including, without limitation, a detailed description of the capital fundraising process

that Friends expects to utilize showing the amount of funds required to be raised and a timeline for raising such funds; (ii) a summary of the key loan terms for anticipated construction and take out financing, if any; and (iii) a proforma operating budget assumptions covering a period of one year from the commencement of operation of the Project.

First Source Hiring Program as defined in Section 11.8.

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

FSB as defined in Section 3.3(a).

FSB Addendum as defined in Section 3.3(a).

General Manager means the General Manager of the San Francisco Recreation and Park Department, or his or her designee, or successor that succeeds to the rights and obligations of the General Manager under applicable Law.

Graffiti as defined in Section 11.19.

Guide means the AICPA Audit Guide for Not-for-Profit Organizations and its related standards.

Handle when used with reference to Hazardous Materials means to use, generate, manufacture, 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 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 whether or not such materials are part of the structure of any existing Improvements on the Site, any Improvements to be constructed on the Site by or on behalf of Friends, or are naturally occurring substances on, in or about the Site; and petroleum, including crude oil or any fraction, and natural gas or natural gas liquids.

Hazardous Material Claims means any and all enforcement, Investigation, Remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed under any Hazardous Materials Laws, together with any and all Losses made or threatened by any third party against City, or any of the other City Indemnified Parties and any of their Agents, or the Site or any Improvements, 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. Hazardous Materials Laws include, but shall not be limited to, City's Pesticide Ordinance (Chapter 39 of the San Francisco Administrative Code), to the extent the same is as of the date of this Agreement applicable to developers of City property, and Section 20 of the San Francisco Public Works Code ("Analyzing Soils for Hazardous Waste").

Historic Preservation Tax Credit means the 20% federal income tax credits for historic rehabilitation, pursuant to Internal Revenue Code §§38 and 47, and 16 U.S.C.A. §470 et seq. and applicable regulations.

Historic Structure Report means [_____].

Improvements means all physical construction on the Site and all buildings, structures, fixtures and other improvements, rehabilitated, erected, built, placed, installed or constructed upon or within the Site on or after the Effective Date, including, but not limited to all renovation and rehabilitation work on the existing Building other than Friends improvement work not required to occur for the Improvements to be Completed pursuant to Section 6.1 hereto, all as described in the Scope of Development and approved by City as provided for in Section 6 and elsewhere in this Agreement, but excluding the Investigation and Remediation of Unknown Pre-Existing Hazardous Materials to the extent City made City's Remediation Election with respect thereto.

Indemnified Parties means, individually or collectively, City Indemnified Parties and Friends Indemnified Parties.

Indemnify means indemnify, protect, defend and hold harmless.

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, under or about the Site, any Improvements or any portion of this Agreement or which have been, are being, or threaten to be Released into the environment. Investigation shall include, without limitation, preparation of site history reports and sampling and analysis of environmental conditions in, on, under or about the Site or any Improvements.

Invitees as defined in the Lease.

Law or Laws shall mean all present and future laws, ordinances, rules, regulations, permits, authorizations, orders and requirements, to the extent applicable to the Parties, the Site, the Improvements, or any portion of any of them (including, without limitation, any subsurface area, the use thereof and of the Site, or any portion thereof, and the buildings and Improvements

thereon) whether or not in the contemplation of the Parties, including, without limitation, all consents or approvals (including Regulatory Approvals) required to be obtained from, and all rules and regulations of, and all building and zoning laws of, all federal, state, county and municipal governments, the departments, bureaus, agencies or commissions thereof, authorities, board of officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions, having or acquiring jurisdiction of the Site, the Improvements or any portion of any of them.

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

LDDA Term as defined in Section 1.2.

Lease as defined in Section 1.4.

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

Long-Term License as defined in Section 4.2(b).

Loss or Losses when used with reference to any Indemnity 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 as defined in Section 2.5(b)(iii).

Memorandum of Lease as defined in Section 2.2(d).

Mitigation Measures as described in Section 11.2.

Mortgage as defined in the Lease.

Mortgagee as defined in the Lease.

Net Revenue as defined in the Lease.

New Markets Tax Credit means those tax credits received for investing in certain low income census tracts as governed by Section 45D of the Internal Revenue Code of the United States.

Nondisclosure of Private Information Ordinance as defined in Section 11.18.

NPS as defined in Section 2.3(a)(vii).

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

Operating Budget as defined in Section 7.1(c).

Part 2 Application as defined in Section 2.3(a)(vii).

Party means City or Friends, as a party to this Agreement. “Parties” means both City and Friends, as parties to this Agreement.

Performance Bond as defined in Section 7.1(i).

Permit to Enter as referred to in Section 4.1(a).

Permitted Title Exceptions as defined in Section 2.6(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.

Pesticide Ordinance as defined in Section 11.7.

Political Activity as defined in Section 11.12.

Phase I ESA as defined in Section 3.3(a).

Phase II ESA as defined in Section 3.3(a).

Preliminary Construction Documents as referred to in Section 5.3(a)(ii).

Prevailing Wage mean the provisions described in Section 5.17.

Prevailing Wage Agreement in the form of Exhibit K.

Private Information as defined in Section 11.18(c).

Project means the Construction of the Improvements described in the Scope of Development, operated as a community center, together with complementary uses as described in the Scope of Development all at the Approved Operating Standards.

Project Requirements as defined in Section 5.4.

Property as defined in Recital A.

Recommendations Regarding Environmental Conditions as defined in Section 3.3(a).

Regulatory Approval means any rezoning, authorization, approval or permit required by any governmental agency having jurisdiction over the Site or the Project, including, but not limited to, City’s Planning Commission and/or Zoning Administrator, City’s Historic Preservation Commission, City’s Recreation and Park Commission, City’s Department of Building Inspection and the Board of Supervisors. “Regulatory Approval” shall not include any such authorization, approval or permit required to Investigate or Remediate the Unknown Pre-Existing Hazardous Materials if City has made City’s Remediation Election.

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 Friends, or in, on, under or about the Site or any portion of the 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, under or about the Site or which have been, are being, or threaten to be Released into the environment. Remediation includes, without limitation, those actions included within the definition of “remedy” or “remedial action” in California Health and Safety Code Section 25322 and “remove” or “removal” in California Health and Safety Code Section 25323.

Schedule of Performance as defined in Section 2.2(a).

Schematic Drawings means the drawings prepared by Aidlin Darling Design described on Exhibit I.

Scope of Development means the narrative document attached hereto as Exhibit I and the Schematic Drawings.

Secretary’s Standards as defined in Recital C.

SFMTA as defined in Section 4.2(a).

SFMTA Property as defined in Section 4.2(a).

SHPO means the California State Historic Preservation Office.

Significant Change as defined in the Lease.

Site as defined in Section 1.1(a).

Site Permit means the permit for construction of improvements as described in Section 5.15(b).

Special City Requirements as defined in Section 10.1(e).

Staff as defined in Section 5.8(a).

Temporary Construction License as defined in Section 4.2(a).

Title Company as defined in Section 2.2(a).

Title Defect as defined in Section 2.6(c).

Title Defect Cure Period as defined in Section 2.6(c).

TM as defined in Section 11.7.

Transfer as defined in Section 9.1.

Unknown Pre-Existing Environmental Conditions as defined in Section 3.3(g).

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.

Workforce Hiring Program means the program for diversity concerning design, construction and operation of the Improvements which Friends has agreed to implement as described in Section 11.10 and attached hereto as Exhibit O.

Writ as defined in Section 12.1(c).

[Remainder of Page Intentionally Blank]

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

FRIENDS

FRIENDS OF GENEVA OFFICE BUILDING AND POWER HOUSE, a California nonprofit corporation

By: _____
Name: _____
Title: _____

CITY

CITY & COUNTY OF SAN FRANCISCO, a municipal corporation

By: _____
PHILIP A. GINSBURG
General Manager
Recreation and Park Department

**APPROVED BY
RECREATION AND PARK COMMISSION
PURSUANT TO RESOLUTION NO. _____ DATED: _____**

Margaret McArthur, Commission Liaison

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Anita L. Wood, Deputy City Attorney

EXHIBIT A

LEGAL DESCRIPTION OF SITE AND SFMTA PROPERTY

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:

BEGINNING at the point of intersection of the Southeasterly line of San Jose Avenue with the Southwesterly line of Geneva Avenue; thence Southeasterly along said line of Geneva Avenue 422.24 feet to the Northwesterly line of Delano (formerly Delaware) Avenue; thence at a right angle Southwesterly along said line of Delano Avenue 331.38 feet, more or less, to a point distant thereon 120 feet Northeasterly from the Northeasterly line of Niagara (formerly Unadilla) Avenue; thence at a right angle Northwesterly parallel with said line of Niagara Avenue 454 feet to the Southeasterly line of San Jose Avenue; thence Northeasterly along said line of San Jose Avenue 333.4 feet to the point of beginning.

BEING a portion of Block 29 "West End Map No. 1". Excepting therefrom that portion lying within Parcel 25 as shown on the Map filed March 3, 1965 in Book U of Maps, Page 69.

Also excepting therefrom that portion described in the Deed Zanello/Gaehwiler, a California partnership recorded February 2, 1987 in Reel E270 Page 598, Document No. D938354.

EXHIBIT C

RECOMMENDATIONS REGARDING ENVIRONMENTAL CONDITIONS

- Before renovation begins, the fluorescent light ballasts and electrical components throughout the office building and powerhouse should be collected and recycled or disposed, based on whether or not they contain PCBs.
- Before renovation begins, the mercury-containing switches should be collected from wall thermostats in the office building and properly disposed by a contractor who is licensed and trained to handle and dispose of hazardous wastes.
- During renovation, ACM, LBP, and lead-based material should be abated and waste materials disposed of in accordance with all applicable regulations as described in the ACM and LBP survey report (Vista 2013).
- Before renovation, stained areas of concrete in the powerhouse should be cleaned and waste materials disposed in accordance with 40 CFR Part 761. The initial step in the cleanup process will be to prepare and submit a notification describing planned cleanup activities as described in 40 CFR Part 761.61. The notification process will notify federal, State, and local agencies who may act as the lead oversight agency for the cleanup and identify the lead agency that will direct the work. The lead oversight agency may have site-specific requirements for further assessment or cleanup.

