BOARD of SUPERVISORS

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M E M O R A N D U M

LAND USE AND TRANSPORTATION COMMITTEE

SAN FRANCISCO BOARD OF SUPERVISORS

TO: Supervisor Aaron Peskin, Chair, Land Use and Transportation Committee

FROM: Erica Major, Assistant Clerk, Land Use and Transportation Committee

DATE: February 3, 2020

SUBJECT: **COMMITTEE REPORT, BOARD MEETING**
Tuesday, February 4, 2020

The following file should be presented as a **COMMITTEE REPORT** at the Board meeting, Tuesday, February 4, 2020. This item was acted upon at the Committee Meeting on Monday, February 3, 2020, at 1:30 p.m., by the votes indicated.

Item No. 47 **File No. 191280**

Ordinance approving an Amended and Restated Land Disposition and Acquisition Agreement with 2000 Marin Property, L.P. for the City's transfer of real property at 639 Bryant Street (Assessor's Parcel Block No. 3777, Lot No. 052) under the jurisdiction of the San Francisco Public Utilities Commission in exchange for real property at 2000 Marin Street (Assessor's Parcel Block No. 4346, Lot No. 003), subject to several conditions, including the reimbursement of certain transaction costs; waiving the Administrative Code, Section 23.3, appraisal and fair market value requirements; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and adopting findings under the California Environmental Quality Act, including the adoption of a Mitigation Monitoring and Reporting Program.

AMENDED, AMENDMENT OF THE WHOLE BEARING SAME TITLE

Vote: Supervisor Aaron Peskin - Aye
Supervisor Ahsha Safai - Aye
Supervisor Dean Preston - Aye

RECOMMENDED AS AMENDED AS A COMMITTEE REPORT

Vote: Supervisor Aaron Peskin - Aye
Supervisor Ahsha Safai - Aye
Supervisor Dean Preston - Aye

c: Board of Supervisors
Angela Calvillo, Clerk of the Board
Alisa Somera, Legislative Deputy
Anne Pearson, Deputy City Attorney

File No. 191280 Committee Item No. 4
Board Item No. 47

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Land Use and Transportation Committee **Date** February 3, 2020

Board of Supervisors Meeting **Date** February 4, 2020

Cmte	Board	
☐	☐	**Motion**
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☒	☒	**Legislative Digest**
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OTHER **(Use back side if additional space is needed)**

☒	☒	DRAFT Amended and Restated Agrmt
☒	☒	PUC Reso No. 19-0227 112619
☒	☒	Original Agrmt 080118
☒	☒	BOS Reso No. 248-18 080218
☒	☒	SFPUC Notice 020320
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Completed by: Erica Major **Date** January 30, 2020
Completed by: Erica Major **Date** February 3, 2020

FILE NO. 191280

AMENDED IN COMMITTEE
2/3/2020 ORDINANCE NO.

[Amended and Restated Land Disposition and Acquisition Agreement - Exchange of 639 Bryant Street for 2000 Marin Street]

Ordinance approving an Amended and Restated Land Disposition and Acquisition Agreement with 2000 Marin Property, L.P. for the City's transfer of real property at 639 Bryant Street (Assessor's Parcel Block No. 3777, Lot No. 052) under the jurisdiction of the San Francisco Public Utilities Commission in exchange for real property at 2000 Marin Street (Assessor's Parcel Block No. 4346, Lot No. 003), subject to several conditions, including the reimbursement of certain transaction costs; waiving the Administrative Code, Section 23.3, appraisal and fair market value requirements; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and adopting findings under the California Environmental Quality Act, including the adoption of a Mitigation Monitoring and Reporting Program.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in *single-underline italics Times New Roman font*.
Deletions to Codes are in ~~*strikethrough italics Times New Roman font*~~.
Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~strikethrough Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Background and Findings.

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

(b) The City, through the SFPUC, leases adjacent property at 651 Bryant Street, Assessor's Parcel Block No. 3777, Lot No. 050 ("City Leased Premises"), for related office and warehouse purposes pursuant to a written lease ("651 Lease"), lease that expires on October 18, 2029.

(c) 2000 Marin Property, L.P., a Delaware limited partnership ("Developer"), owns certain real property known as 2000 Marin Street, Assessor's Parcel Block No. 4346, Lot 003 ("2000 Marin"), an approximately 7.98-acre parcel with a 74,000 square foot building built in 1989.

(d) The Developer proposes to acquire the City Property in exchange for 2000 Marin and other consideration to be provided by the Developer to the SFPUC (together, the "Exchange Transaction"), and seeks to develop a mixed-use project on the City Property, the City Leased Premises, and other adjacent parcels with approximately 923,000 square feet of office space, 60,500 square feet of retail/PDR space, 5,546 gross square feet of institutional (child care) space, and an approximately 40,000 square foot public park ("Development Project").

(e) On August 2, 2018, the City adopted Resolution No. 248-18 (Board of Supervisors File No. 180550), approving a Conditional Land Disposition and Acquisition Agreement between the City and the Developer ("Original Exchange Agreement"), which, upon the satisfaction of certain conditions, provided for (a) the exchange of the City Property for 2000 Marin; (b) the SFPUC's obligation to reimburse the Developer for the costs of new temporary utility yard facilities ("Temporary SFPUC Facility") to be constructed by the Developer for the SFPUC on a portion of 2000 Marin; and (c) the Developer's obligations to (1) relocate the SFPUC's personal property, at the Developer's cost, from the City Property and the City Leased Premises to 2000 Marin; (2) relocate a SFPUC hydrogen peroxide tank (HP Tank) from the City

Property to a nearby location at the Developer's cost; (3) construct or place the new "Temporary SFPUC Facility" for the SFPUC on a portion of 2000 Marin, with the SFPUC to reimburse the Developer for the costs of such construction or placement; and (4) pay the SFPUC for certain transactional costs the SFPUC has incurred in connection with the proposed Exchange Transaction.

(f) Subsequent to the adoption of Resolution No. 248-18, the Developer and the City negotiated certain amendments to the Original Exchange Agreement ("Amended Agreement"). In addition to providing for the Exchange Transaction, the Amended Agreement also requires the Developer to provide the SFPUC with the following additional consideration ("Additional Developer Consideration"):

(i) Tenant Improvements for the SFPUC at Port Leased Premises. The SFPUC is currently negotiating with the Port for a four-year lease of the Port's Pier 23 and the Roundhouse Two facilities in San Francisco ("Port Leased Premises") starting March 1, 2020 to allow the SFPUC to relocate the Power Enterprise operations currently on the City Property and the City Leased Premises. Upon finalization and approval of two proposed Memoranda of Understanding between the Port and the SFPUC providing for the SFPUC's lease of the Port Leased Premises, the Developer will pay up to $2,700,000 to construct and install tenant improvements for the SFPUC at the Port Leased Premises. The SFPUC desires such improvements to be temporary to give the SFPUC time (A) to undertake a long-term facility master planning process to determine the optimal use of 2000 Marin and other SFPUC property in San Francisco and the scope of improvements necessary for such use, including improvements for the expanding Power Enterprise operations, and (B) to identify adequate funding for such improvements. The City will reimburse the Developer for any tenant improvement costs above $2,700,000; and

(ii) Power Enterprise Moving Costs. The Developer will provide all services

necessary to move the Power Enterprise's personal property and equipment from the City Property and the City Leased Premises to the Port Leased Premises on a date mutually agreeable to the parties ("Moving Date") following completion of the tenant improvements at the Port Leased Premises. The Developer's third-party costs incurred in such move will be reimbursed from the City's Transaction Costs payment discussed below; and

(iii) Reimbursement for City Leased Premises Rent Due. The Developer has an option to purchase the real property and improvements at the City Leased Premises. The Developer has stated that it will not close escrow on its purchase of the City Leased Premises before the Moving Date. Because it is expected that the SFPUC's obligation to pay rent to the Port for the Port Leased Premises will commence on March 1, 2020 ("Port Commencement Date"), pursuant to the Amended Agreement, the Developer will either waive or reimburse the SFPUC for any rent or other payments required under the 651 Lease on or after the Port Commencement Date in order to prevent the SFPUC from having to simultaneously pay rent for both the City Leased Premises and the Port Leased Premises. The Amended Agreement provides that (A) if the Developer acquires the City Leased Premises prior to the close of escrow with respect to the Exchange Transaction ("Close of Escrow") and therefore becomes the City's landlord, the Developer will allow the SFPUC to occupy the City Leased Premises free of charge from the Port Commencement Date through the Moving Date and (B) if the Developer does not acquire the City Leased Premises prior to Close of Escrow, the Developer will pay or reimburse the City for, and indemnify and hold the City harmless from, all rent and other sums payable under the 651 Lease with respect to the period from and after the earlier of the Moving Date or the Port Commencement Date otherwise payable by the City to the landlord of the City Leased Premises; and

(iv) City's Transaction Costs. The Developer will deposit into escrow at the closing of the Exchange Transaction a flat sum of $1,000,000 ("Transaction Costs") to

compensate the City for certain of its expenses arising from the Exchange Transaction. After the Developer moves the SFPUC from the City Property and the City Leased Premises, the Developer's agreed-upon moving costs will be disbursed to the Developer from the sums deposited in escrow and the balance of funds held in escrow will be disbursed to the City. The City's Transaction Costs include (A) the City's attorney's fees for negotiation and preparation of the Exchange Transaction documents; (B) the City's costs incurred to investigate the physical condition, title, and suitability of 2000 Marin for the City's use; (C) the City's appraisal fees; (D) the City's personnel, consultant, and other environmental review costs and fees; and (E) the City's title insurance, escrow costs, and other closing costs to acquire 2000 Marin. The Developer's obligation to pay the $1,000,000 will survive the termination or cancellation of the Amended Agreement; and

(v) **Caltrans Authorization.** The SFPUC will de-commission the existing HP Tank located on the City Property at its sole cost by abandoning it in place prior to Close of Escrow. The SFPUC has not determined if, where, or when a replacement hydrogen peroxide tank will be installed. The SFPUC may seek to place a new hydrogen peroxide tank on land owned by the California Department of Transportation (Caltrans) which is located on or adjacent to Harrison Street, in San Francisco between Merlin Street and Morris Street ("Merlin Morris Site"), or another suitable nearby site. If the SFPUC seeks to place a new hydrogen peroxide tank on or adjacent to the Merlin Morris Site or another suitable site owned by Caltrans, as further consideration to the SFPUC, and at the Developer's sole expense, the Developer will use commercially reasonable efforts to obtain from Caltrans its authorization for the SFPUC's placement of a new hydrogen peroxide tank on the Merlin Morris Site or another suitable nearby site owned by Caltrans. The City would conduct any environmental review required by the California Environmental Quality Act (Public Resources Code Sections 21000 et seq.) ("CEQA") prior to making

such decisions. If the SFPUC determines not to place a new hydrogen peroxide tank on or adjacent to the Merlin Morris Site or another suitable site owned by Caltrans, or if the Developer is not able to obtain Caltrans' authorization to placement of a new hydrogen peroxide tank on Caltrans land selected by the SFPUC within 18 months of the closing of the Exchange Transaction, then the Developer shall pay the City the sum of $150,000.

(g) The City's obligation to complete the Exchange Transaction under the Amended Agreement is conditioned on, among other things, (a) the City's approval of the Exchange Transaction following review of the survey, title, and physical condition of 2000 Marin; (b) the SFPUC's de-commissioning of the HP Tank by abandoning it in place at the City Property; and (c) the SFPUC Commission's confirmation of the City's willingness to proceed with the Exchange Transaction after the SFPUC's review of assessments of the environmental condition of 2000 Marin, including the Phase II Report (defined below).

(h) 2000 Marin has soil contamination stemming from former uses and is subject to regulation by the State of California Department of Toxic Substance Control.

(i) In May 2019, the environmental consulting firm Ramboll completed a Phase II site investigation and report of 2000 Marin ("Phase II Report") based upon a proposed early conceptual scope of work that the SFPUC is considering for a potential use for the site.

(j) The SFPUC Commission reviewed the Phase II Report and environmental remediation cost estimate for a potential use of 2000 Marin on file with the Commission Secretary and found that the additional consideration being provided by the Developer and the opportunity to acquire one of the last available large industrial parcels in San Francisco justifies proceeding with the Exchange Transaction notwithstanding the potential substantial cost of future hazardous materials remediation at 2000 Marin, and acknowledged that such costs will ultimately depend upon the SFPUC's plans for its future use of 2000 Marin, which is to be

determined and approved by the SFPUC's Commission at a later date following completion of environmental review for any such project.

(k) The Developer's obligation to complete the Exchange Transaction is conditioned on, among other things, the receipt of all governmental approvals necessary for the Developer to proceed with the Developer Project.

(l) On November 26, 2019, the SFPUC, by Commission Resolution No. 19-0227, authorized the General Manager of the SFPUC to execute the Amended Agreement, subject to approval by the Board of Supervisors.

(m) Entering into the Amended Agreement with the Developer is in the City's best interest, and the SFPUC has found in Resolution No. 19-0227 that (1) the existing space at the City Property and other SFPUC property in San Francisco will not meet the SFPUC's anticipated future utility yard and operational needs, so either expansion of the existing facilities or securing replacement facilities will be necessary in the near future; (2) 2000 Marin presents an extremely rare opportunity for the SFPUC to acquire industrial property with a sufficient area to meet its critical utility yard needs, particularly as the population in San Francisco increases, and the three SFPUC enterprises (water, wastewater, and power) expand their operations to meet increased utility demand; and (3) 2000 Marin is expected to result in improved and more integrated SFPUC utility operations on a site that is five times larger than the City Property, with excellent access to transportation routes, and therefore, after all of the conditions for the proposed Exchange Transaction are satisfied, the City's acquisition of 2000 Marin would render the City Property surplus to the SFPUC's utility needs.

(n) The proposed use of the City Property by the Developer will yield more appropriate land uses within the Central SoMa Plan Area.

(o) After close of escrow on the Exchange Transaction when the SFPUC acquires 2000 Marin, the City Property will be surplus to the SFPUC's utility needs.

Section 2. Environmental and General Plan Consistency Findings.

(a) On November 19, 2019, the Planning Department determined that the relocation of SFPUC's Power Enterprise Utility Field Services to the Port Leased Premises is categorically exempt from CEQA under CEQA Guidelines Section 15301, Class 1 (Existing Conditions).

(b) The Development Project is located within the boundaries of the Central SoMa Plan area. On May 10, 2018, after a duly noticed public hearing, the Planning Commission certified the Final Environmental Impact Report ("EIR") for the Central SoMa Area Plan by Motion No. 20182; and recommended the Central SoMa Plan to the Board of Supervisors for approval by Resolution Nos. 20185, 20186, 20187, and 20188.

(c) On December 7, 2018, the City enacted legislative amendments implementing the Central SoMa Area Plan by Ordinance Nos. 280-18, 281-18, 282-18, and 283-18.

(d) In approving the Central SoMa Plan, the Planning Commission adopted findings as required by CEQA in its Resolution No. 20183, and the Board of Supervisors adopted CEQA Findings in Ordinance No. 280-18.

(e) On May 29, 2019, the Department determined that the Development Project, which includes the Exchange Transaction, did not require further environmental review under Section 15183 of the CEQA Guidelines and California Public Resources Code Section 21083.3, finding that the Development Project is consistent with the adopted zoning controls in the Central SoMa Area Plan and was encompassed within the analysis contained in the EIR, and finding further that since the EIR was finalized, there have been no substantive changes to the Central SoMa Area Plan and no substantive changes in circumstances that would require major revisions to the EIR due to the involvement of new significant environmental effects or an increase in the severity of previously identified significant impacts, and there is no new information of substantial importance that would change the conclusions set forth in the Final EIR. The Department therefore prepared a Community Plan Evaluation ("CPE") certificate for

the Development Project. The file for this project, including the Central Soma Area Plan EIR and the CPE certificate, is available for review at the Planning Department, 1650 Mission Street, Suite 400, San Francisco, California.