EXHIBIT D

FORM OF CERTIFICATE OF COMPLETION

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]

CERTIFICATE OF COMPLETION OF IMPROVEMENTS

WHEREAS, City and County of San Francisco, acting by and through its Recreation and Park Commission (“**City**”), and the Friends of the Geneva Office Building and Power House, a California nonprofit corporation (“**Friends**”), 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 Friends 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 Exhibit A attached hereto and made a part hereof (the “**Property**”), and setting forth certain obligations of Friends to rehabilitate and construct certain Improvements (as defined in the Agreement) on the Property;

WHEREAS, pursuant to that certain Lease dated _____, 201__ (the “**Lease**”), 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 _____, City did convey to Friends (as Friends thereunder) a leasehold interest in the Property;

WHEREAS, City has conclusively determined that the rehabilitation and construction obligations of Friends as specified in the Agreement have been fully performed and the Improvements, as defined in the Agreement, have been completed in accordance therewith; and

WHEREAS, as stated in the Agreement, City’s determination regarding such rehabilitation and construction obligations is not directed to, and thus City assumes no responsibility by virtue of this Certificate 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 standards.

NOW THEREFORE, as provided in the Agreement, with respect to the Property, and subject to the foregoing provisions hereof, City does hereby certify that Friends’ rehabilitation and construction obligations under the Agreement related to Completion of the Improvements

have been fully performed and completed as described above and that the Agreement shall be deemed terminated and of no further force or effect, except as specifically set forth therein. Nothing contained in this instrument shall modify in any way any provisions of the Lease.

IN WITNESS WHEREOF, City has duly executed this instrument this _____ day of _____, 20__.

CITY AND COUNTY OF
SAN FRANCISCO, a municipal corporation

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Deputy City Attorney

EXHIBIT E

FORM OF THE LEASE

[Attached]

EXHIBIT F

SCHEDULE OF PERFORMANCE

INTRODUCTION

Several principles apply to an effective understanding of this Schedule of Performance: (i) all terms used herein have the same meanings as provided in the Lease Disposition and Development Agreement between the City and County of San Francisco through the San Francisco Recreation and Parks Department (“City”), and Friends of Geneva Office Building and Power House, a California non profit corporation (“Developer”) to which this Schedule of Performance is attached (the “Agreement”); (ii) parenthetical numbers are references to sections of the Agreement, as the dates described herein are not exhaustive of all dates described in the Agreement; (iii) all Required Completion Dates provided for in this Schedule of Performance may be extended by applicable Force Majeure provisions or as otherwise provided for in the Agreement; (iv) the Projected Dates provided herein are for informational purposes only and are not binding in any way on the City or the Developer, except as otherwise specifically provided in the Agreement; and (v) in the event of an inconsistency between this Schedule of Performance and the Agreement, the Agreement shall prevail.

<u>Action</u>	<u>Required Completion Date</u>
<u>Approval – LDDA.</u> Recreation and Park Commission shall approve, disapprove, or conditionally approve LDDA.	Expected May 2014
<u>Submission – Preliminary Construction Documents.</u> City shall prepare and submit the Preliminary Construction Documents to the Friends for review and approval (Sec. 5.6).	February 1, 2015
<u>Approval – Preliminary Construction Documents.</u> Friends must approve, disapprove or approve conditionally the Preliminary Construction Documents in writing (Sec. 5.8(b)).	30 days after receipt of Preliminary Construction Documents from City.
<u>Submission – Updated Budget and Financing Plan.</u> Friends shall submit for City’s review and approval an updated estimated Budget of total development costs for the Project, prepared at a level of detail commensurate with the stage of design expressed in the drawings then under review, and to the extent the Budget differs from the Budget previously submitted, shall also submit, for City's information, an updated Financing Plan setting forth anticipated sources and uses of funds. (Sec. 5.6 (b))	30 days after receipt of Preliminary Construction Documents from City.
<u>Approval – Preliminary Construction Documents.</u>	No later than 45 days after receipt of

City must approve, disapprove or approve conditionally the any submissions required under the terms of this Agreement other than full building permit application (Sec. 5.8(d)).	full submission
<u>Submission – Final Construction Document Funding.</u> Friends will gift total funds to the City for completion of Final Construction Documents (for acceptance by the Board of Supervisors).	February 1, 2015 (expected) – November 1, 2015
<u>Submission – Final Construction Documents.</u> City shall prepare and submit the Final Construction Drawings to the Friends for review and approval (Sec 5.6).	June 1, 2015 (expected) - March 1, 2016
<u>Approval – Final Construction Documents.</u> Friends must approve, disapprove or approve conditionally the Final Construction Documents in writing (Sec. 5.8(b)).	30 days after receipt of Final Construction Documents from City.
<u>Submission – Final Budget.</u> Friends shall submit for City’s review and approval a final Budget of total development costs for the Site and the Improvements (Sec. 7.1 (a)).	30 days after receipt of Final Construction Documents from City.
<u>Approval – Final Construction Documents.</u> City must approve, disapprove or approve conditionally the Preliminary Construction Documents in writing (Sec. 5.8(d)).	No later than 45 days after approval of final construction documents by Friends.
<u>Submission - Evidence of Regulatory Approvals.</u> Friends shall submit to City evidence of all required Regulatory Approvals. (Sec. 2.3 (vii)).	No later than 10 days before Close of Escrow.
<u>Submission- Historic Certification Application, Part 2.</u> Friends shall submit to City evidence of submission of Historic Certification Application, Part 2 to the NPS and their approval thereof. (Sec. 2.3 (v)).	No later than 10 days before Close of Escrow.
<u>Submission – HPTC Partnership Agreement (if applicable).</u> Friends shall submit to City operating agreement or limited partnership agreement with an investor to utilize the HTPC. (Sec. 2.3 (vi)).	No later than 10 days before Close of Escrow.

<u>Submission – Final Financing Plan.</u> Friends shall submit to City for review and approval a final Financing Plan setting forth confirmed sources and uses of funds (Sec 7.1 (b))	At least 45 days after submission of Preliminary Construction Documents in accordance with Section 5 and no later than December 2016.
<u>Submission – Operating Budget.</u> Friends shall submit to City an Operating Budget for review and approval. (Sec. 7.1(c)).	On or before submission of final Financing Plan.
<u>Submission – Evidence of City Financing.</u> City shall provide to Developer evidence of all financing to be provided by the City. (Sec. 2.4 (a)(ix)).	On or before submission of final Financing Plan.
<u>Submission – Application for Building Permit.</u> Friends shall complete and submit application for either a Site Permit or a full building permit for planned Improvements (Sec. 5.16).	January 2016 (expected) – January 2017
<u>Submission - SFMTA Short Term License.</u> Friends shall submit to SFMTA Short Term License Permit Area and Construction Work Plan for review and approval.	January 2016 (expected) – January 2017
<u>Submission – Survey of Property.</u> Friends shall prepare and submit a Survey to City for review and approval (Sec.2.7 (b)).	January 2016 (expected) – January 2017
<u>Approval – Survey of Property.</u> City will review and approve Survey (Sec.2.7 (b)).	Within 30 days after submission.
<u>Completion – SFMTA Facilities Matters.</u> SFMTA high tension wire/alarm removed (Section 3.4).	No later than 45 days prior to the start of Construction.
<u>Prepare and Execute Joint Escrow Instructions – Friends.</u> Friends must prepare and execute joint escrow instructions (Sec. 2.2(c)).	No later than 30 days before the Close Date Developer shall prepare and submit to the City for review joint escrow instructions.
<u>Opening of Escrow.</u> Developer shall open Escrow (Sec. 2.2).	No later than 15 days prior to Close Date.
<u>Close of Escrow.</u> (Sec. 2.2(b))	June 2016 [expected] – June 2017.
<u>Commencement of Construction Improvements.</u> Friends shall use its reasonable efforts to commence all construction and development within the times specified in the Schedule of Performance or within such extension of time as the City may grant in writing, in its reasonable discretion or as otherwise permitted by the Agreement, subject to Force	July 2016 [expected] – July 2017.

Majeure. (Sec. 5.13).	
<u>Completion of Construction Improvements.</u> Friends shall use its reasonable efforts to complete all construction and development within the times specified in the Schedule of Performance or within such extension of time as the City may grant in writing, in its reasonable discretion or as otherwise permitted by the Agreement, subject to Force Majeure. (Sec. 5.13).	December 2017 [expected] – December 2018
<u>Submission – Request for Certificate of Completion.</u> Developer may request in writing from the City a Certificate of Completion (Sec. 6.1(a)(ii)).	After Construction of Improvements (except for Deferred Items) on the Property has been completed by the Developer in accordance with all provisions of the LDDA.
<u>Approval – Certificate of Approval.</u> The City shall act on Developer’s request for a Certificate of Completion (Sec. 6.1(a)(ii)).	Within 30 days of receipt of the request.
<u>Submission – As Built Documents.</u> Developer must furnish City as-built plans, specifications and surveys with respect to the Site (Sec. 5.14(a)).	Within 90 days after Completion of the Improvements.
<u>Submission - Certified Construction Costs.</u> The Developer shall furnish to the City Certified Construction Costs (Sec. 5.14(b)).	Within 90 days after Completion of the Improvements.
<u>Inspection – Certified Construction Costs.</u> The City shall have the right to inspect the Developer’s records regarding the construction of the Improvements (Sec. 5.14(b)).	Within 60 days after receipt by the City of Certified Construction.

EXHIBIT G

FORM OF MEMORANDUM OF LEASE

RECORDING REQUESTED BY, AND
WHEN RECORDED, MAIL TO:

Friends of Geneva Office Building and Power
House
755 Ocean Avenue
San Francisco, CA 94112
Attention: Daniel Weaver

No Documentary Transfer Tax due
No fee for recording pursuant to
Government Code § 27383

FOR RECORDER'S USE ONLY

APN: Block 6972 Lot 36

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, acting by and through its Recreation and Park Commission ("City") and FRIENDS OF GENEVA OFFICE BUILDING AND POWER HOUSE, a California non-profit corporation ("Tenant").

Recitals

A. City owns certain real property in the City and County of San Francisco, State of California, located at the corner of Geneva Avenue and San Jose Avenue as more particularly described on Exhibit A attached hereto (the "City Property"). That portion of the City Property depicted as the Geneva Office Building and Powerhouse property on the Property Boundary Survey attached hereto as Exhibit B (the "Leased Property") is in the jurisdiction of City's Recreation and Parks Commission, and is improved with a building comprised of two adjoining structures: a two-story office building and a single-story car shed, known as the Powerhouse. City and Tenant have entered into that certain Lease, dated _____, 20__ (the "Lease"), pursuant to which City leased to Tenant and Tenant leased from City the Leased Property.

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 Leased Property to Tenant for a term commencing on _____, 20____ and ending on _____, 20____, unless earlier terminated in accordance with the terms of the Lease, subject to Tenant's early termination rights described below. Tenant has the option to terminate the Lease early by providing 180 days prior written notice to City, as provided in Section 3.2 of the Lease.

2. Lease Terms. The lease of the Leased 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. Except as otherwise defined in this Memorandum, capitalized terms shall have the meanings given them in the Lease.

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

FRIENDS OF GENEVA OFFICE BUILDING AND
POWER HOUSE, a California non-profit
corporation

By: _____
Its: _____

By: _____
Its: _____

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
PHILIP A. GINSBURG
General Manager
Recreation and Park Department

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By: _____
Deputy City Attorney

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)

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)

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)

EXHIBIT A
to
Memorandum of Lease

Legal Description of City Property

THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING at the point of intersection of the Southeasterly line of San Jose Avenue with the Southwesterly line of Geneva Avenue; thence Southeasterly along said line of Geneva Avenue 422.24 feet to the Northwesterly line of Delano (formerly Delaware) Avenue; thence at a right angle Southwesterly along said line of Delano Avenue 331.38 feet, more or less, to a point distant thereon 120 feet Northeasterly from the Northeasterly line of Niagara (formerly Unadilla) Avenue; thence at a right angle Northwesterly parallel with said line of Niagara Avenue 454 feet to the Southeasterly line of San Jose Avenue; thence Northeasterly along said line of San Jose Avenue 333.4 feet to the point of beginning.

BEING a portion of Block 29 "West End Map No. 1". Excepting therefrom that portion lying within Parcel 25 as shown on the Map filed March 3, 1965 in Book U of Maps, Page 69.

Also excepting therefrom that portion described in the Deed Zanello/Gaehwiler, a California partnership recorded February 2, 1987 in Reel E270 Page 598, Document No. D938354.

APN:

Commonly known as 2301 San Jose Avenue

EXHIBIT B
to
Memorandum of Lease
Depiction of Leased Property

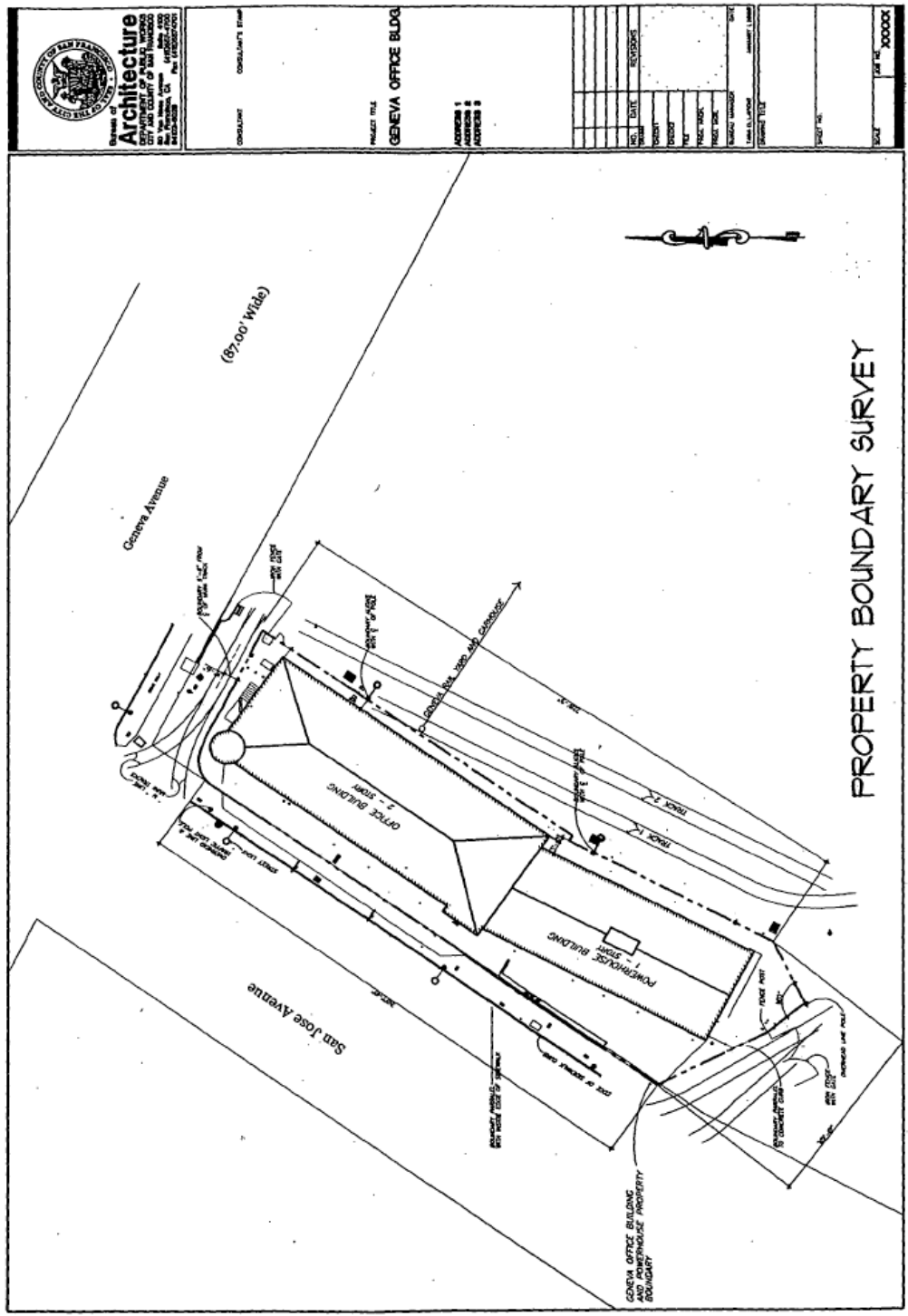


EXHIBIT H

PERMITTED TITLE EXCEPTIONS

1. The lien of supplemental taxes, if any, assessed pursuant to the provisions of Chapter 3.5 (Commencing with Section 75) of the Revenue and Taxation Code of the State of California.

2. The herein described property lies within the boundaries of a Mello Roos Community Facilities District ("CFD"), as follows:

CFD No: 90 1

For: School Facility Repair and Maintenance

This property, along with all other parcels in the CFD, is liable for an annual special tax. This special tax is included with and payable with the general property taxes of the City and County of San Francisco. The tax may not be prepaid.

Further information may be obtained by contacting:

Chief Financial Officer

San Francisco Unified School District

135 Van Ness Ave. - Room 300

San Francisco, CA 94102

Phone (415) 241-6542

3. Terms and provisions of the Emergency Order No. 7838, Location 2301 San Jose Avenue, Block 6972, Lot 020, recorded November 27, 2001, Instrument No. 2001-H060302-00, Reel I021, Image 0469, of Official Records.

EXHIBIT I

SCOPE OF DEVELOPMENT / SCHEMATIC DRAWINGS

A. Schematic Drawings. Drawings prepared by Aidlin Darling Design, dated July 8, 2010, comprised of the following sheets:

- A0.1 Project Information
- A0.2 Site Plan
- A1.1 Basement Level Demolition Plan
- A1.2 Level 1 Demolition Plan
- A1.3 Level 2 Demolition Plan
- A1.4 Level 3 Demolition Plan
- A1.5 Roof Demolition Plan
- A2.1 Basement Level Plan
- A2.2 Level 1 Plan
- A2.3 Level 2 Plan
- A2.4 Level 3 Plan
- A2.5 Roof Plan
- A5.1 Exterior Elevations
- A5.2 Exterior Elevations
- A5.3 Exterior Elevations
- A5.4 Building Sections
- A5.5 Building Sections
- A5.6 Building Sections

B. Scope of Development. The project entails the renovation and restoration of the Geneva Car Barn and Powerhouse, a historic structure located at 2301 San Jose Avenue in San Francisco. Design and documentation work is based on the completed schematic design architectural and structural drawings prepared by Aidlin Darling Design, dated July 12, 2010. Project scope includes facade restoration, seismic upgrade and interior renovation to provide a 300 person event space, a 99 seat black box Theater, three youth training classrooms and associated spaces for the new uses. The design will incorporate the shell and infrastructure for a 2000 square foot restaurant and a 730 square foot retail space.

EXHIBIT J

FORM OF ARCHITECT'S CERTIFICATE

TO: City and County of San Francisco
Recreation and Park Department
McLaren Lodge Annex
San Francisco, California 94117

Date: _____

FROM: [Architect]

RE: Geneva Avenue Office Building and Power House

Note: This certificate is being provided pursuant to Section 5.5(b) of that certain Lease Disposition and Development Agreement between the City and County of San Francisco and the Friends of Geneva Avenue Office Building and Power House, a California non-profit public benefit corporation ("Friends"), dated as of _____, 20__, hereinafter referred to as the "Agreement". All terms used below which are defined terms in the Agreement have the same meaning herein as therein.

I visited the construction site for the Project at intervals appropriate to the stage of construction, or as otherwise agreed by me and the Friends, to become generally familiar with the progress and quality of the construction completed and to determine in general if the construction was being performed in a manner indicating that the construction of the Improvements when completed would be in accordance with the Construction Documents.

My opinions and statements provided in this certificate are limited to my on-site observations. I am not required to make nor have I made exhaustive or continuous on-site inspections to check the quality or quantity of the construction.

I neither retained nor exercised control over or charge of, nor am I responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the construction of the Improvements.

Subject to the limitations set forth above, I hereby certify to the best of my knowledge, information and belief as follows:

Construction of the Improvements has been performed in a good and workmanlike manner and in accordance with those elements of the Final Construction Documents which have been approved by the City pursuant to the Agreement, except as may be noted on Schedule A attached hereto.

The Project, as constructed, complies with all applicable statues, codes, zoning ordinance and regulations, including, but not limited to, handicapped accessibility ordinances and

regulations, including, but not limited to the “ADA Accessibility Guidelines for Buildings and Facilities”, 28 CFR part 36, Appendix A (the “ADA Guidelines”).

The Project is complete (except for minor punch list items specifically described in Schedule A, with estimated costs).

The required certificates, approvals and permits of all governmental authorities having jurisdiction covering the work to date on Improvements have been issued and are in force, and there is not an undischarged violation of applicable laws, regulations or orders of any governmental authority having jurisdiction of which I have notice as of the date hereof, except as may be noted on Schedule A attached hereto.

All statements and opinions made in this certificate are limited to the extent that I have not made exhaustive or continuous on-site inspections to check the quality or quantity of the construction nor have I reviewed the construction means, methods, techniques, sequences or procedures.