(f) The Planning Commission also adopted CEQA findings in its Motion No. 20459, including a Mitigation Monitoring and Reporting Program ("MMRP") applicable to the Development Project, when it approved the Development Project.

(g) On June 6, 2019, the San Francisco Planning Commission approved Office Allocation and Eastern Neighborhoods Large Project Authorization entitlements for the Development Project by its Motion Nos. 20459, 20460, and 20461. The Planning Commission also approved a park fee waiver permitted by Planning Code Section 406(e), and authorized the Planning Director to sign the waiver agreement in its Resolution No. 20461.

(h) The Board of Supervisors has reviewed relevant portions of the Central SoMa EIR, and the CPE certificate prepared for the Development Project.

(i) The Board of Supervisors hereby incorporates the CEQA findings contained in Ordinance No. 280-18, Planning Commission Resolution No. 20183, and Planning Commission Motion No. 20459, including adoption of an MMRP for the Development Project, by this reference thereto as though set forth herein in their entirety.

(j) The Board of Supervisors affirms the Planning Department's November 19, 2019 determination that the relocation of SFPUC's Power Enterprise Utility Field Services to the Port Leased Premises is categorically exempt from CEQA under CEQA Guidelines Section 15301, Class 1 (Existing Conditions).

(k) The Board of Supervisors finds the Amended Agreement is consistent with the General Plan, and the eight priority polices of Planning Code, Section 101 for the reasons set forth in Planning Commission Motion No. 20459 and hereby incorporates such findings by reference as if fully set forth in this ordinance.

Section 3. Waiver of Administrative Code Section 23.3 Appraisal and Fair Market Value Requirements.

(a) On May 18, 2018, in accordance with the requirements of Administrative Code Section 23.3, the City obtained two appraisals ("2018 Appraisals") in connection with the proposed Exchange Transaction, one of the City Property at $63,875,000 and one of 2000 Marin at $63,600,000. On June 5, 2018, the appraised values stated in each of the 2018 Appraisals were confirmed by two respective appraisal reviews as required by Administrative Code Section 23.3.

(b) Because (1) based on the 2018 Appraisals, the combined fair market value of 2000 Marin and the Additional Developer Consideration either equals or exceeds the appraised value of the City Property and (2) even if the current combined fair market value of 2000 Marin and the Additional Developer Consideration is now less than the current fair market value of the City Property, the City's acquisition of 2000 Marin will further a proper public purpose, the Board of Supervisors hereby waives any provisions of Administrative Code Section 23.3 that require (1) the City to obtain additional or updated appraisals or appraisal reviews in connection with the Exchange Transaction and (2) that require the City to receive at least 100% of the appraised value of the City Property.

Section 4. Approval of the Amended Agreement.

The Board of Supervisors hereby approves the Amended Agreement and authorizes the execution of the Amended Agreement by the Director of Property and/or the SFPUC General Manager in substantially the form presented to the Board in File No. 191280, together with any other documents that are necessary or advisable to effectuate the proposed Exchange Transaction.

Section 5. Additions, Amendments, and Modifications.

(a) The Board of Supervisors hereby authorizes the SFPUC General Manager and/or

the City's Director of Property to enter into any amendments or modifications to the Amended Agreement, including without limitation, the exhibits, that the General Manager or Director of Property determines, in consultation with the City Attorney, are in the best interest of the City; do not materially increase the City's obligations or liabilities; are necessary or advisable to effectuate the purposes and intent of the Amended Agreement or this ordinance; and are in compliance with all applicable laws, including the City Charter.

(b) Within 30 days of the Amended Agreement being fully-executed by all parties, the SFPUC shall provide the final Amended Agreement to the Clerk of the Board for inclusion into the official file.

Section 6. Approval and Ratification of Prior Actions.

All actions prior to the adoption of this ordinance by the City's officers with respect to the Amended Agreement and the Exchange Transaction are hereby approved, confirmed, and ratified.

Section 7. Effective Date. This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
RICHARD HANDEL
Deputy City Attorney
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FILE NO. 191280

REVISED LEGISLATIVE DIGEST
(Amended in Committee, 2/3/2020)

[Amended and Restated Land Disposition and Acquisition Agreement - Exchange of 639 Bryant Street for 2000 Marin Street]

Ordinance approving an Amended and Restated Land Disposition and Acquisition Agreement with 2000 Marin Property, L.P. for the City's transfer of real property at 639 Bryant Street (Assessor's Parcel Block No. 3777, Lot No. 052) under the jurisdiction of the San Francisco Public Utilities Commission in exchange for real property at 2000 Marin Street (Assessor's Parcel Block No. 4346, Lot No. 003), subject to several conditions, including the reimbursement of certain transaction costs; waiving the Administrative Code, Section 23.3, appraisal and fair market value requirements; making findings of consistency with the General Plan, and the eight priority policies of Planning Code Section 101.1; and adopting findings under the California Environmental Quality Act, including the adoption of a Mitigation Monitoring and Reporting Program.

Existing Law

Chapter 23 of the City's Administrative Code sets forth the policies and procedures applicable to real estate acquisitions and conveyances by the City, including the requirements that: (i) in certain circumstances, prior to the Board of Supervisor's approval of a proposed City acquisition or conveyance of real property with a value of more than $10,000, the properties to be conveyed or acquired by the City be appraised and, if any such property is appraised at a value in excess of $200,000, the appraisal be subject to an appraisal review and (ii) every conveyance by the City of its real property other than a sale at public auction or through a competitive bidding process shall be for a sales price of at least 100% of the appraised value of such real property, except where the Board determines either that (A) a lesser sum will further a proper public purpose, or (B) based on substantial evidence in the record, the terms and conditions of such conveyance are reflective of the fair market value of the subject real property notwithstanding the appraised value. Pursuant to the proposed ordinance, the Board would approve the execution by the City of an Amended and Restated Conditional Land Disposition and Acquisition Agreement ("Agreement") for the proposed exchange of City's land located at 639 Bryant Street, San Francisco ("City Property") for a parcel of real property located at 2000 Marin Street ("2000 Marin") together with additional consideration. Because (1) the City Property and 2000 Marin were each separately appraised in 2018 (and such appraisals were subjected to appraisal reviews) prior to the Board's approval by Resolution 248-18 of the City's execution of the original Conditional Land Disposition and Acquisition Agreement and (2) pursuant to the proposed ordinance, the Board would find that the City's acquisition of 2000 Marin will further a proper public purpose, the Board would also exempt from the requirements of Section 23.3 of the City's Administrative Code that (a) the City Property and 2000 Marin be subjected to

additional appraisals and (b) the conveyance of the City Property would be required to be for a sales price of at least 100% of its appraised value. The Board will also adopt findings pursuant to the City Planning Code Section 101.1 and findings under the California Environmental Quality Act and ratify previous actions taken in connection with the subject transaction.

Amendments to Current Law

Pursuant to the proposed Ordinance, the Board would find that, notwithstanding the requirements of Section 23.3 of the Administrative Code, the conveyance of the City Property and acquisition of 2000 Marin as contemplated by the Agreement do not require further appraisals and that the conveyance of the City Property will not require a sales price of at least 100% of its appraised value.

Background Information

The SFPUC has found in Resolution No. 19-0227 that (i) the existing space at the City Property and other SFPUC property in San Francisco will not meet the SFPUC's anticipated future utility yard and operational needs, so either expansion of the existing facilities or securing replacement facilities will be necessary in the near future; (ii) 2000 Marin presents an extremely rare opportunity for the SFPUC to acquire industrial property with a sufficient area to meet its critical utility yard needs, particularly as the population in San Francisco increases, and the three SFPUC enterprises (water, wastewater, and power) expand their operations to meet increased utility demand; and (iii) 2000 Marin is expected to result in improved and more integrated SFPUC utility operations on a site that is five times larger than the City Property, with excellent access to transportation routes, and therefore, after all of the conditions for the proposed exchange transaction are satisfied, the City's acquisition of 2000 Marin would render the City Property surplus to the SFPUC's utility needs.

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San Francisco
Water Power Sewer
Services of the San Francisco Public Utilities Commission

PUBLIC NOTICE OF REQUEST TO SAN FRANCISCO BOARD OF SUPERVISORS TO APPROVE A SALE, TRANSFER, OR OTHER CONVEYANCE OF CITY-OWNED PROPERTY.

PLEASE TAKE NOTICE THAT THE CITY AND COUNTY OF SAN FRANCISCO INTENDS TO TRANSFER THE REAL PROPERTY UNDER THE JURISDICTION OF THE SAN FRANCISCO PUBLIC UTILITIES COMMISSION LOCATED AT 639 BRYANT STREET IN SAN FRANCISCO.

THE BOARD OF SUPERVISORS WILL FIRST CONSIDER THIS ACTION AT A HEARING BEFORE ITS LAND USE COMMITTEE SCHEDULED AT 1:30 P.M. ON FEBRUARY 3, 2020 AT:

CITY HALL

ROOM 250

ONE CARLTON B. GOODLETT PLACE

SAN FRANCISCO, CALIFORNIA 94102

OUR MISSION: To provide our customers with high-quality, efficient and reliable water, power and sewer services in a manner that values environmental and community interests and sustains the resources entrusted to our care.

AMENDED AND RESTATED
CONDITIONAL LAND DISPOSITION
AND ACQUISITION AGREEMENT

by and between the

CITY AND COUNTY OF SAN FRANCISCO,

through its Public Utilities Commission,

and

2000 MARIN PROPERTY, L.P.

for the conveyance and exchange of

639 Bryant Street, San Francisco, California

and

2000 Marin Street, San Francisco, CA

_____, 2019

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LIST OF EXHIBITS:

AMENDED AND RESTATED CONDITIONAL LAND DISPOSITION AND ACQUISITION AGREEMENT

This AMENDED AND RESTATED CONDITIONAL LAND DISPOSITION AND ACQUISITION AGREEMENT ("**Agreement**"), dated for reference purposes only as of _____ __, 2019 (the "**Reference Date**"), is by and between the CITY AND COUNTY OF SAN FRANCISCO, a California municipal corporation ("**City**"), through its Public Utilities Commission ("**SFPUC**"), on the one hand, and 2000 MARIN PROPERTY, L.P., a Delaware limited partnership ("**2000 Marin Property**"), on the other hand. In this Agreement, 2000 Marin Property may be referred to as "**Developer**," and City and Developer may each be referred to as a "**Party**" and together as the "**Parties**."

RECITALS

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

B. Pursuant to a Lease dated as of May 12, 2009 (the "**651 Bryant Lease**") between William H Banker, Jr., Successor Trustee of The Banker Trust dated April 20, 1992; Fillmore C. Marks, Trustee of The Fillmore and Barbara Marks 1992 Trust; Fillmore Douglas Marks; William C. Marks, and Bradford F. Marks (collectively, "**Landlord**"), as landlord, and City, as tenant, City leases that certain real property and improvements located at 651 Bryant Street, San Francisco, California (Block 3777, Lot 050) ("**City Leased Premises**"). City uses the City Leased Premises for office and warehouse purposes. The 651 Bryant Lease provides for an initial term that expired on October 18, 2019, but has been renewed pursuant to its terms for an additional ten (10)-year term that will expire on October 18, 2029.

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

D. Developer desires to acquire the City Property, the City Leased Premises, and other adjacent parcels (collectively, the "**Development Project Area**") in order to pursue a development project on the City Property, the City Leased Premises, and other adjacent parcels, which currently

is contemplated to include up to four buildings ranging in height from 70 to 185 feet, containing approximately 922,921 gross square feet of office; 72,291 gross square feet of residential/PDR; and incorporating an approximately 40,000 square foot public park (the "**Development Project**").

E. Pursuant to a Storage License Agreement dated as of August 20, 2018 (the "**Habitat License Agreement**") between Developer, as licensor, and Habitat for Humanity Greater San Francisco, Inc., as licensee ("**Habitat**"), Developer granted Habitat the rights to store certain storage items in a specified storage area on the Replacement Property. The Habitat License Agreement has a term that is month-to-month, terminable by either Developer or Habitat, at the option of either of them, by written notice to the other of such termination given at least thirty (30) days prior to the proposed termination date.

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

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

H. Based on the foregoing, the Parties executed and delivered the Conditional Land Disposition and Acquisition Agreement (the "**Original CLDAA**") dated as of August 1, 2018 to establish a framework for the Exchange Transaction and set forth the terms and conditions under which the Exchange Transaction would occur, subject to all necessary approvals and environmental review required by the California Environmental Quality Act (California Public Resources Code Sections 21000 *et seq.*) ("**CEQA**"), and other applicable laws, including the CEQA Guidelines (California Code of Regulations, title 14, Sections 15000 *et seq.*), and Chapter 31 of the San Francisco Administrative Code ("**Environmental Review**"). The Original CLDAA was made effective on October 9, 2018 (the "**Original Effective Date**"). Pursuant to the Original CLDAA, the approval of the closing of the Exchange Transaction was conditional upon completion of all such approvals and Environmental Review.

I. The SFPUC authorized its General Manager to execute and deliver the Original CLDAA pursuant to SFPUC Resolution No. 18-0121 (the "**CLDAA Resolution**"). Pursuant to Resolution No. 218-18, File No. 180550, City's Board of Supervisors and Mayor authorized City's Director of Property to execute and deliver the Original CLDAA.

J. Since the Original Effective Date, Developer has caused the preparation of, and provided City with, a written Phase 2 Environmental Site Assessment Report with respect to the

Replacement Property (a "**Phase 2 ESA**"). The Parties contemplate that after completion of all remaining required Environmental Review (defined below in Recital L) (if any) and issuance of all Construction Approvals (defined below in Section 1.5(a) [City's Vacation of City Property and Developer's Relocation of City's Personal Property]), Developer will make certain improvements to portions of real property under the jurisdiction and control of the San Francisco Port Commission (the "**Port**") that consist of approximately 87,363 square feet of shed space located at Pier 23, San Francisco and approximately 7,350 square feet of office space located in the Roundhouse Two Building at Seawall Lot 318, San Francisco and are depicted in the attached **Exhibit F-1** (collectively, the "**Port Leased Premises**") to make the Port Leased Premises ready for City's occupancy after consummation of the Exchange Transaction.

K. Although, at its sole cost, City will de-commission the existing HP Tank located on the City Property prior to the consummation of the Exchange Transaction, it has not determined if, where, or when a replacement HP tank will be installed. City may seek to place a new hydrogen peroxide tank on land owned by the California Department of Transportation ("**Caltrans**") within or adjacent to an existing SFPUC pump station known as the Merlin Morris Pump Station (the "**Merlin Morris Pump Station**") and situated in the "Merlin/Morris drainage area," which is located on or adjacent to Harrison Street, San Francisco between Merlin Street and Morris Street, or another suitable nearby site. In the event City seeks to place a new hydrogen peroxide tank on or adjacent to the Merlin Morris Pump Station or another suitable site owned by Caltrans, as further consideration to City, and at Developer's sole expense, subsequent to the consummation of the Exchange Transaction, Developer shall use commercially reasonable efforts to obtain from Caltrans its complete authorization for City's occupation and use of the Merlin Morris Pump Station or another site owned by Caltrans, for placement of a new hydrogen peroxide tank.