Architect

SCHEDULE A

to

Form of Architect's Certificate

EXHIBIT K

PREVAILING WAGE AGREEMENT

[Attached]

EXHIBIT L

FORM OF BUDGET

Construction Cost	\$16,955,794
Soft Costs	
Design Team	\$1,995,000
Regulatory Approvals	\$200,000
Data/Surveys	\$65,000
Project Manager	\$300,000
FF&E	\$500,000
Art Enrichment (2% of construction cost)	\$339,000
Hazardous Abatement	\$102,000
Fire Security Modification	\$75,000
Construction Contingency (5%)	\$847,788
Subtotal	\$4,423,903
Total Project Cost	\$21,379,657

EXHIBIT M
FINANCING PLAN

Source of Funds	Status/Timing	Description	Amount
2000 Neighborhood Park General Obligation Bond Funds	Appropriated	For Design Development and Preliminary Construction Drawings	\$838,000
Community Opportunity Funding*	Spring 2015 (anticipated)	Capital program allowing residents, neighborhood groups, and advocates to initiate capital improvements to RPD properties by matching public funding with other gifts and grants; must have a complete design, budget, and schedule	≤ \$3,000,000
Historic Preservation Tax Credits	Accepted on a rolling basis	20% of rehabilitation hard costs for substantial projects on certified historic structures; must meet SHPO and NPS standards for rehabilitation	≤ \$3,400,000
New Market Tax Credits	Winter 2015 (anticipated)	20% of rehabilitation hard and soft costs for qualified projects in economically distressed areas; must demonstrate Project Readiness	≤ \$4,200,000
Additional fundraising	2014-2016	To be raised from private and public sources	≤ \$9,941,657
Total Funding			\$21,379,657

**City has not made a commitment of an award from the Community Opportunity Fund for the Project.*

EXHIBIT N

FORM OF FIRST SOURCE HIRING AGREEMENT

[Attached]

EXHIBIT O

WORKFORCE HIRING PROGRAM



LOCAL HIRING PROGRAM
OEWD FORM 2
CONSTRUCTION CONTRACTS

FORM 2: LOCAL HIRING PLAN

Department: _____ Project Name: _____ Contract #: _____

If the Engineer's Estimate for this Project exceeds **\$1 million**, then Contractor must submit a Local Hiring Plan using this Form 2 through the City's Project Reporting System. NTP will not be issued until Contractor submits a completed Form 2. Contractor shall be responsible for any delays to NTP and resulting damages incurred by the City caused by the Contractor's failure to submit a completed Form 2 in a timely manner. The Local Hiring Plan must be approved in writing by OEWD before any Application for Payment can be approved and progress payment paid to Contractor. The OEWD-approved Local Hiring Plan will be a Contract Document and will be the basis for determining Contractor's and its Subcontractors' compliance with the local hiring requirements. Any OEWD-approved Conditional Waivers (Form 4) will be incorporated into the OEWD-approved Local Hiring Plan.

COMPLETE AND SUBMIT A SEPARATE FORM 2 FOR EACH TRADE THAT WILL BE UTILIZED ON THIS PROJECT.

INSTRUCTIONS:

1. Please complete tables below for Contractor and all Subcontractors that will be contributing Project Work Hours to meet the Local Hiring Requirement.
2. Please note that a Form 2 will need to be developed and approved separately for each trade craft that will be utilized on this project.
3. If you anticipate utilizing apprentices on this project, please note the requirement that 50% of apprentice hours must be performed by San Francisco residents.
4. The Contractor and each Subcontractor identified in the Local Hiring Plan must sign this form before it will be considered for approval by OEWD.
5. If applicable, please attach all OEWD-approved Form 4 Conditional Waivers.
6. Additional blank forms are available at our Website: www.workforcedevelopmentsf.org. For assistance or questions in completing this form, contact CityBuild (415) 701-4848 or Email Local.hire.ordinance@sfgov.org.

List Trade Craft. Add numerical values from Form 1: Local Hiring Workforce Projection and input in the table below.

Trade Craft	Total Work Hours	Total Local Work Hours	Local Work Hours%	Total Apprentice Work Hours	Total Local Apprentice Work Hours	Local Apprentice Work Hours %
<i>Example: Laborer</i>	1500	300	30%	200	100	50%

STATEMENT OF COMPLIANCE:

This project will follow the City's Mandatory Local Hiring Policy for Construction and include all requirements stipulated under Legislative Code Chapter 6.22(g). Public Projects advertised between March 25, 2013 and March 24, 2014 will have a mandatory local hiring requirement of 30% by trade.

Signature: _____ Name: _____ Contract #: _____

Title: _____ Email: _____

EXHIBIT P

FORM OF MEMORANDUM OF AGREEMENT

RECORDING REQUESTED BY, AND
WHEN RECORDED, MAIL TO:

Friends of Geneva Office Building and Power
House
755 Ocean Avenue
San Francisco, CA 94112
Attention: Daniel Weaver

No Documentary Transfer Tax due
No fee for recording pursuant to
Government Code § 27383

FOR RECORDER'S USE ONLY

APN: Block 6972 Lot 36

**MEMORANDUM OF LEASE DISPOSITION
AND DEVELOPMENT AGREEMENT**

This Memorandum of Lease Disposition and Development Agreement ("Memorandum of LDDA"), dated for reference purposes as of _____, 20____, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through its Recreation and Park Commission ("City") and FRIENDS OF GENEVA OFFICE BUILDING AND POWER HOUSE, a California non-profit corporation ("Friends").

Recitals

C. City owns certain real property in the City and County of San Francisco, State of California, located at the corner of Geneva Avenue and San Jose Avenue as more particularly described on Exhibit A attached hereto (the "City Property"). That portion of the City Property depicted as the Geneva Office Building and Powerhouse property on the Property Boundary Survey attached hereto as Exhibit B (the "Leased Property") is in the jurisdiction of City's Recreation and Parks Commission, and is improved with a building comprised of two adjoining structures: a two-story office building and a single-story car shed, known as the Powerhouse.

D. City and Friends have entered into that certain Geneva Office Building and Power House Lease Disposition and Development Agreement with respect to the Leased Property (the "LDDA"). The Effective Date of the LDDA, as that term is defined in the LDDA, is _____, 20____. ***[Title Company to insert Effective Date pursuant to LDDA Section 12.21; Delete note in execution copy.]***

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

F. Capitalized terms not otherwise defined herein shall have the same meaning as set forth in the LDDA.

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

4. Term. The term of the LDDA shall commence upon the Effective Date and continue until City records a Certificate of Completion for the Improvements pursuant to Section 6 of the LDDA, unless earlier terminated by written agreement of the parties or otherwise in accordance with its provisions.

5. Lease of Leased Property. The City hereby agrees to lease to the Friends and the Friends hereby agrees to lease from the City, the Leased Property, each pursuant and subject to the terms and conditions of the LDDA.

6. No Amendment of LDDA. This Memorandum of LDDA is solely for recording purposes and shall not be construed to alter, modify, amend or supplement the LDDA. In the event of any conflict between any provision of the LDDA and any provision of this Memorandum of LDDA, the LDDA shall control.

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

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

FRIENDS: FRIENDS OF GENEVA OFFICE BUILDING AND POWER HOUSE, a California non-profit corporation

By: _____
Its: _____

By: _____
Its: _____

CITY: CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By: _____
PHILIP A. GINSBURG
General Manager
Recreation and Park Department

APPROVED AS TO FORM:
DENNIS J. HERRERA
City Attorney

By: _____
Deputy City Attorney

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)

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)

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)

EXHIBIT A
to
Memorandum of Lease Disposition and Development Agreement

Legal Description of City Property

THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING at the point of intersection of the Southeasterly line of San Jose Avenue with the Southwesterly line of Geneva Avenue; thence Southeasterly along said line of Geneva Avenue 422.24 feet to the Northwesterly line of Delano (formerly Delaware) Avenue; thence at a right angle Southwesterly along said line of Delano Avenue 331.38 feet, more or less, to a point distant thereon 120 feet Northeasterly from the Northeasterly line of Niagara (formerly Unadilla) Avenue; thence at a right angle Northwesterly parallel with said line of Niagara Avenue 454 feet to the Southeasterly line of San Jose Avenue; thence Northeasterly along said line of San Jose Avenue 333.4 feet to the point of beginning.

BEING a portion of Block 29 "West End Map No. 1". Excepting therefrom that portion lying within Parcel 25 as shown on the Map filed March 3, 1965 in Book U of Maps, Page 69.

Also excepting therefrom that portion described in the Deed Zanello/Gaehwiler, a California partnership recorded February 2, 1987 in Reel E270 Page 598, Document No. D938354.

APN: Block 6972 Lot 36

Commonly known as 2301 San Jose Avenue

EXHIBIT B
to
Memorandum of Lease Disposition and Development Agreement
Depiction of Leased Property

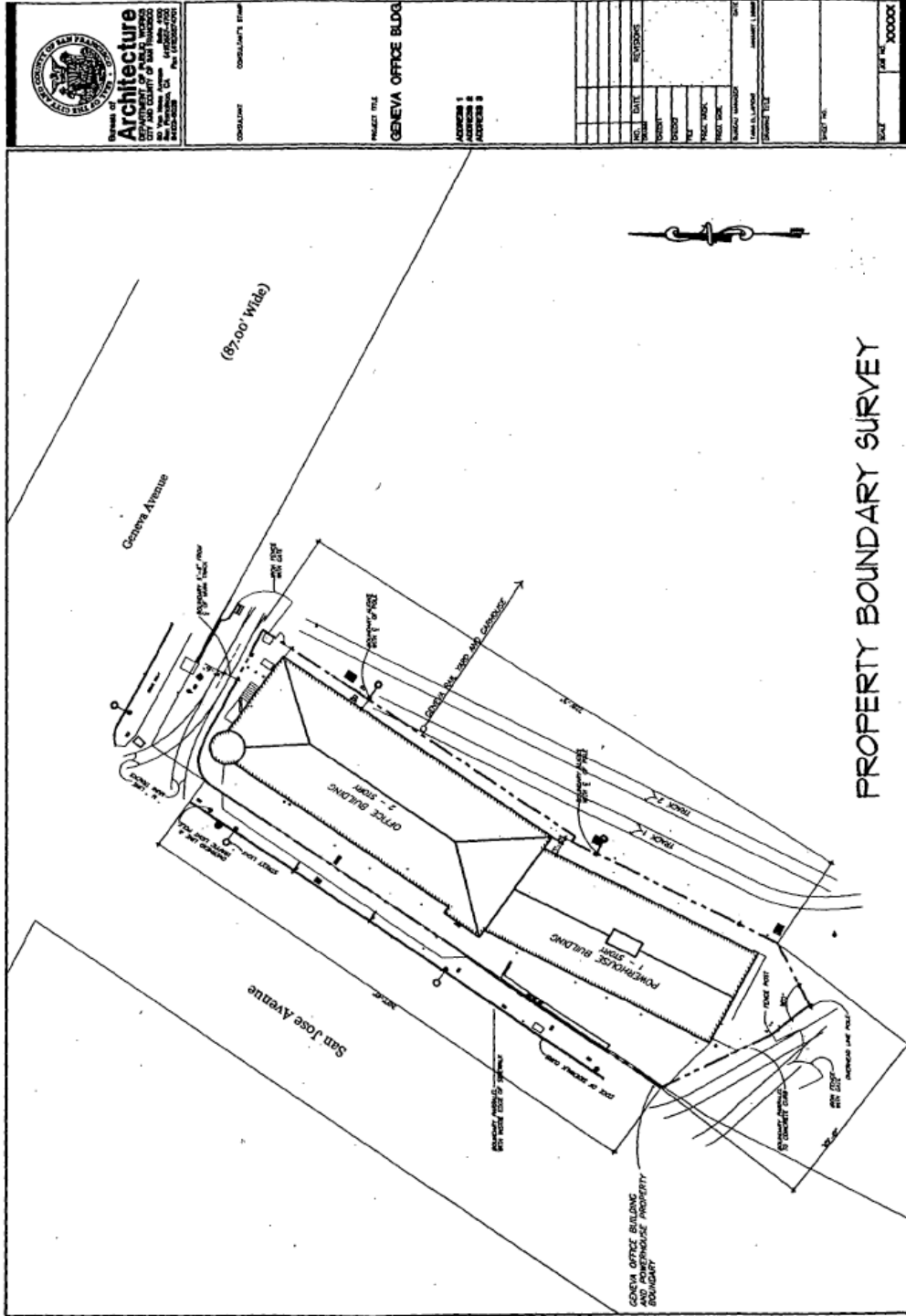


EXHIBIT Q

FORM OF LDDA PERMIT TO ENTER

REVOCABLE PERMIT TO ENTER AND USE PROPERTY

THIS REVOCABLE PERMIT TO ENTER AND USE PROPERTY (this "**Entry Permit**"), dated for reference purposes only as of _____, 20__ , is made by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**"), acting by and through Recreation and Park Commission, and FRIENDS OF THE GENEVA OFFICE BUILDING AND POWERHOUSE, a California non-profit corporation ("**Permittee**").

RECITALS

A. City owns certain real property located at the intersection of San Jose Avenue and Geneva Avenue in the City and County of San Francisco, as further described in the attached Exhibit A (the "**City Property**"), with the buildings on the City Property known as the "Geneva Car Barn" and the "Geneva Powerhouse" (together, the "**Buildings**") under the jurisdiction of City's Recreation and Park Commission and the remainder of the City Property under the jurisdiction of the San Francisco Municipal Transportation Agency ("**SFMTA**").

B. City, acting by and through its Recreation and Park Department , has entered into a Lease Disposition and Development Agreement with Permittee, dated as of _____, 2014 ("**LDDA**"), which provides for Permittee's rehabilitation and improvement of the Buildings (the "**Project**") pursuant to the LDDA and a lease that will be between City and Permittee (the "**Ground Lease**").

City and Permittee agree as follows:

AGREEMENT

1. License; Permit Area. The "**Effective Date**" shall be the date that the following requirements are met: (a) this Entry Permit shall have been fully executed, and (b) Permittee shall have delivered to City the insurance certificates described in Section 10. As of the Effective Date, City confers to Permittee a revocable, personal, unassignable, non-exclusive and non-possessory privilege for Permittee and its affiliates and their respective officers, agents, employees, contractors, subcontractors and invitees (collectively, the "**Permittee Agents**") to enter upon and use that portion of the City Property depicted on the attached Exhibit A (the "**Permit Area**") for the Permitted Activities (as defined in Section 3).

This Entry Permit gives Permittee a license only and, notwithstanding anything to the contrary herein, this Entry Permit does not constitute a grant by City of any ownership, leasehold, easement or other property interest or estate whatsoever in the Permit Area, or any portion thereof. The privilege given to Permittee under this Entry Permit is effective only insofar as the rights of City in the Permit Area are concerned, and Permittee shall obtain any further permission necessary because of any other existing rights affecting the Permit Area.

2. Term of Permit. The privilege given to Permittee pursuant to this Entry Permit is temporary only and shall commence on the Effective Date. Unless sooner terminated pursuant to the terms hereof, the term of this Entry Permit ("**Term**") shall commence on the Effective Date and expire on _____, 20__ (the "**Termination Date**").

Without limiting any of its rights hereunder, City may at its sole option, exercised in good faith, freely revoke this Entry Permit at any time prior to the Termination Date, without cause and without any obligation to pay any consideration to Permittee, by delivering no less than five (5) days' prior written notice of such termination to Permittee.

3. Uses; Permitted Activities. Permittee and the Permittee Agents may use the Permit Area to perform the following activities (collectively, the "**Permitted Activities**"): (a) to perform Permittee's obligations under this Entry Permit, and (b) to use the Permit Area for

4. Performance of Work. [To be modified as appropriate to the Permitted Activities] Permittee shall conduct, and shall cause the Permittee Agents, to conduct the Permitted Activities in compliance with the terms of this Entry Permit, including the following conditions, which are for the sole benefit of City:

4.1 Work Plans. Prior to commencing the Permitted Activities, Permittee shall have prepared a work plan and schedule for the Permitted Activities to be performed that is approved in writing by City (each, a "**Work Plan**"), which approval shall not be unreasonably withheld, conditioned or delayed. Permittee acknowledges and agrees that it shall be reasonable for City to withhold such approval if a submitted work plan materially conflicts with this Entry Permit, the LDDA, the Ground Lease or any regulatory agreements or permit needed for the Permitted Activities or the Project (collectively, the "**Specification Documents**"), would materially affect City's use of the remainder of the City Property, including its railcar operations, or would raise material health or safety concerns. A Work Plan shall not be amended, modified or supplemented without City's prior written consent pursuant to this Entry Permit.

4.2 Permits and Approvals; Compliance with Specification Documents. Before beginning any of the Permitted Activities, Permittee shall obtain all permits, licenses and approvals (collectively, "**Approvals**") required of any regulatory agencies to commence and complete Permitted Activities, including, but not limited to, any permits from the San Francisco Department of Public Works and the San Francisco Department of Building Inspection. Permittee shall deliver copies of all Approvals to City prior to the Effective Date. Permittee recognizes and agrees that no approval by City of any of the Permitted Activities pursuant to this Entry Permit shall be deemed to constitute the Approval required of any federal, state or local regulatory authority with jurisdiction, including any required of City acting in its regulatory capacity, and nothing herein shall limit Permittee's obligation to obtain all such Approvals at Permittee's sole cost. Permittee shall conduct, and shall cause the Permittee Agents, to conduct the Permitted Activities in compliance with the terms of the Specification Documents.

4.3 Licensed Contractors; Exercise of Due Care. The Permitted Activities shall only be performed by contractors that are licensed by the State of California and duly qualified to perform such work, to the extent required by the State of California, and any of the Permitted Activities that is not required to be performed under applicable laws by a contractor licensed by the State of California for such work shall be performed by persons duly qualified to perform such work. Permittee shall use and cause the Permittee Agents to use due care at all times to avoid any damage or harm to City's property and to native vegetation and natural attributes of the Permit Area (other than as reasonably necessary to perform any of the Permitted Activities). City shall have the right to have a representative present during any of the Permitted Activities. Permittee shall do everything reasonably within its power, both independently and upon request by City, to prevent and suppress fires and the release of Hazardous Materials (as defined in Section 9.1) on and adjacent to the Permit Area attributable to the use of the Permit Area by Permittee or the Permittee Agents pursuant to this Entry Permit.

4.4 Cooperation with City Personnel. Permittee and the Permittee Agents shall work closely with City personnel to avoid disruption of City property in, under, on or about the Permit Area, City's use of the remainder of the City Property, and the maintenance, operation, repair,

replacement of City's utilities and improvements on the City Property. Permittee shall provide City's designated representative with advance written notice of (a) the commencement of the Permitted Activities, and (b) the completion of the Permitted Activities. City shall have the right, at its sole cost, to have a designated representative observe, photograph and/or otherwise record all of Permittee's activities on the Permit Area.

4.5 Work and Use Schedule. Permittee and the Permittee Agents may only perform the Permitted Activities during the hours specified in the applicable Work Plan (or between any shorter hours required under any applicable laws). Permittee will notify City if it terminates any phase of the Permitted Activities prior to the last day of such phase specified in the Work Plan for such phase. Permittee will notify City if it terminates the Permitted Activities prior to the Termination Date.

4.6 Pre-Entry Baseline. At City's request, Permittee shall document the condition of the Permit Area prior to the commencement of any Permitted Activities through the use of photographs, maps and any other appropriate documentation to provide a pre-construction baseline to monitor impacts. Appropriate documentation shall be determined in consultation with a staff member from the Recreation and Park Department's Capital Management Division. Permittee shall provide City with a copy of such documentation prior to the commencement of any Permitted Activities.

4.7 Maintenance of Permit Area; Repair of Damage. Permittee shall remove all debris in the Permit Area caused by any of the Permitted Activities or the use of the Permit Area by Permittee or any of the Permittee Agents. If any portion of the Permit Area or any City property located on or about the City Property is damaged at any time by any of the activities conducted by Permittee or any of the Permittee Agents hereunder, Permittee shall immediately, at its sole cost, repair any and all such damage and restore the Permit Area or property to its previous condition. Permittee shall, at all times and at its sole cost, maintain the Permit Area in a good, clean, safe, secure, sanitary and slightly condition (giving due consideration to the nature of the Permitted Activities) so far as the Permit Area may be affected by the Permitted Activities or any other actions in the Permit Area by Permittee or the Permittee Agents.

4.8 Excavation Activities. Permittee shall prevent all materials (including soil) displaced by or resulting from the Permitted Activities or the use of the Permit Area by Permittee or any of the Permittee Agents from entering storm drains, sewers, or water ways and shall immediately notify the City, and all appropriate regulatory agencies required under applicable laws, if there is any accidental release of such materials.

4.9 Agent Acknowledgement of Agreement. Permittee shall deliver a complete copy of this Entry Permit to all Permittee Agents performing any of the Permitted Activities or otherwise entering the Permit Area pursuant to this Entry Permit. Prior to the entry on the Permit Area by any such party, Permittee shall deliver a notice to City signed by such party acknowledging its receipt of a copy of this Entry Permit and its agreement to comply with and be bound by all of the provisions of this Entry Permit pertaining to its entry on the Permit Area.