L. Pursuant to the Original CLDAA, the Parties' obligation to complete the consummation of the Exchange Transaction in accordance with the terms and conditions of this Agreement (as further stated in Section 7.1 [Closing Date] below, the "**Closing**") was conditioned upon City's completion of all required Environmental Review and all approvals and authorizations ("**Approvals**") in connection with such Environmental Review and as otherwise required by all applicable state and local law or otherwise required by this Agreement. Since the Original Effective Date, City has completed Environmental Review with respect to the transactions comprising the proposed Exchange Transaction, including the relocation of the SFPUC's Power Enterprise operations at the City Property and the City Leased Premises to the Port Leased Premises, and the transfer of the City Property to Developer, including the decommissioning of the HP Tank. City has not yet determined, however, and, prior to the consummation of the Exchange Transaction, will not determine, the manner of use or development of the Replacement Property by City or the SFPUC once the Exchange Transaction is completed. Accordingly, prior to any use or development of the Replacement Property by City or the SFPUC, City will comply with all CEQA requirements and conduct all required Environmental Review in connection with any proposed use or development of the Replacement Property subsequently determined by City or the SFPUC. The Parties intended that the Original CLDAA was to constitute a conditional, phased, land acquisition agreement and that City shall complete all necessary Environmental Review of the Properties prior to taking any final approval action for the consummation of the Exchange Transaction. City has completed all required CEQA review for the Exchange Transaction, and, following consummation of the Exchange Transaction and City's determination

of its long-term uses of the Replacement Property, City will complete any further required CEQA review for the Replacement Property in connection with such uses.

M. Since the execution and delivery of the Original CLDAA, the Parties have determined to amend and restate the Original CLDAA to provide for, among other things, the Parties' respective obligations regarding, and a schedule for, the construction of the proposed improvements to the Port Leased Premises. City and Developer acknowledge and agree that this Agreement amends and restates the Original CLDAA in its entirety, and thereby supersedes and replaces, the Original CLDAA. This Agreement contains the entire understanding of the Parties with respect to the Exchange Transaction, as more particularly described below.

AGREEMENT

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

ARTICLE 1: DEFINITIONS; PROPERTY EXCHANGE AND ESCROW

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

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

"**651 Rent**" has the meaning assigned to such term in Section 1.6(a)(i) [City Leased Premises] below.

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

"**Amendment CLDAA Resolution**" means any resolution or ordinance adopted or enacted by City's Board of Supervisors and Mayor that authorizes City's Director of Property or the SFPUC's General Manager to execute and deliver this Agreement.

"**Amendment Effective Date**" has the meaning assigned to such term in Section 10.25 [Amendment Effective Date; Original Effective Date] below.

"**Applicable Laws**" shall mean all present and future applicable laws, ordinances, rules, regulations, resolutions, statutes, permits, authorizations, orders, requirements, covenants, conditions, and restrictions, whether or not in the contemplation of the Parties, that may affect or be applicable to the Property or any part of the Property (including any subsurface area) or the use of the Property. "Applicable Laws" shall include any environmental, earthquake, life safety and disability laws, and all consents or approvals required to be obtained from, and all rules and regulations of, and all building and zoning laws of, all federal, state, county and municipal governments, the departments, bureaus, agencies or commissions thereof, authorities, board of officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions, having or acquiring jurisdiction of the City Property or the Replacement Property, as applicable.

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

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

"**Approved Moving Costs**" has the meaning assigned to such term in Section 1.5(d) [Move to Port Leased Premises; Costs of Moving Services] below.

"**Attorneys' Fees and Costs**" shall mean any and all reasonable attorneys' fees, costs, expenses, and disbursements, including consultants' and expert witnesses' fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, exhibit preparation, courier, postage, facsimile, long-distance and communications expenses, court costs, and the costs and fees associated with any other legal, administrative or alternative dispute resolution proceeding, fees and costs associated with execution upon any judgment or order, and costs on appeal. For purposes of this Agreement, City's reasonable attorneys' fees shall be based on the fees regularly charged by private attorneys in San Francisco with comparable experience notwithstanding City's use of its own attorneys.

"**Caltrans**" has the meaning assigned to such term in Recital I above.

"**Caltrans Authorization**" has the meaning assigned to such term in Section 1.4(c)(iii) [Exchange Values; Additional Consideration] below.

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

"**Certificate of Compliance**" has the meaning assigned to such term in Section 1.5(b)(iii) [Completion of the Work and City Inspection] below.

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

"**City Approval Condition**" has the meaning assigned to such term in the last fully capitalized paragraph of this Agreement (before the signature page).

"**City Condition Precedent**" has the meaning assigned to such term in Section 6.1 [City's Conditions Precedent to City Approval of Closing and Acceptance of Replacement Property] below.

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

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

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

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

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

"**City's Reimbursable Costs**" has the meaning assigned to such term in Section 1.4(c) [Exchange Values; Additional Consideration] below.

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

"**CLDAA Resolution**" means Resolution No. 218-18, File No. 180550 pursuant to which City's Board of Supervisors and Mayor authorized City's Director of Property or the SFPUC's General Manager to execute and deliver this the Original CLDAA.

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

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

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

"**Closing Authorization Action**" has the meaning assigned to such term in Section 6.1(e) [Approval by City's SFPUC, Board of Supervisors, and Mayor] below.

"**Completion Notice**" has the meaning assigned to such term in Section 1.5(b)(iii) [Completion of the Work and City Inspection] below.

"**Construction Approvals**" has the meaning assigned to such term in Section 1.5(a) [City's Vacation of City Property and Developer's Relocation of City's Personal Property] below.

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

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

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

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

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

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

"**Developer Deed**" has the meaning assigned to such term in Section 3.1(b) [Title to Replacement Property] below.

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

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

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

"**Developer's Broker**" has the meaning assigned to such term in Section 10.9 [No Brokers or Finders] below.

"**Developer's Reimbursable Costs**" has the meaning assigned to such term in Section 1.5(c)(i) [City's Reimbursement Obligation for Construction Costs] below.

"**Developer's Reimbursable Costs Schedule**" has the meaning assigned to such term in Section 1.5(c)(i) [City's Reimbursement Obligation for Construction Costs] below.

"**Developer's Work**" has the meaning assigned to such term in Section 1.5(a) [City's Vacation of City Property and Developer's Relocation of City's Personal Property] below.

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

"**Environmental Review**" means all necessary approvals and environmental review required by CEQA, and other Applicable Laws, including the CEQA Guidelines (California Code

of Regulations, title 14, Sections 15000 *et seq.*), and Chapter 31 of the San Francisco Administrative Code.

"**Escrow**" shall mean the escrow account to be established by Developer with the Title Company as stated in Section 1.3 [Escrow] below.

"**Escrow Company**" means Chicago Title Insurance Company located at One Embarcadero Center, Suite 250, San Francisco, CA 94111 Attention: Terina J. Kung.

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

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

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

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

"**FSA**" has the meaning assigned to such term in Section 10.22(b) [First Source Hiring Agreement] below.

"**Habitat**" means Habitat for Humanity Greater San Francisco, Inc., a California nonprofit corporation.

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

"**Hazardous Material**" shall mean any material that, because of its quantity, concentration, or physical or chemical characteristics, is deemed by any federal, state, or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. "Hazardous Material" includes any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" under any Environmental Laws; any asbestos and asbestos containing materials (whether or not such materials are part of the structure of any existing improvements on the Property, any improvements to be constructed on the Property, or are naturally occurring substances on, in, or about the Property); and petroleum, including crude oil or any fraction, and natural gas or natural gas liquids. "Hazardous Material" shall not include any material used or stored at the Property in limited quantities and required in connection with the routine operation and maintenance of the Property, if such use and storage comply with all Applicable Laws relating to the use, storage, disposal, and removal of such material.

"**HP Notice**" has the meaning assigned to such term in Section 1.4(c)(iii) [Exchange Values; Additional Consideration] below.

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

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

"**Lava Mae**" means Lava Mae, a California nonprofit corporation.

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

"**License**" has the meaning assigned to such term in Section 1.5(e) [City's Continued Occupancy of City Property After Closing and Prior to Moving Date] below.

"**Loss**" or "**Losses**" shall mean any and all claims, demands, losses, liabilities, damages (including foreseeable and unforeseeable consequential damages), liens, obligations, interest, injuries, penalties, fines, lawsuits and other proceedings, judgments, and awards and reasonable costs and expenses of whatever kind or nature, known or unknown, foreseen or unforeseen, or contingent or otherwise, including Attorneys' Fees and Costs.

"**Merlin Morris Pump Station**" has the meaning assigned to such term in Recital I above.

"**Moving Costs**" has the meaning assigned to such term in Section 1.5(d) [Move to Port Leased Premises; Costs of Moving Services] below.

"**Moving Costs Estimate**" has the meaning assigned to such term in Section 1.5(d) [Move to Port Leased Premises; Costs of Moving Services] below.

"**Moving Costs Invoice**" has the meaning assigned to such term in Section 1.5(d) [Move to Port Leased Premises; Costs of Moving Services] below.

"**Moving Date**" has the meaning assigned to such term in Section 1.5(d) [Move to Port Leased Premises] below.

"**Moving Services**" has the meaning assigned to such term in Section 1.5(a) [City's Vacation of City Property and Developer's Relocation of City's Personal Property] below.

"**Original CLDAA**" has the meaning assigned to such term in Recital J above.

"**Original Effective Date**" has the meaning assigned to such term in Section 10.25 [Amendment Effective Date; Original Effective Date] below.

"**Park Fee Waiver**" means a developer impact fee waiver or credit acceptable to Developer that City's Planning Commission, and, if necessary, Board of Supervisors and Mayor, each acting at its sole and absolute discretion after the completion of all Environmental Review, may grant to Developer with respect to the approximately 40,000 square foot public plaza

anticipated to be transferred to City in connection with the Development Project, if approved and constructed. Nothing in this Agreement authorizes or approves the Development Project or the Park Fee Waiver, which, as noted in Article 4 [CEQA Compliance; Project Approvals], will occur, if at all, following Environmental Review.

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

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

"**Port**" means the San Francisco Port Commission.

"**Port Leased Premises**" means that certain real property and improvements under the jurisdiction and control of the San Francisco Port Commission that consist of approximately 87,363 square feet of shed space located at Pier 23, San Francisco and approximately 7,350 square feet of office space located in the Roundhouse Two Building at Seawall Lot 318, San Francisco, California, which are depicted in the attached **Exhibit F-1**.

"**Port Rent Commencement Date**" has the meaning assigned to such term in Section 1.6(a)(ii) [City Leased Premises].

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

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

"**Punch List**" has the meaning assigned to such term in Section 1.5(b)(iii) [Completion of the Work and City Inspection] below.

"**Reimbursement Documents**" has the meaning assigned to such term in Section 1.5(c)(iv) [City's Reimbursement Obligation for Construction Costs] below.

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

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

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

"**Replacement Property Title Report**" means that certain current preliminary title report of the Replacement Property, prepared by Escrow Company under Order No. 15605292-156-TJK-JM, and dated September 27, 2019.

"**Scope of Construction**" has the meaning assigned to such term in Section 1.5(a) [City's Vacation of City Property and Developer's Relocation of City's Personal Property] below.

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

"**Tenant Improvements**" has the meaning assigned to such term in Section 1.5(a) [City's Vacation of City Property and Developer's Relocation of City's Personal Property] below.

"**TI Cap**" has the meaning assigned to such term in Section 1.4(c)(ii) [[Exchange Values; Additional Consideration] below.

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

"**Vacate and Move**" has the meaning assigned to such term in Section 1.5(a) [City's Vacation of City Property and Developer's Relocation of City's Personal Property] below.

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

1.3 Escrow. Developer (at Developer's sole cost) shall open an escrow account ("**Escrow**") with respect to the Exchange Transaction with Chicago Title Insurance Company ("**Escrow Company**") located at One Embarcadero Center, Suite 250, San Francisco, CA 94111 and deposit a fully executed copy of this Agreement with Escrow Company. This Agreement shall serve as instructions to Escrow Company as the escrow holder for consummation of the Exchange Transaction. Developer and City shall execute such additional or supplementary instructions as may be reasonably appropriate to enable the Escrow Company to comply with the terms of this Agreement and effect Closing; provided, however, that if there is any conflict between the provisions of this Agreement and any additional supplementary instructions, the terms of this Agreement shall control.

1.4 Exchange Values; Additional Consideration.

(a) Based on a MAI appraisal of the City Property by Clifford Advisory, LLC dated July 2, 2018, which assumed that the City Property would be developed and used in a manner consistent with the CSP (defined below in Section 4.1 [CEQA Compliance]), the Parties agree that, for purposes of the Exchange Transaction, the fair market value of the City Property is no more than Sixty-Three Million Eight Hundred Seventy-Five Thousand Dollars ($63,875,000).

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

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

(i) Subject to reduction by the amount of the Approved Moving Costs (defined in Section 1.5(d) [Move to Port Leased Premises; Costs of Moving Services] below, Developer shall pay City the sum of One Million Dollars ($1,000,000) ("**City's Reimbursable Costs**") to defray or partially defray City's and the SFPUC's incurred expenses in connection with the Exchange Transaction, including such expenses as consultant costs, actual out-of-pocket transaction costs, environmental review and investigations, appraisals, legal services costs in the investigation and documentation of the transactions contemplated by this Agreement.

(ii) Developer shall construct and install the Tenant Improvements pursuant to the specifications and requirements stated in Section 1.5(b) [Developer's Work] below and the attached **Exhibit F**, and pay for all costs in connection with the design, purchase, permitting, installation, inspection, and construction of the Tenant Improvements and obtaining the Construction Approvals (defined in Section 1.5(a) [City's Vacation of City Property and Developer's Relocation of City's Personal Property] below); provided that Developer's obligation to pay such costs shall not exceed the amount of Two Million Seven Hundred Thousand Dollars ($2,700,000) (the "**TI Cap**"). In connection with the calculation of the TI Cap, such calculation shall not include any internal costs incurred by Developer with respect to **(A)** the design, purchase, permitting, installation, inspection, and construction of the Tenant Improvements, **(B)** seeking any of the Construction Approvals, or **(C)** for management services otherwise provided by Developer or any affiliate of Developer with respect to the Tenant Improvements. The Parties acknowledge their mutual intent that the costs of the management services described in clauses (A), (B), and (C) of the foregoing sentence shall be at Developer's sole expense and shall not be included in calculation of the TI Cap, whether such management services are performed by Developer's employees or are performed by third-party consultants or agents retained by Developer to perform such services.

(iii) At Developer's sole expense, subsequent to the Closing, if City gives written notice (a "**HP Notice**") to Developer within ninety (90) days after the Closing Date that City desires to place a new hydrogen peroxide tank on the Merlin Morris Pump Station, additional property adjacent to the Merlin Morris Pump Station, or other nearby land owned by Caltrans, Developer shall use commercially reasonable efforts, at Developer's sole expense, to obtain from Caltrans complete authorization acceptable to City ("**Caltrans Authorization**") for the use of any such Caltrans property by City for location of a new hydrogen peroxide tank. If **(A)** City does not give Developer a HP Notice within ninety (90) days after the Closing Date or **(B)** City gives Developer a HP Notice and Developer is unable to obtain the Caltrans Authorization within eighteen (18) months following the Closing Date, then on or before the date that is five hundred forty (540) days after the Closing Date, Developer shall pay City the sum of One Hundred Fifty Thousand Dollars ($150,000) as additional compensation and thereafter Developer shall be released completely and finally from any and all obligations with respect to the Caltrans Authorization.