4.10 Wages and Working Conditions. With respect to the installation of any facilities or improvements or the performance of any work that is a "public work" under the State of California Labor Code, any employee performing services for Permittee or any Permittee Agent shall be paid not less than the highest prevailing rate of wages and that Permittee shall include, in any contract for construction of such improvement work or any alterations on the Permit Area, a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Permittee further agrees that, as to the construction of such improvement work or any alterations on the Permit Area under this Entry Permit, Permittee shall comply, and cause all Permittee Agents to comply, with the provisions of Section 6.22(E) of the San Francisco Administrative Code (as the same may be amended, supplemented or replaced) that relate to payment of prevailing wages. Permittee shall

require all Permittee Agents to provide, and shall deliver to City upon request, certified payroll reports with respect to all persons performing labor in the construction of the improvement work or any alterations on the Permit Area for Permittee or any Permittee Agent.

5. Restrictions on Use; City's Uses. Permittee agrees that, by way of example only and without limitation, the following uses of the Permit Area by Permittee or any other party claiming by or through Permittee are inconsistent with the limited purpose of this Entry Permit and are strictly prohibited as provided below:

5.1 Improvements. Except for any temporary structures or improvements described in a Work Plan and the personal property reasonably needed to perform the Permitted Activities described in the applicable Work Plan, Permittee shall not construct or place any temporary or permanent structures or improvements or personal property on the Permit Area, nor shall Permittee alter any existing structures or improvements on the Permit Area. Permittee understands and agrees that City is entering into this Entry Permit in its capacity as a landowner with a proprietary interest in City's Property and not as a regulatory agency with certain police powers. Permittee understands and agrees that neither the City's execution of this Entry Permit nor any approvals by City of any work plan or otherwise given by City under this Entry Permit shall grant, or be deemed to imply, that Permittee will be able obtain, any required Approvals from departments, boards or commissions of the City and County of San Francisco that have jurisdiction over any of the Permitted Activities.

5.2 Dumping; Storing; Signs. Permittee shall not dump or dispose of refuse or other unsightly materials or store any materials on, in, under or about the Permit Area. Permittee shall not place, erect or maintain any sign, advertisement, banner or similar object on or about the Permit Area, except for any temporary sign that is necessary for any of the Permitted Uses and is approved by City in writing, which approval may be given or withheld in City's sole discretion.

5.3 Nuisances; No Interference with City's Uses. Permittee shall not conduct any activities on or about the Permit Area that constitute waste, nuisance or unreasonable annoyance (including, without limitation, emission of objectionable odors, noises or lights) to City, to the owners or occupants of neighboring property or to the public; provided, however, that City shall not, in its proprietary capacity as landowner under this Entry Permit, deem Permittee's performance of any of the Permitted Activities in compliance with the terms and conditions of this Entry Permit to be a nuisance or unreasonable annoyance. Except for any activities described in a Work Plan, Permittee shall not materially interfere with or obstruct City's use of the Permit Area or the rights of SFMTA or any other party with rights to occupy or use the other portions of the Property.

5.5 Utilities. City has no responsibility or liability of any kind or character with respect to any utilities that may be on, in or under the Permit Area. Permittee has the sole responsibility to locate such utilities and protect them from damage, and Permittee has sole responsibility for any damage to utilities or damages resulting from Permittee's activities at the Permit Area. Permittee shall arrange and pay for any necessary temporary relocation of City and public utility company facilities reasonably necessary to facilitate any of the Permitted Activities, subject to the prior written approval by City and any such utility companies of any such relocation. Permittee shall be solely responsible for arranging and paying directly for any utilities or services necessary for its activities hereunder.

5.6 Damage. Permittee shall not do anything about the Permit Area that will cause damage to any of City's property. City's approval of any work plan pursuant to this Entry Permit or of the proposed Permitted Activities shall not be deemed to constitute the waiver of any rights City may have under Applicable Laws for any damage to the City's real or personal property or the City Property resulting from the Permitted Activities.

6. Fees. [Intentionally omitted.]

7. Surrender; As-Built Plans; Remaining Improvements. Upon the expiration of this Entry Permit or within five (5) days after any sooner revocation or other termination of this Entry Permit, Permittee shall surrender the Permit Area in a broom clean, free from hazards, clear of all debris and restore the Permit Area substantially to its condition immediately prior to the Effective Date, to the reasonable satisfaction of City; provided, however, that Permittee shall have no obligation to repair or restore any deficient condition at the Permit Area that was disclosed, but not caused, by any of the Permitted Activities. At such time, Permittee shall remove all of its property from the Permit Area and any signs permitted hereunder, and shall repair, at its cost, any damage to the Permit Area caused by such removal. Permittee's obligations under this Section shall survive any termination of this Entry Permit.

Any equipment or any other property of Permittee or Permittee Agents remaining in the Permit Area after completion of activities may be deemed abandoned by City in its sole discretion and City may store, remove, and dispose of such equipment or property at Permittee's sole cost and expense unless City has otherwise granted written permission to Permittee for such remaining equipment or property. Permittee waives all claims for any costs or damages resulting from City's retention, removal, and disposition of such property.

8. Compliance with Laws. Permittee shall, at its expense, conduct and cause to be conducted all Permitted Activities in a safe and prudent manner and in compliance with all laws, regulations, codes, ordinances and orders of any governmental or other regulatory entity (including, without limitation, the Americans with Disabilities Act and any other disability access laws), whether presently in effect or subsequently adopted and whether or not in the contemplation of the parties. Permittee shall, at its sole expense, maintain all Approvals in force at all times during its use of the Permit Area. Permittee understands and agrees that City is entering into this Entry Permit in its capacity as a property owner with a proprietary interest in the Permit Area and not as a regulatory agency with police powers. Nothing herein shall limit in any way Permittee's obligation to obtain any required Approvals from City departments, boards or commissions or other governmental regulatory authorities or limit in any way City's exercise of its police powers.

9. Hazardous Materials.

9.1 Definitions. For purposes of this Entry Permit, the following terms have the following meanings:

(a) **"Environmental Laws"** means any federal, state or local laws, ordinances, regulations or policies judicial and administrative directives, orders and decrees dealing with or relating to Hazardous Materials (including, without limitation, their use, handling, transportation, production, disposal, discharge, storage or reporting requirements) or to health and safety, industrial hygiene or environmental conditions in, on, under or about the Permit Area or property, including, without limitation, soil, air, bay water and groundwater conditions or community right-to-know requirements, related to the work being performed under this Entry Permit.

(b) **"Handle"** or **"handling"** means to use, generate, process, produce, package, treat, store, emit, discharge or dispose.

(c) **"Hazardous Material"** means any substance or material which has been determined by any state, federal, or local government authority to be a hazardous or toxic substance or material, including without limitation, any hazardous substance as defined in Section 101(14) of CERCLA (42 USC Section 9601(14)) or Sections 25281(f) or 25316 of the California Health and Safety Code, any hazardous material as defined in Section 25501(k) of the California Health and Safety Code, and any additional substances or materials which at such

time are classified or considered to be hazardous or toxic under any federal, state or local law, regulation or other exercise of governmental authority.

(d) **"Investigation"** means activities undertaken to determine the nature and extent of Hazardous Materials which may be located on or under real property, or which have been, are being, or threaten to be released to the environment.

(e) **"Remediation"** shall mean activities undertaken to cleanup, remove, contain, treat, stabilize, monitor or otherwise control Hazardous Materials located on or under real property or which have been, are being or threaten to be released to the environment.

(f) **"Regulatory Agency"** means any federal, state or local governmental agency or political subdivision having jurisdiction over the Permit Area and any of the Permitted Activities. The City shall be a "Regulatory Agency" to the extent that City is acting in its capacity as a regulatory authority, rather than in its proprietary capacity as a landowner.

(g) **"Release"** means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment of any Hazardous Material (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Material or pollutant or contaminant).

9.2 Environmental Laws. Permittee shall handle all Hazardous Materials introduced or disturbed on the Permit Area during the Term in compliance with all Environmental Laws. Permittee shall not be responsible for the safe handling of Hazardous Materials to the extent released on the Permit Area by City or any City employee, agent, contractor, subcontractor, or invitee, or existing on the Permit Area prior to the Effective Date, except to the extent any of the Permitted Activities exacerbates such Hazardous Materials. Permittee shall protect its employees and the general public in accordance with all Environmental Laws. City may from time to time request, and Permittee shall be obligated to provide, information reasonably adequate for City to determine that any and all Hazardous Materials are being handled in a manner which complies with all Environmental Laws.

9.3 Removal of Hazardous Materials. Prior to termination of this Entry Permit, Permittee, at its sole cost and expense, shall remove any and all Hazardous Materials to the extent introduced or released in, on, under or about the Permit Area by Permittee or the Permittee Agents during the Term and shall Remediate or dispose of any Hazardous Materials produced as a result of the Permitted Activities. All costs of storage, shipping and disposal of extracted soils and groundwater shall be the sole responsibility of Permittee including, without limitation, the costs of preparation and execution of shipping papers, including but not limited to hazardous waste manifests. With respect to shipping papers and hazardous waste manifests, Permittee shall be the "generator" and in no case shall the City be named as the generator.

9.4 Notification. Permittee shall provide City with a copy of any permits issued for any Permitted Activity that involves the potential release or discharge of any Hazardous Materials in or from the Permit Area, and the receipt of a hazardous waste generator identification number issued by the U.S. Environmental Protection Agency or the California Environmental Protection Agency to itself or any of the Permittee Agents. Permittee shall promptly notify City in writing of, and shall contemporaneously provide City with a copy of:

(a) Any release or discharge of any Hazardous Materials, whether or not the release is in quantities that would be required under applicable laws to be reported to a Regulatory Agency;

(b) Any written notice of release of Hazardous Materials in or on the Permit Area that is provided by Permittee or any of the Permittee Agents to a Regulatory Agency including any City agency;

(c) Any notice of a violation, or a potential or alleged violation, of any Environmental Law that is received by Permittee or any of the Permittee Agents from any Regulatory Agency;

(d) Any inquiry, investigation, enforcement, cleanup, removal, or other action that is instituted or threatened by a Regulatory Agency against Permittee or any of the Permittee Agents and that relates to the release or discharge of Hazardous Material on or from the Permit Area;

(e) Any claim that is instituted or threatened by any third party against Permittee or any of the Permittee Agents and that relates to any release or discharge of Hazardous Materials on or from the Permit Area; and

(f) Any notice of the termination, expiration or substantial amendment of any environmental operating permit needed by Permittee or any of the Permittee Agents.

9.5 Hazardous Material Disclosures. California law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Although this Entry Permit grants Permittee a license only, Permittee is hereby advised that Hazardous Materials may be present on the Permit Area, including, but not limited to vehicle fluids, janitorial products, tobacco smoke, and building materials containing chemicals, such as formaldehyde. By execution of this Entry Permit, Permittee acknowledges that the notice set forth in this Section satisfies the requirements of California Health and Safety Code Section 25359.7 and related statutes. Permittee also acknowledges its own obligations pursuant to California Health and Safety Code Section 25359.7 as well as the penalties that apply for failure to meet such obligations.