(d) Developer shall pay City's Reimbursable Costs by depositing One Million Dollars ($1,000,000) in Escrow at Closing; provided that, notwithstanding any other provision of this Agreement, Developer's obligation to pay City's Reimbursable Costs shall survive the termination or cancellation of this Agreement. In the event this Agreement is terminated prior to the Closing for any reason, Developer shall pay to City directly City's Reimbursable Costs within thirty (30) days after any such termination. After the Closing, the disbursement of City's Reimbursable Costs from the Escrow shall be as stated in Section 7.4(b) [Duties of Escrow Company Regarding Post-Closing Disbursement of Approved Moving Costs and City's Reimbursement Costs] below.

1.5 City's Vacation of City Property and Developer's Relocation of City's Personal Property; Developer's Work and Improvements to Port Leased Premises; City's Reimbursement Obligation for Developer's Work Costs in Excess of TI Cap.

(a) City's Vacation of City Property and Developer's Relocation of City's Personal Property. City shall vacate the City Property and the City Leased Premises entirely on a specified date (as set forth below) and move ("**Vacate and Move**") to the Port Leased Premises, which Developer shall improve by the installation and construction of the tenant leasehold improvements as described below and on the attached **Exhibit F** (the "**Tenant Improvements**"). As a condition to City's obligation to Vacate and Move, Developer shall provide, or cause to be provided, all services necessary to move and relocate all of City's personal property or equipment placed, installed, or present on the City Property and the City Leased Premises (the "**Moveable Property**") to the Port Leased Premises (the "**Moving Services**"). Developer's costs incurred in connection with the Moving Services shall be paid as stated in Section 1.5(d) [Move to Port Leased Premises; Costs of Moving Services] below. As well, promptly after the Amendment Effective Date, Developer shall work with City cooperatively and diligently to "value engineer" the selection, composition, and manner of installation and construction of the proposed Tenant Improvements with the goal of reducing costs and maximizing efficiency with respect to the selection, installation, and construction of the Tenant Improvements. As a condition to City's obligation to Vacate and Move, Developer shall obtain all necessary approvals from all federal, state, or local governmental authorities and agencies with jurisdiction ("**Construction Approvals**") for the construction of the Tenant Improvements in compliance with all Applicable Laws, which will include appropriate fencing acceptable to the SFPUC on and completely surrounding the Pier 23 portion of the Port Leased Premises, in accordance with the specifications and requirements set forth on the attached **Exhibit F** (the "**Scope of Construction**"). Once the Construction Approvals are obtained by Developer, Developer shall pay for, subject to the TI Cap, and complete all construction and installation of the Tenant Improvements on the Port Leased Premises (Developer's obligations to obtain the Construction Approvals and complete the construction of the Tenant Improvements are sometimes referred to collectively below as "**Developer's Work**") in accordance with the requirements set forth in **Exhibit F** and Section 1.5(b) [Developer's Work] below:

(b) Developer's Work.

(i) Development of Final Plans and Budget. Prior to the Amendment Effective Date and, if not completed by the Amendment Effective Date, promptly thereafter until accomplished, City and Developer shall work together diligently and cooperatively to develop final plans and specifications in accordance with the Scope of Construction parameters and criteria, with a detailed budget, all approved by City (the "**Final Plans and Budget**") in accordance with the procedures set forth in **Exhibit F** for Developer's Work. Any projected fees, costs, or other expenses incurred by Developer in connection with the application for, granting, or expedition of, the Construction Approvals, including application fees, permit fees, plan review fees, construction management fees, expeditor's fees, or attorneys' or consultants' fees, shall be pro-rated, as necessary, to ensure that only those reasonable costs and fees that are directly related to the construction of the Tenant Improvements are included within the Final Plans and Budget. The Final Plans and Budget shall not include any projected or actual costs incurred by Developer for internal or third-party management costs relating to Developer's Work. Any projected amounts designated as cost-overrun reserves or contingency monies shall be no greater than ten percent (10%) of all other amounts contained within the Final Plans and Budget. Within thirty (30) days after the Amendment Effective Date, Developer shall submit a draft copy of Developer's proposed Final Plans and Budget to City for its review and approval. City will either approve such proposed draft, or return it to Developer with comments and proposed revisions, within ten (10) business days of receipt. If City returns comments and proposed revisions to such proposed draft, Developer will prepare and deliver to City an additional draft within ten (10) business days of receipt of City's comments and proposed revisions. This process shall be repeated until a draft of the Final Plans and Budget is acceptable to, and approved in writing by, both City and Developer (the "**Approved Final Plans and Budget**").

(ii) Construction of Tenant Improvements. As soon as reasonably practicable after the Parties' mutual approval of the Approved Final Plans and Budget, Developer shall obtain all Construction Approvals and commence construction, and diligently continue construction until completed, of the Tenant Improvements at the Port Leased Premises in accordance with the Final Plans and Budget and the procedures stated in **Exhibit F**. City and Developer shall cooperate with each other regularly during the construction process as necessary to enable Developer to complete the construction as soon as possible. The construction of the Tenant Improvements will be completed within one hundred fifty (150) days after the Closing Date, as such period may be extended by Developer at its discretion.

(iii) Completion of the Work and City Inspection. Upon completion of Developer's Work, Developer shall deliver a notice to City (the "**Completion Notice**") advising City of the completion of the Tenant Improvements in compliance with the requirements and procedures set forth in **Exhibit F**. Within ten (10) days following its receipt of the Completion Notice, City shall inspect the

completed Tenant Improvements and either **(A)** approve the Tenant Improvements, as built, by providing Developer an executed certificate of full compliance in the form attached as **Exhibit G** (the "**Certificate of Compliance**") or **(B)** provide Developer with a punch list of items to be corrected (a "**Punch List**") with respect to the Tenant Improvements.

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

(c) City's Reimbursement Obligation for Construction Costs. City shall reimburse Developer for its incurred construction costs to perform Developer's Work that are in excess of the TI Cap, subject to the following conditions:

(i) Within five (5) business days after the Moving Date (defined below), Developer shall deliver to City a schedule detailing the total amount of construction costs incurred by Developer (which shall not include any projected or actual costs incurred by Developer for internal or third-party management costs relating to Developer's Work) in excess of the TI Cap and payable by City pursuant to this Agreement ("**Developer's Reimbursable Costs**"), which schedule (the "**Developer's Reimbursable Costs Schedule**") shall include a statement of the actual construction costs incurred by or on behalf of Developer in the performance of Developer's Work, a description of each material aspect of the Developer's Work performed, hours expended, rates paid for Developer's Work, related material costs, and, if then or subsequently requested by City, copies of invoices and other evidence of the claimed Developer's Reimbursable Costs. In the event City disputes any amount included within Developer's Reimbursable Costs Schedule submitted by Developer, City shall notify Developer within fifteen (15) business days of its receipt of the Developer's Reimbursable Costs Schedule and the Parties shall meet promptly and work cooperatively to resolve such dispute(s). Promptly after the Parties agree upon the amount of the Developer's Reimbursable Costs, City shall insert such amount into the Reimbursement Documents (defined below in Section 1.5(c)(iv) [City's Reimbursement Obligation for Construction

Costs]) previously approved by the Parties pursuant to Section 1.5(c)(iv) [City's Reimbursement Obligation for Construction Costs], and the Parties shall mutually execute and deliver the Reimbursement Documents.

(ii) The Developer's Reimbursable Costs may include any fees, costs, or other expenses incurred by Developer in connection with the application for, granting, or expedition of, the Construction Approvals, including application fees, permit fees, plan review fees, construction management fees, expeditor's fees, or attorneys' or consultants' fees; provided that **(A)** such costs and fees shall not include any projected or actual costs incurred by Developer for internal or third-party management costs relating to Developer's Work or include and shall not be increased by any fees, compensation, or profits payable to or collected by Developer or its affiliates, directly or indirectly, in connection with Developer's Work, including any amounts in the nature of development, management, or development management fees payable to, or collected by, Developer or its affiliates, **(B)** all such costs and fees shall be pro-rated, as necessary, to ensure that only those costs and fees that are directly related to the Construction Approvals or the construction or installation of the Tenant Improvements are included within the Developer's Reimbursable Costs, and **(C)** no portion of the Developer's Reimbursable Costs payable by City shall bear or be increased by any interest, finance fees, or similar charges.

(iii) City shall pay the Developer all Reimbursement Costs in excess of the TI Cap in accordance with the provisions of the Reimbursement Documents.

(iv) Prior to, and as a condition of, the Closing Authorization Action, the Parties shall agree in writing to the final form of an agreement and, if necessary, other documents to evidence and state City's obligations to pay Developer the Developer's Reimbursable Costs pursuant to the terms and conditions stated in this Agreement (the "**Reimbursement Documents**"); provided that **(A)** the Parties may approve the form of the Reimbursement Documents notwithstanding that the amount of Developer's Reimbursable Costs have not yet been determined pursuant to the procedures stated in this Section 1.5(c), and **(B)** City's obligation to pay Developer the Developer's Reimbursable Costs shall not be secured by any lien, mortgage, deed of trust, or other security interest.

City hereby acknowledges and agrees that the Closing Authorization Action shall not occur until the Parties mutually agree on the Approved Final Plans and Budget and the Reimbursement Documents (each of which shall be attached as exhibits to the Closing Authorization Action).

(d) Move to Port Leased Premises; Costs of Moving Services. After the Closing and on a date (the "**Moving Date**") mutually agreed to by the Parties that is no later than ten (10) days after the delivery by City of a Certificate of Compliance as provided in Section 1.5(b) [Developer's Work] above, Developer shall perform the Moving Services, and City shall Vacate and Move. Developer shall initially pay for all direct costs actually incurred to pay third parties engaged by Developer to perform the Moving Services

(e.g., a relocation consultant, moving companies, and equipment rentals) (the "**Moving Costs**"). The Moving Costs shall not include any of Developer's or its affiliates' internal management or personnel costs incurred in connection with the Moving Services. The Moving Costs shall be determined in accordance with the following procedures:

(i) On or prior to the date that is ten (10) days after the Amendment Effective Date, Developer shall present City for its approval a written detailed estimate of the anticipated Moving Costs (the "**Moving Costs Estimate**").

(ii) Within ten (10) days of City's receipt of the Moving Costs Estimate, City shall either approve it in writing or return it to Developer with comments and/or City's written agreement that it will assign SFPUC Agents to move, at City's cost, specified items that are part(s) of the Moveable Property and deletions or adjustments of costs attributable to the items City undertakes to move.

(iii) If City returns comments and proposed revisions to the Moving Costs Estimate, Developer will prepare and deliver to City an additional draft Moving Costs Estimate within ten (10) business days of receipt of City's comments and proposed revisions. This process shall be repeated until a draft of the Moving Costs Estimate is acceptable to, and approved in writing by, both City and Developer (the "**Approved Moving Costs**").

(iv) After the Approved Moving Costs are established as described above, they may be adjusted pursuant to the Parties' mutual written agreement at any time prior to the fifth (5th) business day after the Moving Services are completed; provided that City's agreement to so adjust the Approved Moving Costs shall not be unreasonably withheld, conditioned, or delayed with respect to any Developer request to adjust the Approved Moving Costs by the amounts of any direct costs actually incurred by Developer to pay third parties engaged by Developer to perform the Moving Services that are not excluded as provided above and were not then previously included in the Approved Moving Costs agreed to by the Parties. Once the Moving Services have been completed and the Approved Moving Costs are finally determined, the Parties shall execute and deliver to the Escrow Company a written statement (the "**Moving Costs Invoice**") that confirms the amount of the Approved Moving Costs. Promptly thereafter, the Approved Moving Costs incurred by Developer shall be disbursed by the Escrow Company to Developer in accordance with Section 7.4(b) [Duties of Escrow Company Regarding Post-Closing Disbursement of Approved Moving Costs and City's Reimbursement Costs] below from the amounts previously deposited in Escrow by Developer as City's Reimbursable Costs pursuant to Section 1.4(d) [Exchange Values; Additional Consideration] above.

(e) City's Continued Occupancy of City Property After Closing and Prior to Moving Date. On or before the Closing Date, the Parties shall execute and deliver a license in the form of the attached **Exhibit I** or otherwise mutually acceptable to the Parties (the "**License**"), which shall provide for City's continued, rent-free occupancy of the City

Property during the period commencing on the Closing Date and ending on the Moving Date.

(f) HP Tank Decommissioning and Developer's Assistance in Location of Potential New Tank. At its sole cost and expense, City will de-commission the existing HP Tank prior to and as a condition of the Exchange Transaction. At Developer's sole expense, subsequent to the Closing, if City gives a HP Notice to Developer within ninety (90) days after the Closing Date that City desires to place a new hydrogen peroxide tank on the Merlin Morris Pump Station, additional property adjacent to the Merlin Morris Pump Station, or other nearby land owned by Caltrans, Developer shall use commercially reasonable efforts, at Developer's sole expense, to obtain from a Caltrans Authorization for the use of any such Caltrans property by City for location of a new hydrogen peroxide tank. If **(a)** City does not give Developer a HP Notice within ninety (90) days after the Closing Date or **(b)** City gives Developer a HP Notice and Developer is unable to obtain the Caltrans Authorization within eighteen (18) months following the Closing Date, then on or before the date that is five hundred forty (540) days after the Closing Date, Developer shall pay City the sum of One Hundred Fifty Thousand Dollars ($150,000) as additional compensation and thereafter Developer shall be released completely and finally from any and all obligations with respect to the Caltrans Authorization. At its sole cost and expense, City will de-commission the existing HP Tank prior to and as a condition of the Exchange Transaction.

1.6 City Leased Premises. Prior to the Closing Date, at its sole election, Developer may acquire the City Leased Premises from Landlord. City has exercised its option to renew under the 651 Bryant Lease to extend its term for an additional ten (10)-year period.