10. Insurance. [To be updated/reviewed by City's Risk Manager once RPD knows Permittee's proposed Permitted Activities]

10.1 Insurance Policies. Permittee shall procure and keep in effect at all times during the Term, at Permittee's expense, and cause its contractors and subcontractors to maintain at all times insurance as follows during the Term:

(a) General Liability Insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Independent Contractors, Explosion, Collapse and Underground (XCU), Broadform Property Damage, Sudden and Accidental Pollution, Products Liability and Completed Operations;

(b) Automobile Liability Insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired automobiles, as applicable, and sudden and accidental pollution (unless such coverage requirement is waived by City's Risk Manager);

(c) Workers' Compensation Insurance with Employer's Liability Coverage with limits of not less than One Million Dollars (\$1,000,000) each accident; and

(d) Contractor's Pollution Legal Liability Insurance with combined single limit of Two Million Dollars (\$2,000,000) each claim, and with coverage to include legal

liability arising from the sudden and accidental release of pollutants, and no less than a one-year extended reporting period, endorsed to include Non-Owned Disposal Site coverage.

10.2 Policy Requirements; Delivery of Certificates.

(a) All liability policies required hereunder shall provide for the following: (i) name as additional insureds the City and County of San Francisco, its officers, agents and employees; and (ii) specify that such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Entry Permit and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period. Sudden and accidental pollution coverage in the liability policies required hereunder shall be limited to losses resulting from Permittee's activities (and the activities of any Permittee Agents) under this Entry Permit (excluding non-negligent aggravation of existing conditions with respect to Hazardous Materials).

(b) All policies shall be endorsed to provide thirty (30) days' prior written notice of cancellation, non-renewal or reduction in coverage to City.

(c) Permittee shall deliver to City certificates of insurance and additional insured policy endorsements from insurers prior to the Effective Date and in a form satisfactory to City, evidencing the coverages required hereunder, together with complete copies of the policies at City's request. In the event Permittee shall fail to procure such insurance, or to deliver such certificates, City may procure, at its option, the same for the account of Permittee, and the cost thereof shall be paid to City within ten (10) days after delivery to Permittee of bills therefor.

(d) All policies shall include a waiver of subrogation endorsement or provision wherein the insurer acknowledges acceptance of Permittee's waiver of claims against City, provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any other insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose in whole or in part during the policy period.

(e) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.

(f) Should any of the required insurance be provided under a claims made form, Permittee shall maintain such coverage continuously throughout the Term and, without lapse, for a period of three (3) years beyond the Termination Date, to the effect that, should any occurrences during the Term Permit give rise to claims made after Termination Date, such claims shall be covered by such claims-made policies.

(f) Upon City's request, Permittee and City shall periodically review the limits and types of insurance carried pursuant to this Section. If the general commercial practice in the City and County of San Francisco is to carry liability insurance in an amount or coverage materially greater than the amount or coverage then being carried by Permittee for risks comparable to those associated with the Permit Area, then City in its sole discretion may require Permittee to increase the amounts or coverage carried by Permittee hereunder to conform to such general commercial practice.

10.3 Waiver of Subrogation. Notwithstanding anything to the contrary contained herein, Permittee hereby waives any right of recovery against City for any loss or damage sustained by Permittee with respect to the Permit Area or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of City, to the extent such loss or damage is covered by insurance which is required to be purchased by Permittee under this Entry Permit or is actually covered by insurance obtained by Permittee. Permittee agrees to cause its insurers to issue appropriate waiver of subrogation rights endorsements to all policies relating to the Permit Area; provided, the failure to obtain any such endorsement shall not affect the above waiver.

10.4 No Limitation on Permittee Obligations. Permittee's compliance with the provisions of this Section shall in no way relieve or decrease Permittee's indemnification obligations under this Entry Permit or any of Permittee's other obligations hereunder. Notwithstanding anything to the contrary in this Entry Permit, this Entry Permit shall terminate immediately, without notice to Permittee, upon the lapse of any required insurance coverage. Permittee shall be responsible, at its expense, for separately insuring Permittee's personal property.

11. Waiver of Claims; Waiver of Consequential and Incidental Damages.

(a) Neither City nor any of its commissions, departments, boards, officers, agents or employees shall be liable for any damage to the property of Permittee, the Permittee Agents, or their respective officers, agents, employees, contractors or subcontractors, or employees, or for any bodily injury or death to such persons, resulting or arising from the condition of the Permit Area or its use by Permittee or the Permittee Agents, except to the extent that any such damage, injury or death is caused by the gross negligence or willful misconduct of City or any of its commissions, departments, boards, officers, agents, employees, or contractors (each, a "**City Agent**").

(b) Permittee acknowledges that the Permit Area and the Permitted Activities can be modified by City pursuant to Section 3 and revoked by City pursuant to Section 2 and in view of such fact, Permittee expressly assumes the risk of making any expenditures in connection with this Entry Permit, even if such expenditures are substantial. Without limiting any indemnification obligations of Permittee or other waivers contained in this Entry Permit and as a material part of the consideration for this Entry Permit, Permittee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any present or future laws, statutes, or regulations (including, but not limited to, any claim for inverse condemnation or the payment of just compensation under the law of eminent domain or otherwise at equity), in the event that City exercises its right to modify the Permit Area or the Permitted Activities pursuant to Section 3 or to revoke this Entry Permit pursuant to Section 2.

(c) Permittee acknowledges that it will not be a displaced person at the time this Entry Permit is terminated or revoked or expires by its own terms, and Permittee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any present or future laws, statutes, or regulations for displaced persons, including, without limitation, any and all claims for relocation benefits or assistance from City under federal and state relocation assistance laws.

(d) Permittee expressly acknowledges and agrees that the fees payable hereunder do not take into account any potential liability of City for any consequential or incidental damages including, but not limited to, lost profits, arising out of disruption to Permittee's uses hereunder. City would not be willing to give this Entry Permit in the absence of a complete waiver of

liability for consequential or incidental damages due to the acts or omissions of City or its Agents, and Permittee expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Permittee or other waivers contained in this Entry Permit and as a material part of the consideration for this Entry Permit, Permittee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against for consequential and incidental damages (including without limitation, lost profits) and covenants not to sue for such damages, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, arising out of this Entry Permit or the uses authorized hereunder, including, without limitation, any interference with uses conducted by Permittee pursuant to this Entry Permit, regardless of the cause, and whether or not due to the negligence of City or its Agents, except for the gross negligence or willful misconduct of City or its Agents.

(e) In connection with the foregoing releases, Permittee acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

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

Permittee acknowledges that the releases contained herein includes all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Permittee realizes and acknowledges that it has agreed upon this Entry Permit in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained herein shall survive any termination of this Entry Permit.

12. Defaults by Permittee. If Permittee fails to perform any of its monetary obligations under this Entry Permit and fails to cure such monetary failure within five (5) business days following City's written notice of such monetary failure to Permittee, then City may, at its sole option, immediately terminate this Entry Permit by providing Permittee with written notice of such termination. If Permittee fails to perform any of its non-monetary obligations under this Entry Permit, then City may, at its sole option, remedy such failure for Permittee's account and at Permittee's expense or terminate this Entry Permit by providing Permittee with thirty (30) days' prior written notice of City's intention to cure such default (except that no such prior notice shall be required in the event of an emergency as determined by City) or to terminate this Entry Permit. Such action by City shall not be construed as a waiver of any rights or remedies of City under this Entry Permit, and nothing herein shall imply any duty of City to do any act that Permittee is obligated to perform. Permittee shall pay to City upon demand, all costs, damages, expenses or liabilities reasonably incurred by City, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such default. Permittee's obligations under this Section shall survive the termination of this Entry Permit.

13. No Costs to City; No Liens. Permittee shall bear all costs or expenses of any kind or nature in connection with its use of the Permit Area and in complying with the conditions of this Entry Permit, and shall keep the Permit Area free and clear of any liens or claims of lien arising out of or in any way connected with its use of the Permit Area.

14. Indemnity. Except solely to the extent of Losses resulting directly from the willful misconduct or gross negligence of City or of any City Agent or from any material breach of this Entry Permit by City or any City Agent, Permittee shall indemnify, defend and hold harmless each of City and the City Agents each from and against any and all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages and liabilities of any kind (collectively, "**Losses**"), arising in any manner out of (**a**) any injury to or death of any person or damage to or destruction of any property occurring in, on or about the

Permit Area, or any part thereof, whether the person or property of Permittee, any Permittee Agent, and any of their respective officers, agents, employees, contractors, subcontractors, or third persons, relating in any manner to any of the Permitted Activities, **(b)** any failure by Permittee to faithfully observe or perform any of the terms, covenants or conditions of this Entry Permit, including all applicable laws, or to cause the Permittee Agents, to comply with such terms, covenants or conditions, **(c)** the use of the Permit Area or any activities conducted thereon by Permittee or any Permittee Agent, **(d)** any handling, release or threatened release, or discharge, or threatened discharge, of any Hazardous Material caused or allowed by Permittee or any Permittee Agent on, in, under or about the Permit Area, any improvements permitted thereon, or into the environment; **(e)** any requirement of a Regulatory Agency for investigation or remediation of any release of Hazardous Materials at the Permit Area in connection with use of the Permit Area by Permittee or any Permittee Agent; and **(f)** any requirement of a Regulatory Agency for investigation or remediation of any Hazardous Materials arising out of or in connection with the activities of Permittee or any Permittee Agent at the Permit Area, including, without limitation, requirements which would not have been imposed except for such party's use of the Permit Area for an of the Permitted Activities. The foregoing indemnity shall not include any Losses incurred by City with respect to any Hazardous Materials at the Permit Area discovered, but not released, by Permittee or any Permittee Agent. The indemnity in this Section shall include, without limitation, reasonable attorneys' and consultants' fees, investigation and remediation costs and all other reasonable costs and expenses incurred by the indemnified parties, including, without limitation, damages for decrease in the value of the Permit Area and claims for damages or decreases in the value of adjoining property. Permittee specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Permittee by City and continues at all times thereafter. Permittee's obligations under this Section shall survive the expiration or other termination of this Entry Permit.