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

(i) allow City to continue to occupy the City Leased Premises pursuant to the 651 Bryant Lease (including the obligation to pay "Rent" (as that term is defined in the 651 Bryant Lease, "**651 Rent**") as required by the 651 Bryant Lease), from the date Developer acquires the City Leased Premises until the earlier of the Moving Date or March 1, 2020,

(ii) if the Moving Date has not occurred on or prior to March 1, 2020, continue to allow City to occupy the City Leased Premises pursuant to the 651 Bryant Lease but, commencing on March 1, 2020 or such later date (the "**Port Rent Commencement Date**") as City is first obligated to pay rental to the Port with respect to the Port Leased Premises and continuing until the Moving Date, City shall have no further obligation to pay 651 Rent, and

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

(b) If Developer proceeds with the Closing prior to acquiring the City Leased Premises, Developer will pay or reimburse City for, and indemnify and hold City harmless from, all sums with respect to the period from and after the earlier of the Moving Date, March 1, 2020, or the Port Rent Commencement Date otherwise payable by City to Landlord as 651 Rent pursuant to the 651 Bryant Lease (including, to the extent payable pursuant to the 651 Bryant Lease, all sums paid or payable by City to Landlord in connection with the termination of the 651 Bryant Lease prior to the expiration of the 651 Bryant Lease term or attributable to City's obligations pursuant to provisions of Section 20 of the 651 Bryant Lease (entitled "Surrender of Property)) (collectively, the "**Developer Lease Payments**"). In addition, at Closing, Developer shall have the option to either

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

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

ARTICLE 2: INVESTIGATIONS

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

2.2 Developer's Independent Investigation. Developer represents and warrants to City that, as of the Original Effective Date, Developer had the opportunity to perform a diligent and thorough inspection and investigation of all matters related to the City Property, either independently or through Developer's Agents (defined in Section 10.15 [Parties and Their Agents] below), including the following:

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

(b) The quality, nature, adequacy, and physical condition of the City Property, including all other physical and functional aspects of the City Property;

(c) The environmental condition of the City Property, including an environmental report by a licensed engineering or environmental firm selected by Developer that shows to Developer's sole satisfaction that the City Property is suitable for

commercial development with implementation of appropriate remediation or mitigation of hazardous soils and groundwater; and

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

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

2.4 As-Is Condition of City Property; Release of City. Developer represents and warrants to City that, as of the Reference Date, Developer has had the opportunity to perform a diligent and thorough inspection and investigation of each and every aspect of the City Property, either independently or through its Agents, including the following matters: DEVELOPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT CITY IS CONVEYING AND DEVELOPER IS ACQUIRING CITY'S INTEREST IN THE CITY PROPERTY ON AN "AS IS WITH ALL FAULTS" BASIS. DEVELOPER IS RELYING SOLELY ON ITS INDEPENDENT INVESTIGATION AND, OTHER THAN THE REPRESENTATIONS AND WARRANTIES OF CITY EXPRESSLY SET FORTH IN THIS AGREEMENT, NOT ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM CITY OR ITS AGENTS AS TO ANY MATTERS CONCERNING THE CITY PROPERTY, ITS SUITABILITY FOR DEVELOPER'S INTENDED USES, OR ANY OF THE PROPERTY CONDITIONS OF THE CITY PROPERTY. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 5.2 [REPRESENTATIONS AND WARRANTIES OF CITY] BELOW, CITY DOES NOT GUARANTEE THE LEGAL, PHYSICAL, GEOLOGICAL, ENVIRONMENTAL, ZONING, OR OTHER CONDITIONS OF THE CITY PROPERTY OR THE SUITABILITY OF THE CITY PROPERTY FOR ANY USE, NOR DOES IT ASSUME ANY RESPONSIBILITY FOR THE COMPLIANCE OF THE CITY PROPERTY OR ITS USE WITH ANY APPLICABLE LAWS (DEFINED IN SECTION 10.8 [APPLICABLE LAWS]). IT IS DEVELOPER'S SOLE RESPONSIBILITY TO DETERMINE ALL BUILDING, PLANNING, ZONING, AND OTHER REGULATIONS AND APPLICABLE LAWS, INCLUDING ANY PUBLIC TRUST CLAIMS, RELATING TO THE CITY PROPERTY AND THE USES TO WHICH IT MAY BE PUT.

As part of its agreement to accept the City Property in its "as is and with all faults" condition, Developer, on behalf of itself and its successors and assigns, waives any right to recover from, and forever releases and discharges, City and its respective Agents, and their respective heirs, successors, legal representatives, and assigns, from any and all Losses (defined in Section

2.9 [Indemnification of City] below), whether direct or indirect, known or unknown, or foreseen or unforeseen, that may arise on account of or in any way be connected with **(a)** the use of the City Property by City or its Agents or invitees or **(b)** the physical, geological, or environmental condition of the City Property. In connection with the foregoing release, Developer expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

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

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

INITIALS: Developer: _____

2.5 City's Independent Investigations. City represents and warrants to Developer that, as of the Reference Date, City had the opportunity to perform a diligent and thorough inspection and investigation of all matters related to the Replacement Property, either independently or through City's Agents, including the following:

(a) All matters affecting title to the Replacement Property, including all documents and matters identified in that certain current preliminary title report of the Replacement Property, prepared by Escrow Company under Order No. 5605292-156-TJK-JM and dated September 27, 2019 ("**Replacement Property Title Report**"). City shall have forty-five (45) days following receipt of the Replacement Property Title Report to review all matters affecting title to the Replacement Property, including copies of all documents referred to in the Replacement Property Title Report;

(b) The quality, nature, adequacy, and physical condition of the Replacement Property, including all other physical and functional aspects of the Replacement Property; and

(c) The environmental condition of the Replacement Property, including review of all reports delivered by Developer as part of the Replacement Property Documents relating to the environmental condition of the Replacement Property, including any such reports provided to Developer by the then-current owner. Notwithstanding the content of such reports and anything else to the contrary in this Section 2.5, City acknowledges that it has received and reviewed the Phase 2 ESA with respect to the Replacement Property. The SFPUC's Commission's written approval of the environmental condition of the Replacement Property after review of the Phase 2 ESA described above shall be a condition of Closing.

(d) City's review and approval of the form and substance of all the documents related to the Exchange Transaction and all other matters relating to the Replacement

Property and its intended use, including receipt of a formal MAI appraisal, investigation of the property's current zoning and use designation, and review of all reports and records in Developer's possession or reasonably available to Developer.

2.6 City's Discovery of Hazardous Materials. If the SFPUC's Commission's review of the Phase 2 ESA results in the SFPUC's Commission's determination that the Replacement Property is contaminated with any hazardous material in a manner that may make the Replacement Property unsuitable for commercial development, occupancy, or use without implementation of remediation or mitigation of hazardous soils and groundwater that are acceptable to the SFPUC's Commission, the SFPUC's Commission may elect to **(a)** reasonably extend the time periods for review of environmental conditions and for execution of this Agreement in order to allow City to remove such materials in a manner acceptable to the SFPUC, **(b)** terminate this Agreement and/or any other agreement or instrument entered into with Developer (other than Developer's obligation to pay City's Reimbursable Costs, all of which obligations shall survive the termination of this Agreement) in connection with the Exchange Transaction contemplated by this Agreement by giving notice to Developer, or **(c)** negotiate with Developer an appropriate remediation strategy for such environmental condition. If the negotiations contemplated by clause (c) of the foregoing sentence do not result in agreements that are acceptable to the SFPUC's Commission, at its sole discretion, the SFPUC's Commission will retain its right to terminate this Agreement as provided in clause (b) of the foregoing sentence.

2.7 As-Is Condition of Replacement Property; Release of Developer. City represents and warrants to Developer that, as of the Reference Date, City has had the opportunity to perform a diligent and thorough inspection and investigation of each and every aspect of the Replacement Property, either independently or through its Agents, including the following matters: CITY SPECIFICALLY ACKNOWLEDGES AND AGREES THAT DEVELOPER IS CONVEYING AND CITY IS ACQUIRING DEVELOPER'S FEE INTEREST IN THE REPLACEMENT PROPERTY ON AN "AS IS WITH ALL FAULTS" BASIS. CITY IS RELYING SOLELY ON ITS INDEPENDENT INVESTIGATION AND, OTHER THAN THE REPRESENTATIONS AND WARRANTIES OF DEVELOPER EXPRESSLY SET FORTH IN THIS AGREEMENT, NOT ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM DEVELOPER OR ITS AGENTS AS TO ANY MATTERS CONCERNING THE REPLACEMENT PROPERTY, THE SUITABILITY FOR CITY'S INTENDED USES OR ANY OF THE PROPERTY CONDITIONS THEREOF. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 5.1 [REPRESENTATIONS AND WARRANTIES OF DEVELOPER] BELOW, DEVELOPER DOES NOT GUARANTEE THE LEGAL, PHYSICAL, GEOLOGICAL, ENVIRONMENTAL, ZONING, OR OTHER CONDITIONS OF THE REPLACEMENT PROPERTY, OR THE SUITABILITY FOR ANY USE, NOR DOES IT ASSUME ANY RESPONSIBILITY FOR THE COMPLIANCE OF THE REPLACEMENT PROPERTY OR ITS USE WITH ANY APPLICABLE LAWS. IT IS CITY'S SOLE RESPONSIBILITY TO DETERMINE ALL BUILDING, PLANNING, ZONING, AND OTHER REGULATIONS AND APPLICABLE LAWS RELATING TO THE REPLACEMENT PROPERTY AND THE USES TO WHICH EACH MAY BE PUT.

As part of its agreement to accept the Replacement Property and in their "as is and with all faults" condition, City, on behalf of itself and its successors and assigns, waives any right to recover from, and forever releases and discharges, Developer and its Agents, and their respective

heirs, successors, legal representatives and assigns, from any and all Losses, whether direct or indirect, known or unknown, or foreseen or unforeseen, that may arise on account of or in any way be connected with **(a)** the use of the Replacement Property by Developer and its Agents or **(b)** the physical, geological, or environmental condition of the Replacement Property. In connection with the foregoing release, City expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

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

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

INITIALS: City: _____

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

2.9 Indemnification of City. Developer shall indemnify and hold harmless City and its officers, agents, and employees from and, if requested, shall defend them against, any and all loss, cost, damage, injury, liability, and claims (as further defined below, "**Losses**") arising or resulting directly or indirectly from **(a)** Developer's breach of its obligations arising under this Agreement, **(b)** any administrative, legal, or equitable action or proceeding instituted by any person or entity other than City challenging the validity of this Agreement, the Development Project, the Approvals and/or any final environmental impact report approved or adopted by City in connection with the proposed Exchange Transaction (a "**FEIR**"), or other actions taken pursuant to CEQA, or other approvals under federal, state, or City laws relating to the Exchange Transaction or the Development Project, **(c)** any relocation claims by any existing tenant or occupant relating to City's acquisition of the Replacement Property, Developer's acquisition of the 651 Bryant Street property, or this Exchange Agreement, and **(d)** any action taken by City or Developer in furtherance of this Agreement, or the Exchange Transaction, except to the extent that such indemnity is void or otherwise unenforceable under any Applicable Laws, and except to the extent such Loss is the result of City's gross negligence or willful misconduct. Such indemnity shall include Attorneys' Fees and Costs (defined below) and City's cost of investigating any claims against City. All indemnifications set forth in this Agreement shall survive its expiration or termination.

"**Loss**" or "**Losses**" shall mean any and all claims, demands, losses, liabilities, damages (including foreseeable and unforeseeable consequential damages), liens, obligations, interest, injuries, penalties, fines, lawsuits and other proceedings, judgments, and awards and reasonable

costs and expenses of whatever kind or nature, known or unknown, foreseen or unforeseen, or contingent or otherwise, including Attorneys' Fees and Costs.

"**Attorneys' Fees and Costs**" shall mean any and all reasonable attorneys' fees, costs, expenses, and disbursements, including consultants' and expert witnesses' fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, exhibit preparation, courier, postage, facsimile, long-distance and communications expenses, court costs, and the costs and fees associated with any other legal, administrative or alternative dispute resolution proceeding, fees and costs associated with execution upon any judgment or order, and costs on appeal. For purposes of this Agreement, City's reasonable attorneys' fees shall be based on the fees regularly charged by private attorneys in San Francisco with comparable experience notwithstanding City's use of its own attorneys.

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

ARTICLE 3: TITLE

3.1 Permitted Title Exceptions; Cure of Defects.

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

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

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

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

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

ARTICLE 4: CEQA COMPLIANCE; PROJECT APPROVALS

4.1 CEQA Compliance. On May 10, 2018, the City certified the Central SOMA Final Environmental Impact Report ("**CSEIR**") for the Central SOMA Plan (Case No. 2011.1356E) ("**CSP**") and approved the CSP on December 12, 2018. The City Property is located within the CSP area. The CSEIR included analysis of potential uses of the City Property and zoning and development controls applicable to the City Property and adjoining parcels.

As well, since the Original Effective Date, City has completed Environmental Review with respect to the transactions comprising the proposed Exchange Transaction, including the relocation of the SFPUC's Power Enterprise operations at the City Property and the City Leased Premises to the Port Leased Premises, the transfer of the City Property to Developer, the decommissioning of the HP Tank, and the transfer of the Replacement Property to City. City has not yet determined, however, and, prior to the consummation of the Exchange Transaction, will not determine, the manner of use or development of the Replacement Property by City or the SFPUC once the Exchange Transaction is completed. Prior to any use or development of the Replacement Property by City or the SFPUC, City will comply with all CEQA requirements and conduct all required Environmental Review in connection with any proposed use or development of the Replacement Property subsequently determined by City or the SFPUC.

4.2 Developer Project Approvals; Park Fee Waiver. As of the Amendment Effective Date, Developer acknowledges that City has adopted zoning controls that will permit Developer to implement the Development Project as Developer intends and, except for the Park Fee Waiver, Developer has secured all approvals, entitlements, or authorizations from City or any other governmental entity with jurisdiction (whether as part of the CSP or otherwise), all of which have become final and non-appealable and will permit a first phase consisting of 711,136 square feet of office at the Development Project Area. Notwithstanding the foregoing, Developer will retain discretion not to proceed with the Exchange Transaction unless, on or prior to March 31, 2020, City's Planning Commission, and, if necessary, Board of Supervisors and Mayor, grant the Park Fee Waiver to Developer. If, prior to the earlier of the Closing or March 31, 2020, any the Park Fee Waiver is not granted, or granted with conditions, environmental mitigation measures, alternatives, or modifications unacceptable to Developer in the exercise of Developer's sole and absolute discretion, Developer may terminate this Agreement (together with all other obligations of Developer referred to in this Agreement) after exercising reasonable efforts to remove, ameliorate, or otherwise address such conditions, measures, alternatives, or modifications; provided that Developer's obligation to pay, or reimburse City, to the extent not previously paid, for all of City's Reimbursable Costs.

ARTICLE 5: REPRESENTATIONS AND WARRANTIES

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

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

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

and operation of the Replacement Property between the Reference Date and the Closing Date.

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

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

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

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

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

(h) Developer is an entity duly organized and validly existing under the laws of the State of Delaware and in good standing under the laws of the State of Delaware; this Agreement and all documents executed by Developer that are to be delivered to City at the Closing are, or at the Closing will be, duly authorized, executed, and delivered by Developer, or at the Closing will be, legal, valid, and binding obligations of such Party, enforceable against such Party in accordance with their respective terms, and are, or at the Closing will be, sufficient to convey good and marketable title (if they purport to do so), and do not, and at the Closing will not, violate any provision of any agreement or judicial order to which such Party is a party or to which or the Replacement Property is subject.

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

As used in this Agreement, the term "**Hazardous Material**" shall mean any material that, because of its quantity, concentration, or physical or chemical characteristics, is deemed by any federal, state, or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. "Hazardous Material" include any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as "Superfund" law), as amended, (42 U.S.C. Sections 9601 et seq.) or under Section 25281 or 25316 of the California Health & Safety Code; any "hazardous waste" as defined in Section 25117 or listed under Section 25140 of the California Health & Safety Code (all of such laws are collectively referred to as "**Environmental Laws**"); any asbestos and asbestos containing materials (whether or not such materials are part of the structure of any existing improvements on the Property, any improvements to be constructed on the Property, or are naturally occurring substances on, in, or about the Property); and petroleum, including crude oil or any fraction, and natural gas or natural gas liquids. "Hazardous Material" shall not include any material used or stored at the Property in limited quantities and required in connection with the routine operation and maintenance of the Property, if such use and storage comply with all Applicable Laws relating to the use, storage, disposal, and removal of such material.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.4 City's Indemnity. City, on behalf of itself and its successors and assigns, shall indemnify, defend, and hold harmless Developer, its agents, and their respective successors and assigns from and against any and all Losses, excluding consequential or punitive damages, up to and including an aggregate amount of Two Hundred Fifty Thousand Dollars ($250,000.00) to the

extent resulting from any intentional or negligent breach of City's representations or warranties set forth in this Article 5. The foregoing indemnification shall survive the Closing or any termination of this Agreement for a period of twelve (12) months.

5.5 Hazardous Substance Disclosure. California law requires sellers to disclose to buyers the presence or potential presence of certain Hazardous Materials. Accordingly, each Party is hereby advised that occupation of the other Party's property may lead to exposure to Hazardous Materials such as gasoline, diesel, and other vehicle fluids, vehicle exhaust, office maintenance fluids, tobacco smoke, methane, and building materials containing chemicals, such as formaldehyde. By execution of this Agreement, each Party acknowledges that the notices and warnings set forth above satisfy the requirements of California Health and Safety Code Section 25359.7 and related statutes.

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

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

(a) Review of Survey and Title. City's acceptance of the Replacement Property shall be subject to City's and Escrow Company's review and acceptance of a current ALTA survey or, at City's discretion, a current CLTA survey, of the Replacement Property and any and all other documents relating to title not previously disclosed and reviewed pursuant to Section 2.5, which would allow Escrow Company to issue to City the City Title Policy described in Section 3.2 [Title Insurance] above.

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

(c) Acceptance of the Environmental Condition of the Replacement Property by the SFPUC's Commission After Further Assessment of Replacement Property's Environmental Condition. The SFPUC's Commission's written confirmation of the SFPUC's willingness to proceed with the Exchange Transaction after the SFPUC's review of further assessments of the environmental condition of the City Property, including the Phase 2 ESA.

(d) CEQA Compliance. City's compliance with all Applicable Laws, including CEQA and City's Environmental Quality Regulations (San Francisco Administrative Code Section 31) as described in Section 4.1 [CEQA Compliance], and the granting of all Approvals.

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

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

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

(h) Developer's Performance. Developer shall have performed all of the obligations under this Agreement it is required to perform on or before the Closing, including:

(i) depositing into Escrow City's Reimbursable Costs and any other sums required to be paid by Developer under this Agreement and an FSA (defined below in Section 10.22(b) [First Source Hiring Agreement]) approved by City; and

(ii) issuance to Developer of all Construction Approvals.

(i) Reimbursement Documents. The Parties shall have approved the form of the final Reimbursement Documents as set forth in Section 1.5(c)(iv) [City's Reimbursement Obligation for Construction Costs] (with the amount of Developer's Reimbursable Costs to be determined after the Closing Date and inserted prior to mutual execution and delivery by the Parties as contemplated in Section 1.5(d)(i) [City's Reimbursement Obligation for Construction Costs]).

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

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

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

(m) Execution and Delivery of the License. The Parties have mutually executed and delivered the License.

6.2 Failure of City's Conditions Precedent; Cooperation of Developer. Each City Condition Precedent is intended solely for City's benefit. If any City Condition Precedent is not satisfied by the Closing Date or by the date otherwise provided above, at its sole election and by written notice to Developer, City may extend the date for satisfaction of the condition, waive the condition in whole or part, conditionally waive the condition in whole or in part, or terminate this Agreement. Notwithstanding anything to the contrary in the foregoing, if any such conditional waiver is not acceptable to Developer, at its sole discretion, Developer may reject such conditional waiver, in which event the original City Condition Precedent shall remain effective, and if not satisfied, shall entitle City to terminate this Agreement. If City elects to so terminate this Agreement, then upon any such termination, neither Party shall have any further rights nor obligations hereunder except for those that expressly survive termination of this Agreement, including Developer's obligation to pay, or reimburse City, for all of City's Reimbursable Costs, to the extent not previously paid.

Developer shall cooperate with City and do all acts as may be reasonably requested by City to fulfill any City Condition Precedent, including execution of any documents, applications, or permits. Developer's representations and warranties to City shall not be affected or released by City's waiver or fulfillment of any City Condition Precedent.

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

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

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

(c) CEQA Compliance. City's compliance with all Applicable Laws, including CEQA and City's Environmental Quality Regulations (San Francisco Administrative Code Section 31) as described in Section 4.1 [CEQA Compliance], and the granting of all Approvals.

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

(e) Park Fee Waiver. City's Planning Commission, and, if necessary, Board of Supervisors and Mayor, have granted the Park Fee Waiver as set forth in Section 4.2 [Developer Project Approvals; Park Fee Waiver].

(f) Reimbursement Documents. The Parties shall have approved the form of the final Reimbursement Documents as set forth in Section 1.5(c)(iv) [City's Reimbursement Obligation for Construction Costs] (with the amount of Developer's Reimbursable Costs to be determined after the Closing Date and inserted prior to mutual execution and delivery by the Parties as contemplated in Section 1.5(d)(i) [City's Reimbursement Obligation for Construction Costs].

(g) Construction Approvals. Developer has obtained all Construction Approvals.

(h) Execution and Delivery of the License. The Parties have mutually executed and delivered the License.

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

(j) De-Commission of the HP Tank. At its sole cost and expense, City shall have fully de-commissioned the HP Tank located on the City Property in a manner reasonably satisfactory to Developer and City.

6.4 Failure of Developer Conditions Precedent. Each Developer Condition Precedent is intended solely for the benefit of Developer. If any Developer Condition Precedent is not satisfied on or before the required completion date specified therefor (or by the date otherwise provided above or as such date may be extended as permitted hereby), at its option and by written notice to City, Developer may extend the date for satisfaction of the condition, waive the condition in whole or in part or conditionally waive in whole or in part, in writing the condition precedent or terminate this Agreement. Notwithstanding anything to the contrary in the foregoing, if any such conditional waiver is not acceptable to City, at its sole discretion, City may reject such conditional waiver, in which event the original Developer Condition Precedent shall remain effective, and if not satisfied, shall entitle Developer to terminate this Agreement. If Developer elects to so terminate this Agreement, neither Party shall have any further rights or obligations hereunder except for those that expressly survive the termination of this Agreement, including

Developer's obligation to pay, or reimburse City, for all of City's Reimbursable Costs, to the extent not previously paid, incurred prior to the date of such termination.

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

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

ARTICLE 7: CLOSING

7.1 Closing Date. Subject to the satisfaction of all conditions contained in this Agreement, including the enacting by City of the Closing Authorization Action, "**Closing**" shall mean the consummation, through Escrow Company, of the Exchange Transaction pursuant to the terms and conditions of this Agreement, on a business day mutually agreed upon by City and Developer as the Closing Date but in any event no later than thirty (30) days after the satisfaction of all conditions to Closing set forth in this this Agreement, including those identified in Section 6.1 [City's Conditions Precedent to City Approval of Closing and Acceptance of Replacement Property] and Section 6.3 [Developer Conditions Precedent], as such date may be extended from time to time with the written consent of both Developer and City ("**Closing Date**"); provided, however, in no event shall the Closing Date occur later than May 1, 2020. All funds shall be delivered in cash and immediately available funds to the Escrow Company by the close of business on the business day that is immediately prior to the Closing Date.

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

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

(b) certified copies of the CLDAA Resolution and, if necessary pursuant to Applicable Laws in connection with the authorization of this Agreement, any resolution or ordinance adopted or enacted by City's Board of Supervisors and Mayor that authorizes

City's Director of Property or the SFPUC's General Manager to execute and deliver this Agreement (the "**Amendment CLDAA Resolution**");

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

(d) a copy of the License, duly executed on behalf of City; and

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

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

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

(b) any funds, delivered in cash, that Developer is required to deposit into Escrow in accordance with this Agreement, including:

(i) a FSA approved by City.

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

(iii) City's Reimbursable Costs;

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

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

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

(c) a copy of the License, duly executed on behalf of Developer; and

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

7.4 Duties of Escrow Company at Closing and at Post-Closing Disbursement of Approved Moving Costs and City's Reimbursement Costs.

(a) Duties of Escrow Company at Closing. As of Closing, the Escrow Company shall:

(i) record in the Official Records the following instruments in the following order of recording: **(A)** certified copies of the CLDAA Resolution, the Amendment CLDAA Resolution, the Closing Authorization Action, and any other resolution or ordinance issued by City's Board of Supervisors and Mayor as required pursuant to Section 6.1(e) [Approval by City's SFPUC, Board of Supervisors, and Mayor], **(B)** the City Deed, and **(C)** the Developer Deed;

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

(iii) disburse and pay as appropriate from the sums deposited in Escrow all Closing Costs, transfer taxes, pro-rated real property taxes, and other sums, if any, payable at Closing.

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

(b) Duties of Escrow Company Regarding Post-Closing Disbursement of Approved Moving Costs and City's Reimbursement Costs. After the Closing, Escrow Company shall retain in Escrow the amounts deposited by Developer as City's Reimbursable Costs until the Parties deliver the Moving Costs Invoice to Escrow Company. Promptly thereafter, Escrow Company shall disburse to Developer from the City's Reimbursement Costs held in Escrow the amount of the Approved Moving Costs and disburse the balance of the sums held as City's Reimbursable Expenses, together with any accrued interest thereon, if any, to City.

7.5 Expenses.

(a) Generally. In addition to City's Reimbursable Costs, and any other costs or expenses to be paid by Developer at or prior to Closing (if any), Developer will pay at Closing the following costs ("**Closing Costs**"): **(i)** all premiums and associated costs for the City Title Policy and Developer Title Policy, **(ii)** all survey costs, **(iii)** Escrow costs, and **(iv)** all recording fees arising out of any aspect of the Exchange Transaction.

(b) Transfer Taxes. Developer shall pay the transfer taxes applicable solely to the City Property. Only for purposes of determining city and county transfer taxes, and notwithstanding the fair market value determination of the Replacement Property as calculated in accordance with Section 1.4(b) [Exchange Values; Additional Consideration], the consideration being paid by Developer in connection with the Exchange Transaction shall be deemed to be equal to the fair market value of the City Property as determined in accordance with Section 1.4(a) [Exchange Values; Additional Consideration]. To the extent the actual fair market value of the Replacement Property as determined in accordance with Section 1.4(b) exceeds the fair market value of the City Property as determined in accordance with Section 1.4(a), such additional amount shall be deemed a gift, credited to City at Closing and not subject to documentary transfer tax.

Developer shall have no obligation to pay the transfer taxes, if any, applicable to the Replacement Property.

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

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

7.8 Post-Closing Obligation. Within thirty (30) days after City's delivery of an executed Certificate of Compliance pursuant to Section 1.5(b))(iii) [Completion of Work and City Inspection], City shall **(a)** Vacate and Move and **(b)** deliver possession of the City Property free of occupants, users, and tenants (with realty improvements remaining, but all personalty removed from City Property by Developer).

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

ARTICLE 8: RISK OF LOSS

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

ARTICLE 9: DEFAULT AND REMEDIES

9.1 Default; Right to Specific Performance. If either Party fails to perform its obligations under this Agreement (except as excused by the other Party's default), including a failure to convey the City Property or the Replacement Property at the time and in the manner provided for by this Agreement, at its sole election, the Party claiming default may make written demand for performance. If the Party receiving such demand for performance fails to comply with such written demand within thirty (30) days after receipt of such notice, the Party claiming default will have the option to **(a)** waive such default, **(b)** demand specific performance or pursue any other rights and remedies to which such Party may be entitled either in law or in equity and/or **(c)** terminate this Agreement, in each case by written notice to the defaulting Party. If a Party becomes aware of a default by the other Party under this Agreement before the Closing Date and elects to proceed with the Closing, then the Party that elects to proceed shall be deemed to have waived the default.

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

9.3 Exculpation. Developer's liability arising out of or in connection with this Agreement shall be limited to Developer's assets and any proceeds of insurance policies required of Developer by this Agreement and City shall not look to any property or assets of any direct or indirect partner, member, manager, shareholder, director, officer, principal, employee, or agent of

Developer (collectively, "**Developer Parties**") in seeking either to enforce Developer's obligations or to satisfy a judgment for Developer's failure to perform such obligations and none of the Developer Parties shall be personally liable for the performance of Developer's obligations under this Agreement. In no event shall either Party be liable for, and each Party, on behalf of itself and, to the extent applicable to such Party, its respective officers, employees, elected officials, supervisors, boards, commissions, commissioners, direct or indirect partners, members, managers, shareholders, directors, officers, principals, employees, and agents, hereby waives any claim against the other Party for, any indirect or consequential damages, including loss of profits or business opportunity, arising under or in connection with this Agreement. Further, in no event shall either Party's respective officers, employees, elected officials, supervisors, boards, commissions, commissioners, direct or indirect partners, members, managers, shareholders, directors, officers, principals, employees, or agents be liable to the other Party for any punitive damages provided, however, that neither City nor Developer shall be excused from any punitive damages imposed by a court of competent jurisdiction, after all appeal periods have run with their having been no appeal. Notwithstanding the foregoing, at City's request, Developer will provide security with a value of not less than the sum of City's good-faith estimate of City's Reimbursable Costs for the performance of Developer's obligations pursuant to this Agreement to pay City for City's Reimbursable Costs, which security, at Developer's option and if reasonably acceptable to City, may be provided in a commercially reasonable form by a letter of credit, a performance bond or similar instrument, or a guaranty by an affiliate of Developer (such as the affiliate of Developer which controls the rights to purchase the 598 Brannan Street property).

ARTICLE 10: GENERAL PROVISIONS

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

If to Developer:
2000 Marin Property, L.P.
c/o Tishman Speyer
One Bush Street, Suite 50o
San Francisco, California 94104
Attention: Carl D. Shannon
Telephone: (415) 344-6630
E-mail: CShannon@tishmanspeyer.com

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

If to City:	San Francisco Public Utilities Commission 525 Golden Gate Avenue, 13th Floor San Francisco, CA 94102 Attention: General Manager
With a copy to:	San Francisco Public Utilities Commission Real Estate Services Division 525 Golden Gate Avenue, 10th Floor San Francisco, CA 94102 Attn: Real Estate Director 2000 Marin / 639 Bryant Exchange E-mail: RES@sfwater.org
With a copy to:	Andrico Penick, Director of Property City and County of San Francisco 25 Van Ness Avenue, Suite 400 San Francisco, CA 94102 Telephone: (415) 554-9823 E-mail: andrico.penick@sfgov.org
With a copy to:	Office of the City Attorney Room 234, City Hall 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102 Attn: Richard Handel E-mail: richard.handel@sfcityatty.org Telephone: (415) 554-6760

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

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

10.3 Severability. If any provision of this Agreement, or its application to any Party or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this Agreement or the application of such provision to either Party or any other circumstance, and the remaining portions of this Agreement shall continue in full

force and effect, unless enforcement of this Agreement as so modified by and in response to such invalidation would be unreasonable or grossly inequitable under all of the circumstances or would frustrate the fundamental purposes of this Agreement.

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

10.5 Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective successors, heirs, legal representatives, administrators, and assigns. Developer may assign this Agreement to any party with City's consent, which shall not be unreasonably withheld or delayed so long as the proposed assignee provides sufficient security, or demonstrates its means, to City's reasonable satisfaction, to secure Developer's obligations to perform its obligations under this Agreement, including payment of City's Reimbursable Costs, to the extent not previously paid and not payable or secured by insurance to be provided by Developer pursuant to, or in connection with, this Agreement). In addition, at its sole discretion, Developer may designate another party to take title to the City Property at the Closing.

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

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

10.8 Applicable Laws. "**Applicable Laws**" shall mean all present and future applicable laws, ordinances, rules, regulations, resolutions, statutes, permits, authorizations, orders, requirements, covenants, conditions, and restrictions, whether or not in the contemplation of the Parties, that may affect or be applicable to the Property or any part of the Property (including any subsurface area) or the use of the Property. "Applicable Laws" shall include any environmental, earthquake, life safety and disability laws, and all consents or approvals required to be obtained from, and all rules and regulations of, and all building and zoning laws of, all federal, state, county and municipal governments, the departments, bureaus, agencies or commissions thereof, authorities, board of officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions, having or acquiring jurisdiction of the City Property or the Replacement Property, as applicable. The term "Applicable Law" shall be construed to mean the same as the above in the singular as well as the plural.