15. "As Is" Condition of Permit Area; Disclaimer of Representations. Permittee accepts the Permit Area in its "AS IS" condition, without representation or warranty of any kind by City, its officers, agents or employees, including, without limitation, the suitability, safety, or duration of availability of the Permit Area or any facilities on the Permit Area for Permittee's use. Without limiting the foregoing, this Entry Permit is made subject to all applicable laws, rules and ordinances governing the use of the Permit Area, and to any and all covenants, conditions, restrictions, easements, encumbrances, claims of title and other title matters affecting the Permit Area, whether foreseen or unforeseen, and whether such matters are of record or would be disclosed by an accurate inspection or survey. It is Permittee's sole obligation to conduct an independent investigation of the Permit Area and all matters relating to its use of the Permit Area hereunder, including, without limitation, the suitability of the Permit Area for such uses. Permittee, at its own expense, shall obtain such permission or other approvals from any third parties with existing rights as may be necessary for Permittee to make use of the Permit Area in the manner contemplated hereby. Under California Civil Code Section 1938, to the extent applicable to this Entry Permit, Permittee is hereby advised that the Permit Area has not undergone inspection by a Certified Access Specialist ("CASp") to determine whether it meets all applicable construction-related accessibility requirements.

16. Notices. Except as otherwise expressly provided herein, any notices given under this Entry Permit shall be effective only if in writing and given by delivering the notice in person, by sending it first class mail or certified mail, with a return receipt requested, or overnight courier, return receipt requested, with postage prepaid, addressed as follows:

If to City: City and County of San Francisco
 Recreation and Park Department
 Property Management
 McLaren Lodge Annex

San Francisco, California 94117

If to Permittee: Friends of the Geneva Car Barn and Powerhouse
755 Ocean Ave.
San Francisco, California 94112

Notices herein shall be deemed given two (2) days after the date when it shall have been mailed if sent by first class, certified or overnight courier, or upon the date personal delivery is made.

17. No Joint Ventures or Partnership; No Authorization. This Entry Permit does not create a partnership or joint venture between City and Permittee as to any activity conducted by Permittee on, in or relating to the Permit Area. Permittee is not a State actor with respect to any activity conducted by Permittee on, in, or under the Permit Area. The giving of this Entry Permit by City does not constitute authorization or approval by City of any activity conducted by Permittee on, in or relating to the Permit Area.

18. 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. Permittee acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

19. Non-Discrimination.

19.1 Covenant Not to Discriminate. In the performance of this Entry Permit, Permittee agrees not to discriminate against any employee of, any City employee working with Permittee, or applicant for employment with Permittee, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

19.2 Subcontracts. Permittee shall include in all subcontracts relating to the Permit Area a non-discrimination clause applicable to such subcontractor in substantially the form of Section 19.1. In addition, Permittee shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Permittee's failure to comply with the obligations in this Subsection shall constitute a material breach of this Entry Permit.

19.3 Non-Discrimination in Benefits. Permittee does not as of the date of this Entry Permit and will not during the Term, in any of its operations in San Francisco, on real property owned by City, or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

19.4 Condition to Permit. As a condition to this Entry Permit, Permittee shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission (the "**HRC**"). Permittee hereby represents that prior to execution of this Entry Permit, (i) Permittee executed and submitted to the HRC Form HRC-12B-101 with supporting documentation, and (ii) the HRC approved such form.

19.5 Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the use of City property are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Permittee shall comply fully with and be bound by all of the provisions that apply to this Entry Permit under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Permittee understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of Fifty Dollars (\$50) for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Entry Permit may be assessed against Permittee and/or deducted from any payments due Permittee.

20. Notification of Limitations on Contributions. Through its execution of this Entry Permit, Permittee acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Permittee acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Permittee further acknowledges that the prohibition on contributions applies to each Permittee; each member of Permittee's board of directors, and Permittee's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than twenty percent (20%) in Permittee; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Permittee. Additionally, Permittee acknowledges that Permittee must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Permittee further agrees to provide to City the names of each person, entity or committee described above.

21. Pesticide Prohibition. Permittee shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "**Pesticide Ordinance**") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (iii) require Permittee to submit to the Recreation and Park Department an integrated pest management ("**IPM**") plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Permittee may need to apply to the Permit Area during the Term, (b) describes the steps Permittee will take to meet the City's IPM Policy described in Section 300 of the Pesticide Ordinance and (c) identifies, by name, title, address and telephone number, an individual to act as the Permittee's primary IPM contact person with the City. In addition, Permittee shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance.

22. Conflicts of Interest. Through its execution of this Entry Permit, Permittee acknowledges 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 87100 *et seq.* and Sections 1090 *et seq.* of the Government Code of the State of California, and certifies that it does

not know of any facts which would constitute a violation of said provision, and agrees that if Permittee becomes aware of any such fact during the Term, Permittee shall immediately notify the City.

23. No Assignment. This Entry Permit is personal to Permittee and shall not be assigned, conveyed or otherwise transferred by Permittee under any circumstances except by operation of law. Any attempt to assign, convey or otherwise transfer this Entry Permit shall be null and void and cause the immediate termination and revocation of this Entry Permit.

24. Sunshine Ordinance. Permittee understands and agrees that under the City's Sunshine Ordinance (San Francisco Administrative Code Chapter 67) and the State Public Records Law (California Government Code Section 6250 *et seq.*), apply to this Entry Permit and any and all records, information, and materials submitted to the City in connection with this Entry Permit. Accordingly, any and all such records, information and materials may be subject to public disclosure in accordance with the City's Sunshine Ordinance and the State Public Records Law. Permittee hereby authorizes the City to disclose any records, information and materials submitted to the City in connection with this Entry Permit.

25. Food Service Waste Reduction. Permittee agrees to comply fully with and be bound by all of the applicable provisions of the Food Service Waste Reduction Ordinance, as set forth in the San Francisco Environment Code, Chapter 16, including the remedies provided therein, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Entry Permit as though fully set forth herein. Accordingly, Permittee acknowledges that City contractors and lessees may not use Disposable Food Service Ware that contains Polystyrene Foam in City Facilities and while performing under a City contract or lease, and shall instead use suitable Biodegradable/Compostable or Recyclable Disposable Food Service Ware. This provision is a material term of this Entry Permit.

26. Prohibition of Tobacco Sales and Advertising. Permittee acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on the Permit Area. This 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 advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of cigarettes and tobacco products, or (ii) encourage people not to smoke or to stop smoking.

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

28. Tropical Hardwoods and Virgin Redwood Ban. The City and County of San Francisco 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 expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code. Permittee agrees that, except as permitted by the application of Sections 802(b) and 803(b), Permittee shall not use or incorporate any tropical hardwood, tropical

hardwood wood product, virgin redwood or virgin redwood wood product in the performance of this Entry Permit.

29. Possessory Interest Taxes. Permittee recognizes and understands that this Entry Permit may create a possessory interest subject to property taxation and that Permittee may be subject to the payment of property taxes levied on such interest under applicable law. Permittee agrees to pay taxes of any kind, including possessory interest taxes, if any, that may be lawfully assessed on Permittee's interest under this Entry Permit or use of the Permit Area pursuant hereto and to pay any other taxes, excises, licenses, permit charges or assessments based on Permittee's usage of the Permit Area that may be imposed upon Permittee by applicable law. Permittee shall pay all of such charges when they become due and payable and before delinquency.

30. Consideration of Criminal History in Hiring and Employment Decisions. Permittee agrees to comply fully with and be bound by all of the provisions of Chapter 12T of the San Francisco Administrative Code (City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions) ("**Chapter 12T**"), including the remedies and implementing regulations of Chapter 12T, as may be amended from time to time, in the hiring or employment any person with respect to the Permitted Activities. The provisions of Chapter 12T are incorporated by reference and made a part of this Entry Permit as though fully set forth herein. Such provisions include, but are not limited to, the requirements for solicitations or advertisements for employees made by Permittee if such employees would perform any of the Permitted Activities and the prohibition of certain inquiries when initially interviewing job candidates for such employment positions. The text of the Chapter 12T is available on the web at <http://sfgov.org>.

Permittee shall incorporate by reference in all subcontracts the provisions of Chapter 12T, and shall require all its contractors to comply with such provisions. Permittee's failure to comply with the obligations in this Section shall constitute a material breach of this Entry Permit. Permittee understands and agrees that if it fails to comply with the requirements of Chapter 12T, City shall have the right to pursue any rights or remedies available under Chapter 12T, including but not limited to, a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Entry Permit.

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

32. Severability. If any provision of this Entry Permit or the application thereof to any person, entity or circumstance shall be invalid or unenforceable, the remainder of this Entry Permit, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Entry Permit shall be valid and be enforceable to the fullest extent permitted by law, except to the extent that enforcement of this Entry Permit without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this Entry Permit.

33. Counterparts. This Entry Permit may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

34. General Provisions. (a) This Entry Permit may be amended or modified only by a writing signed by City and Permittee. (b) No waiver by any party of any of the provisions of this Entry Permit shall be effective unless in writing and signed by an officer or other authorized

representative, and only to the extent expressly provided in such written waiver. (c) Except as otherwise expressly set forth herein, all approvals and determinations of City requested, required or permitted pursuant to this Entry Permit may be made in the sole and absolute discretion of the General Manager of City's Recreation and Park Department or other authorized City official. (d) This Entry Permit (including the exhibit(s) hereto) contains the entire agreement between the parties and all prior written or oral negotiations, discussions, understandings and agreements are merged herein. (e) The section and other headings of this Entry Permit are for convenience of reference only and shall be disregarded in the interpretation of this Entry Permit. (f) Time is of the essence. (g) This Entry Permit shall be governed by California law and the City's Charter. (h) If either party commences an action against the other or a dispute arises under this Entry Permit, the prevailing party shall be entitled to recover from the other reasonable attorneys' fees and costs. For purposes hereof, reasonable attorneys' fees of City shall be based on the fees regularly charged by private attorneys in San Francisco with comparable experience. (i) Permittee may not record this Entry Permit or any memorandum hereof. (j) Subject to the prohibition against assignments or other transfers by Permittee hereunder, this Entry Permit shall be binding upon and inure to the benefit of the parties and their respective heirs, representatives, successors and assigns. (i) If City sells or otherwise conveys any portion of the Permit Area, the owner of such conveyed portion of the Permit Area shall accept such portion subject to this Entry Permit and shall assume City's rights and obligations under this Entry Permit to the extent such rights and obligations affect such transferred portion.

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Permittee represents and warrants to City that it has read and understands the contents of this Entry Permit and agrees to comply with and be bound by all of its provisions.

PERMITTEE:

FRIENDS OF THE GENEVA OFFICE
BUILDING AND POWERHOUSE, a California
non-profit corporation

By: _____
Its: _____

Date: _____

By: _____
Its: _____

Date: _____

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, acting by and through its
Recreation and Park Commission

By: _____
PHILIP A. GINSBURG, General Manager
Recreation and Park Department

Date: _____

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Deputy City Attorney

EXHIBIT A
to

LDDA Permit to Enter
Depiction of City Property, Buildings, and Permit Area