10.9 No Brokers or Finders. Each Party warrants to the other Party that, other than developer's broker, who has been identified by Developer to City ("**Developer's Broker**"), who will be paid by Developer at Closing, no other broker or finder was instrumental in arranging or bringing about this transaction and that there are no claims or rights for brokerage commissions or finder's fees in connection with the transactions contemplated by this Agreement. If any other party brings a claim for a commission or finder's fee based on any contact, dealings, or communication with Developer (including any claim asserted by Developer's Broker relating in any way to the Exchange Transaction or this Agreement) or City, then the Party through whom

such party makes a claim shall defend the other Party(ies) from such claim, and shall indemnify, protect, defend, and hold harmless the indemnified Party from any Losses that the indemnified Party incurs in defending against the claim. The provisions of this Section shall survive the Closing, or, if the conveyance is not consummated for any reason, any termination of this Agreement.

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

10.11 Interpretation of Agreement.

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

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

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

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

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

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

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

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

10.15 Parties and Their Agents. As used in this Agreement, the term "**Agents**" when used with respect to either Party shall include the agents, employees, officers, contractors, and representatives of such Party. Developer is comprised of more than one party, and Developer's obligations under this Agreement shall be joint and several among such parties.

10.16 Attorneys' Fees. If either Party fails to perform any of its respective obligations under this Agreement or if any dispute arises between the Parties concerning the meaning or interpretation of any provision of this Agreement, then the defaulting Party or the Party not prevailing in such dispute, as the case may be, shall pay any and all reasonable Attorneys' Fees and Costs incurred by the other Party on account of such default or in enforcing or establishing its rights under this Agreement, including court costs. Any such Attorneys' Fees and Costs incurred by either Party in enforcing a judgment in its favor under this Agreement shall be recoverable separately from and in addition to any other amount included in such judgment, and such Attorneys' Fees and Costs obligation is intended to be severable from the other provisions of this Agreement and to survive and not be merged into any such judgment. For purposes of this Agreement, the reasonable fees of attorneys of the Office of City Attorney of the City and County of San Francisco shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which such services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney's Office.

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

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

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

10.20 MacBride Principles - Northern Ireland. City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide

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

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

10.22 First Source Hiring Program.

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

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

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

(ii) Set first source interviewing, recruitment, and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco

Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed ten (10) days. During that period, the employer may publicize the entry level positions in accordance with the FSA. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

(iii) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

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

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

(vi) Set the term of the requirements.

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

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

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

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

(e) Liquidated Damages. Developer agrees:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10.24 Prohibition Against Making Contributions to City; Notification of Limitations on Contributions. Through its execution of this Agreement, Developer acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with City for the selling or leasing of any land or building to or from City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to **(a)** the City elective officer, **(b)** a candidate for the office held by such individual, or **(c)** a committee controlled by such individual

or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Developer acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of $50,000 or more. Developer further acknowledges that the prohibition on contributions applies to each Developer; each member of Developer's board of directors, and Developer's chief executive officer, chief financial officer, and chief operating officer; any person with an ownership interest of more than twenty percent (20%) in Developer; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Developer. Additionally, Developer acknowledges that Developer must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Developer further agrees to provide to City the names of each person, entity, or committee described above.

10.25 Amendment Effective Date; Original Effective Date. The effective date of the Original CLDAA (the "**Original Effective Date**") was October 9, 2018. This Agreement shall become effective upon the business first day ("**Amendment Effective Date**") on which each of the following events has occurred: **(a)** the Parties have duly executed and delivered this Agreement, and **(b)** the City Approval Condition (as defined below) has been satisfied. The Parties shall confirm in writing the Amendment Effective Date of this Agreement once such date has been established pursuant to this Section; provided, however, the failure of the Parties to confirm such date in writing shall not have any effect on the validity of this Agreement. Where used in this Agreement or in any of its attachments, references to "**Amendment Effective Date**" will mean the Amendment Effective Date as established and confirmed by the Parties pursuant to this Section.

10.26 Supersession and Replacement of Original CLDAA. As of the Amendment Effective Date, this Agreement shall immediately supersede and replace the Original CLDAA and the terms and conditions of the Original CLDAA shall have no further force or effect. If the terms and conditions of the Original CLDAA conflict with the terms and conditions of this Agreement, the terms and conditions of this Agreement shall prevail.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, DEVELOPER ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS AGREEMENT UNLESS AND UNTIL A RESOLUTION OR ORDINANCE OF CITY'S BOARD OF SUPERVISORS THAT APPROVES OF THIS AGREEMENT AND AUTHORIZES THE TRANSACTIONS CONTEMPLATED HEREBY HAS BEEN DULY ENACTED. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY UNDER THIS AGREEMENT ARE CONTINGENT UPON THE DUE ENACTMENT OF SUCH A RESOLUTION OR ORDINANCE ("**CITY APPROVAL CONDITION**"), AND THIS AGREEMENT SHALL BE NULL AND VOID IF CITY'S BOARD OF SUPERVISORS AND MAYOR DO NOT APPROVE THIS AGREEMENT AT THEIR RESPECTIVE SOLE DISCRETION. SIMILARLY, NOTWITHSTANDING SATISFACTION OF THE CITY APPROVAL CONDITION, NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THE CLOSING OF THE EXCHANGE TRANSACTION CONTEMPLATED BY THIS AGREEMENT UNLESS AND UNTIL A RESOLUTION OR

ORDINANCE OF CITY'S BOARD OF SUPERVISORS THAT APPROVES OF AND AUTHORIZES THE CLOSING AND THE CONSUMMATION OF THE EXCHANGE TRANSACTION HAS BEEN DULY ENACTED. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY UNDER THIS AGREEMENT ARE CONTINGENT UPON THE DUE ENACTMENT OF SUCH RESOLUTIONS OR ORDINANCES AND APPROVAL OF THE TRANSACTIONS CONTEMPLATED HEREBY BY ANY EMPLOYEES, DEPARTMENTS, OR COMMISSIONS OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTIONS OR ORDINANCES WILL BE ENACTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

[Signature page follows]

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

DEVELOPER:

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

Date: _____, 2018

By: _____
Name: _____
Its: _____

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

Date: _____, 2018

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

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Richard Handel, Deputy City Attorney

[CONSENT OF ESCROW COMPANY ON FOLLOWING PAGE]

CONSENT OF ESCROW COMPANY:

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

ESCROW COMPANY: CHICAGO TITLE INSURANCE COMPANY

By: _____
Its: _____
Date: _____

EXHIBIT A

CITY PROPERTY LEGAL DESCRIPTION

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

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

EXHIBIT B

REPLACEMENT PROPERTY LEGAL DESCRIPTION

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

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

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

APN: Block 4346, Lot 003

EXHIBIT C

REPLACEMENT PROPERTY DOCUMENTS

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

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

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

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

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

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

24. Supplemental Phase II Investigation 1901 Cesar Chavez dated June 27, 2012 prepared for Rutan & Tucker by Stechmann Geoscience, Inc.

25. Geotechnical Engineering Investigation dated August 8, 2013. Prepared for Home Depot U.S.A., Inc by Moore Twining

26. 2000 Marin Phase II Environmental Investigation Report prepared for DLA Piper by Ramboll dated June 3, 2019

27. 2000 Marin Phase I Environmental Site Assessment prepared for Tishman Speyer by Ramboll dated September 19, 2019

28. Draft Five-Year Review The San Francisco Chronicle 1901 Cesar Chavez San Francisco, California prepared by Ramboll dated November 06, 2018.

29. 2000 Marin Street Property Condition Assessment Report prepared for Tishman Speyer by Thornton Tomasetti dated December 2, 2014

30. 2000 Marin Street Building Materials Survey Report prepared for 2000 Marin Property, L.P. by Ramboll and Terracon dated August 9, 2019

31. San Francisco Newspaper Agency Site Annual Inspection Report to DTSC, dated July 18, 2019

EXHIBIT D

FORM OF CITY DEED

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

_____

_____

_____

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

_____

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

QUITCLAIM DEED
(Assessor's Parcel No. _____)

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

Executed as of _____, 201_.

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

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

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

State of California)
) ss
County of San Francisco)

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

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

Witness my hand and official seal.

Signature _____ (Seal)

EXHIBIT 1 TO CITY DEED

LEGAL DESCRIPTION

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

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

EXHIBIT E

FORM OF DEVELOPER DEED

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

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

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

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

GRANT DEED
(Assessor's Parcel No. _____)

The undersigned grantor declares:

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

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

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

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

Executed as of _____.

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

By: _____
Name: _____
Its: _____

CERTIFICATE OF ACCEPTANCE

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

Dated: _____

By: _____
Andrico Penick, Director of Property

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

State of California)
) ss
County of San Francisco)

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

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

Witness my hand and official seal.

Signature _____ (Seal)

EXHIBIT 1 TO DEVELOPER DEED

LEGAL DESCRIPTION

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

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

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

APN: Block 4346, Lot 003

EXHIBIT F

SCOPE OF CONSTRUCTION OF TENANT IMPROVEMENTS

Pursuant to Section 1.5 of this Agreement, Developer shall complete the following improvements (**"Tenant Improvements"**) in and on the Port Leased Premises:

1. Developer shall modify the existing space within the tenant area (noted on F-1) of the second floor of the Roundhouse Two Building of Seawall Lot 318, San Francisco (the "**Roundhouse Premises**") to provide, at a minimum, the following;

(a) no less than eight (8) offices, fifteen (15) cubicles, and one (1) workstation with 48" desktop for plan review;

(b) one (1) large conference room with seating for approximately forty employees;

(c) one (1) copy room with one (1) extra dedicated 4plex electrical;

(d) two (2) restrooms, each with two-(2) stalls, and one (1) gender neutral restroom with one (1) stall;

(e) All plumbing and associated infrastructure necessary for City's current washing machines;

(f) One (1) IDF closet with appropriate electrical, venting, and sufficient space for SFPUC provided networking equipment; UPS, and battery backup.

(g) Fiber access cabling from IDF closet to City's Fiber network;

(h) One (1) kitchenette with sink, refrigerator, microwave; and dishwasher;

(i) Telecommunication wiring with no less than two (2) data-jacks per office and workstation, as well as wiring for conference and AV equipment in the conference room; Cat 6 or better labeled wiring from each data outlet to IDF closet;

(j) Office furniture will be moved from the City Leased Premises when feasible, or replaced with used furniture of similar or higher quality;

(k) Fifteen (15) electric panel workstations that are at least 6' x 9' (with an electric Sit/Stand work surface, box, box file cabinet, and overhead shelf and each equipped with least two (2) outlets on separate circuits) and of a quality that is at least comparable to Herman Miller OS 2 with grade 2 fabric quality;

(l) Not less than 7 HVAC zones with no air-supply vents located over desks or workstations;

(m) Not less than (1) fourplex electrical and (1) duplex data outlet for each room of 99 useable square feet or less, (2) fourplex electrical and duplex data outlet

for each room of 100 - 299 useable square feet or less, and (3) fourplex electrical and duplex data outlet for each room of 300 useable square feet or greater;

(n) Installation of moved existing AV equipment, and installation of corresponding wall backing and outlets;

(o) Front door, number lockset, and two (2) doors with interior locks;

(p) Carpet squares and interior paint throughout all portions of the Roundhouse Premises; and

(q) Any other additional improvements as required to cause the Roundhouse Premises to have comparable functionality as that currently enjoyed at the City Property and the City Leased Premises.

2. Developer shall modify the existing space within the tenant area (noted on F-1) consisting of the 87,363 square feet of shed space at Pier 23, San Francisco (the "**Pier 23 Premises**") to provide for the following;

(a) One (1) highly secure motorized swing gate at the entrance of Pier 23 which provides sufficient clearance for SFPUC service vehicles;

(b) One (1) men and one (1) women locker changing area that will include privacy fencing and include warehouse heating plus any other area required to meet City's All Gender Ordinance requirements;

(c) All plumbing and associated infrastructure necessary for City's current washing machines

(d) One (1) secure morning meeting area that includes space for approximately forty (40) employees, three (3) computer kiosks, and one (1) caged and locked IDF closet with adequate room for SFPUC provided networking equipment;

(e) Fiber access from IDF closet to City Fiber network;

(f) Warehouse racks and bins sufficient to store all currently racked and/or binned materials present at the City Property and the City Leased Premises;

(g) Laydown area sufficient to store all current laydown materials present at the City Property and the City Leased Premises;

(h) Minimum two (2) 240V, 30 amp receptacles for compressors;

(i) Minimum two (2) electric car charging stations;

(j) Parking for approximately forty-five (45) standard passenger cars, and six (6) SFPUC service trucks;

(k) A heated area for three (3) workstations;

(l) three (3) 96"x30" work benches similar to ULINE Model H-6343-WOOD, and six (6) duplex receptacles for work bench area;

(m) Removal or securing of storefront doors and windows, and securing of all other doors;

(n) Repairs to the exterior of the Pier 23 Premises as necessary to secure the facility;

(o) Telecommunication wiring with no less than two (2) data-jacks per computer kiosk and workstation, as well as wiring for the morning meeting area;

(p) all furniture, fixtures and equipment necessary to support warehouse operations;

(q) Lighting as necessary to ensure safe working environment;

(r) Fire life safety upgrades as required by the Port;

(s) A number punch code access system at the front door of the Pier 23 Premises;

(t) Camera security system with sufficient coverage of exterior of Pier 23;

(u) Alarm system on all doors/ windows; and

(v) Any other additional improvements as required to cause the Pier 23 Premises to have the same functionality as that currently enjoyed at the City Property and the City Leased Premises.

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

3. Upon completion of Developer's Work, Developer shall cause all debris to be removed, and cause the Port Leased Premises and any other City property affected by Developer's Work to be restored to its original condition to City's satisfaction.

4. Developer shall conduct and cause Developer's Work to be conducted in a safe and reasonable manner and in compliance with all Applicable Laws and industry standards.

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

EXHIBIT F-1

DEPICTION OF PORT LEASED PREMISES

EXHIBIT G

FORM OF CERTIFICATE OF COMPLIANCE

FOR

TENANT IMPROVEMENTS

The City and County of San Francisco, a California municipal corporation ("**City**") delivers this Certificate of Compliance to 2000 Marin Property, L.P., a Delaware limited partnership ("**Developer**") in connection with the "Tenant Improvements" described in that certain Amended and Restated Conditional Land Disposition and Acquisition Agreement entered into by and between City and Developer as of _____, 2019 (the "**CLDAA**"). Any defined term used in this Certificate that is not otherwise defined shall have the meaning attributed to such defined term in the CLDAA.

Pursuant to Section 1.5(b) [Developer's Work] of the CLDAA, City hereby certifies to Developer, in connection with the completion of the Tenant Improvements, that:

1. City (**a**) acknowledges receipt of the Completion Notice or Final Completion Notice, as applicable, (**b**) has inspected the completed Tenant Improvements, and (**c**) subject to Punch List items and latent defects, hereby approves the Tenant Improvements unconditionally and agrees that there are no conditions or impediments for City to Vacate and Move;

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

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

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

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

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

By: _____
Andrico Penick,
Director of Property

EXHIBIT H

FORM OF LICENSE

LICENSE TO OCCUPY PROPERTY

This LICENSE (this "**License**"), dated as of _____, 2020, is made by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**"), acting by and through its Public Utilities Commission ("**SFPUC**"), and 2000 MARIN PROPERTY, L.P., a Delaware limited partnership ("**Licensor**").

RECITALS

A. Pursuant to that certain Amended and Restated Conditional Land Disposition and Acquisition Agreement dated as of _____, 20__ (the "**CLDAA**"), Licensor acquired from City that certain real property and improvements located at 639 Bryant Street (Block 3777, Lot 052) in San Francisco, California (the "**Property**"), as more particularly described in the attached **Exhibit A**. Capitalized terms not otherwise defined in this License shall have the meaning assigned to such terms in the CLDAA.

B. Prior to the transfer of the Property by City to Licensor, the SFPUC has used, and continues to use, the Property for an industrial yard serving the SFPUC's Power Enterprise. Pursuant to the CLDAA, Licensor and City agreed that, until the Moving Date, the SFPUC and its agents, employees, and contractors may continue to occupy and use the Property on a rent-free basis for use as an industrial yard serving the SFPUC's Power Enterprise.

C. City and Licensor desire to enter into this License to provide for the terms and conditions of the SFPUC's use and occupancy of the Property until the Moving Services have been completed and City Vacates and Moves from the Property to the Port Leased Premises.

LICENSE

NOW, THEREFORE, in consideration of the foregoing covenants, promises, and undertakings set forth in this License, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and Licensor agree as follows:

1. LICENSE

At all times during the term of this License, the SFPUC and its agents, employees, contractors, subcontractors, representatives, and other persons designated by the SFPUC, including their respective employees (collectively, its "**Agents**") may occupy and use the Property for an industrial yard and related purposes consistent with the SFPUC's use of the Property prior to the date of this License, subject to, and in accordance with, the terms and conditions of this License. City acknowledges and agrees that City owned the Property prior to its conveyance to Licensor and, accordingly, City accepts the Property in its "AS IS" condition as of the Closing Date. Licensor has not made nor does Licensor make any representations or promises with respect to the Property. Licensor shall have no obligation to **(a)** perform any work or otherwise prepare the Property for use by the SFPUC and its Agents, or **(b)** provide any services or utilities to the Property, and for purposes of clarity, City shall pay all costs and expenses of services and utilities provided to the Property during the term of this License. This License gives City a license only

and notwithstanding anything to the contrary in this License, it does not constitute a grant by Licensor of any ownership, easement, or other property interest or estate whatsoever in any portion of the License Area. Nothing in this License shall be construed as granting or creating any franchise rights pursuant to any federal, state, or local laws.

2. TERM OF LICENSE

The term of this License is temporary only and shall commence on the Closing Date and shall continue until Licensor completes its performance of the Moving Services as contemplated in the CLDAA.

3. RENT

There shall be no rent, fees, or other monetary compensation payable by City to Licensor in connection with City's occupancy and use of the Property pursuant to this License.

4. COMPLIANCE WITH LAWS

City shall conduct and cause to be conducted all activities on the Property allowed by this License in a safe and prudent manner and in compliance with all applicable laws, regulations, codes, ordinances, and orders of any governmental or other regulatory entity with jurisdiction over the Property or the activities permitted by this License on the Property.

5. INDEMNITY

City shall indemnify, defend, and hold harmless Licensor 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**"), to the extent arising directly out of **(i)** the activities of City or its Agents under this License, **(b)** the negligence or willful misconduct of City, the SFPUC, or their respective Agents, licensees, or invitees, or **(c)** breach of this License by City or the SFPUC, except to the extent of Losses caused by the negligence or willful misconduct of Licensor or Licensor's authorized representatives. City assumes the risk of damage to any of City's personal property, except for damage caused by the negligence or willful misconduct of the Licensor or its Agents.

6. REPAIR OF DAMAGE

If any portion of the Property is damaged by any of the activities conducted by City or its Agents pursuant to this License, at its sole cost, City shall repair any and all such damage and restore the Property to its previous condition.

7. NO JOINT VENTURES OR PARTNERSHIP; NO AUTHORIZATION

This License does not create a partnership or joint venture between City and/or the SFPUC, on one hand, and Licensor, on the other hand, as to any activity conducted by City or the SFPUC on, in, or in relation to the Property. This License does not constitute authorization or approval by Licensor of any activity conducted by Licensor on, in, around, or relating to the Property.

8. CITY'S SELF-INSURANCE

Licensor acknowledges that City maintains a program of self-insurance and agrees that City shall not be required to carry any insurance with respect to this License. City assumes the risk of damage to any of City's personal property, except for damage caused by the negligence or willful misconduct of Licensor or its Agents.

9. NO ASSIGNMENT

City will not assign its rights or delegate its duties under this License (whether by assignment, transfer, operation of law or otherwise) or permit the Property or any part thereof to be occupied or used by any person or entity other than the SFPUC and its Agents.

10. ACCESS BY LICENSOR

Licensor and its Agents will have the right, from time to time throughout the term of this License, to enter any portion of the Property at all reasonable times to examine the same, to show the same to prospective purchasers, mortgagees, or lessees, and to make such repairs (at City's sole cost and expense) that Licensor may elect to perform following City's failure to comply with the terms of Section 6 above. Subject to the provisions of Section 5 above, none of the foregoing shall give rise to any liability on the part of Licensor. Any entry by Licensor shall be made in a manner designed to minimize interference with use of the Property by the SFPUC and its Agents.

11. LIMITATION ON LICENSOR'S LIABILITY

The liability of Licensor for Licensor's obligations under this License and any other documents executed by Licensor and City in connection with this License (collectively, the "**License Documents**") shall be limited to Licensor's interest in the Property and City shall not look to any other property or assets of Licensor or the property or assets of any of Licensor's direct or indirect partners, members, managers, shareholders, officers, directors, principals, employees, agents or contractors (collectively, the "**Licensor Parties**") in seeking either to enforce Licensor's obligations under the License Documents or to satisfy a judgment for Licensor's failure to perform such obligations; and none of the Licensor Parties shall be personally liable for the performance of Licensor's obligations under the License Documents.

12. NOTICES

Any notices given under this License 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 nationally-recognized overnight courier that provides next day delivery and provides a receipt therefor, with postage prepaid, addressed as follows (or such alternative address as may be provided in writing):

If to Licensor: 2000 Marin Property, L.P.
c/o Tishman Speyer
One Bush Street, Suite 500
San Francisco, California 94104
Attention: Carl D. Shannon
Telephone: (415) 344-6630
E-mail: CShannon@TishmanSpeyer.com

With a copy to:	DLA Piper LLP (US) 555 Mission Street, Suite 2400 San Francisco, California 94105 Attn: Stephen Cowan, Esq. Telephone: (415) 615-6000 E-mail: stephen.cowan@dlapiper.com
If to City:	San Francisco Public Utilities Commission 525 Golden Gate Avenue, 13th Floor San Francisco, CA 94102 Attention: General Manager
With a copy to:	San Francisco Public Utilities Commission Real Estate Services Division 525 Golden Gate Avenue, 10th Floor San Francisco, CA 94102 Attn: Real Estate Director 2000 Marin / 639 Bryant Exchange E-mail: RES@sfwater.org
With a copy to:	Andrico Penick, Director of Property City and County of San Francisco 25 Van Ness Ave. Suite 400 San Francisco, CA 94102 Telephone: (415) 554-9823 E-mail: andrico.penick@sfgov.org
With a copy to:	Office of the City Attorney Room 234, City Hall 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102 Attn: Richard Handel E-mail: richard.handel@sfcityatty.org Telephone: (415) 554-6760

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

13. MACBRIDE PRINCIPLES - NORTHERN IRELAND

The provisions of San Francisco Administrative Code §12F are incorporated into this License and made part of this License. By signing this License, Licensor confirms that Licensor has read and understood that City urges companies doing business in Northern Ireland to resolve employment

inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

14. TROPICAL HARDWOOD AND VIRGIN REDWOOD BAN

City urges companies not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product, except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code.

15. DISCLOSURE

Licensor understands and agrees that the City's Sunshine Ordinance (San Francisco Administrative Code Chapter 67) and the State Public Records Law (Gov't Code Sections 6250 et seq.) apply to this License and any and all records, information, and materials submitted to City in connection with this License. Accordingly, any and all such records, information, and materials may be subject to public disclosure in accordance with City's Sunshine Ordinance and the State Public Records Law. Licensor hereby authorizes City to disclose any records, information, and materials submitted to the City in connection with this License.

16. CONFLICT OF INTEREST

Through its execution of this License, Licensor acknowledges that it is familiar with the provisions of **(a)** Article III, San Francisco Campaign and Governmental Conduct Code, Chapter 2; and **(b)** California Government Code Sections 87100 et seq. and Sections 1090 et seq. and certifies that it does not know of any facts which would constitute a violation of such provisions, and agrees that if Licensor becomes aware of any such fact during the term of this License, Licensor shall immediately notify City.

17. NOTIFICATION OF LIMITATIONS ON CONTRIBUTIONS

Through its execution of this License, Licensor acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with City for the selling or leasing of any land or building to or from City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that City elective officer serves, from making any campaign contribution to **(a)** the City elective officer, **(b)** a candidate for the office held by such individual, or **(c)** a committee controlled by such individual or candidate, at any time from the 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. Licensor 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. Licensor further acknowledges that the prohibition on contributions applies to each Licensor; each member of Licensor's board of directors, and Licensor's chief executive officer, chief financial officer, and chief operating officer; any person with an ownership interest of more than twenty percent (20%) in Licensor; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Licensor. Additionally, Licensor acknowledges that Licensor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Licensor further agrees to provide to City the names of each person, entity, or committee described above.

18. FOOD SERVICE WASTE REDUCTION ORDINANCE

During the term of this License, in connection with City's occupancy and use of the Property, Licensor shall comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in the San Francisco Environment Code, Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this License as though fully set forth. This provision is a material term of this License.

19. SUGAR-SWEETENED BEVERAGE PROHIBITION

City will not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this License.

20. GENERAL PROVISIONS

(a) This License may be amended or modified only by a writing signed by City and Licensor. **(b)** No waiver by any party of any of the provisions of this License 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. No waiver shall be deemed a subsequent or continuing waiver of the same, or any other, provision of this License. **(c)** This instrument (including the attached exhibit(s)) contains the entire License between the parties and all prior written or oral negotiations, discussions, understandings and licenses with respect to City's occupancy and use of the Property after the Closing Date are merged into this License. **(d)** The sections and other headings of this License are for convenience of reference only and shall be disregarded in the interpretation of this License. **(e)** Time is of the essence in all matters relating to this License. **(f)** This License shall be governed by California law and the City's Charter. **(g)** If either party commences an action against the other or a dispute arises under this License, the prevailing party shall be entitled to recover from the other reasonable attorneys' fees and costs. For purposes of this License and for purposes of the indemnifications set forth in this License, City's reasonable attorneys' fees shall be based on the fees regularly charged by private attorneys in San Francisco with comparable experience notwithstanding City's use of its own attorneys. **(h)** This License may be executed in counterparts, each of which is deemed to be an original, and all such counterparts constitute one and the same instrument.

[SIGNATURES ON FOLLOWING PAGE]

In witness whereof, City and Licensor have executed this License on the date set forth below, effective as of the date first set forth above.

LICENSOR:

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

By: _____

Name: _____

Dated: _____

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
HARLAN L. KELLY, JR.
General Manager
San Francisco Public Utilities Commission

Dated: _____

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By: _____
Richard Handel
Deputy City Attorney

EXHIBIT A

Property Description

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

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

PUBLIC UTILITIES COMMISSI

City and County of San Francisco

RESOLUTION NO. 19-0227

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

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

WHEREAS, The SFPUC leases adjacent property at 651 Bryant Street, Block 3777, Lot 050 (City Leased Premises), for related SFPUC office and warehouse purposes under a lease that expires on October 18, 2029; and

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

WHEREAS, 2000 Marin, L.P., a Delaware limited partnership (Developer), owns certain real property known as 2000 Marin Street, Block 4346, Lot 003 (2000 Marin), an approximately 7.98-acre parcel with a 74,000-square foot building built in 1989; and

WHEREAS, The Developer proposes to acquire the City Property in exchange for 2000 Marin, and seeks to develop a mixed-use project on the City Property, the City Leased Premises, and other adjacent parcels the Developer proposes to acquire from third parties (Developer's Project); and

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

WHEREAS, The Central SOMA Plan was approved by the CityPlanning Commission on May 10, 2018 and approved by the Board of Supervisors on December 4, 2018; and

WHEREAS, This Commission has reviewed relevant portions of the Central SoMa EIR, and the Community Plan Evaluation (CPE) certificate prepared for the 598 Brannan Street development project, which includes the 639 Bryant Street site and 2000 Marin Street property exchange. These documents have been available for this Commission's review as well as public review; and

WHEREAS, In approving the Central SoMa Plan, the Planning Commission adopted CEQA findings in its Resolution No. 20183. The Planning Commission also adopted CEQA findings in its Motion No. 20459 when it approved the 598 Brannan Street Project, which included the 639 Bryant Street site and the 2000 Marin Street property exchange. This Commissionhereby incorporates the CEQA findings contained in Resolution No. 20183 and Motion No. 20459, including the MMRP, by this reference thereto as though set forth herein in their entirety;and

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

WHEREAS, City and Developer executed and delivered a Conditional Land Disposition and Acquisition Agreement (Original Agreement) dated as of August 1, 2018 to establish a framework for the exchange of the City Property for 2000 Marin (Exchange Transaction) and to state the terms and conditions under which the Exchange Transaction would occur, subject to all necessary approvals and environmental review required by the California Environmental Quality Act (CEQA), and other applicable laws; and

WHEREAS, The SFPUC authorized its General Manager to execute and deliver the Original Agreement pursuant to SFPUC Resolution No. 18-0121, and pursuant to Resolution No. 218-18, File No. 180550, City's Board of Supervisors and Mayor authorized City's Director of Property and/or the General Manager to execute and deliver the Original Agreement; and

WHEREAS, The Original Agreement was made effective on October 9, 2018 (Original Effective Date); and

WHEREAS, The Developer and the SFPUC propose entering into an Amended and Restated Land Disposition and Acquisition Agreement (Amended Agreement) for the Exchange Transaction, a copy of which has been presented to this Commission and is on file with the Commission Secretary; and

WHEREAS, 2000 Marin has soil contamination and pursuant to a deed covenant, 2000 Marin is subject to oversight by the California Department of Toxic Substance Control (DTSC). Any disturbance of the existing four-inch to 12-inch thick asphalt concrete cap requires DTSC consent and oversight and could require environmental remediation, the costs of which would depend on the extent of the soil disturbance; and

WHEREAS, Under both the Original Agreement and the Amended Agreement, the SFPUC must pay for any hazardous materials remediation costs that it may incur in connection with its future development of 2000 Marin. A separate deed covenant prevents any post-2015 owner of 2000 Marin from bringing claims arising from the soils contamination against prior owners of the property; and

WHEREAS, In accordance with the requirements of the Original Agreement, in May 2019, the environmental consulting firm Ramboll completed a Phase II Site Investigation of 2000 Marin (Phase II Report) based upon a proposed conceptual scope of work for a potential use for the site; and

WHEREAS, Ramboll took 33 soil samples from 12 borings and submitted them for chemical analyses. Based on the analyses results, Ramboll determined that approximately 30% of the soil samples (9 of 33 samples) are classified as "hazardous waste" under the Resource Conservation and Recovery Act (RCRA), 30% of the soil samples (10 of 33 samples) are classified as non-hazardous waste under the RCRA but as hazardous waste under California law, and the

remaining 40% of the soils samples are classified as non-hazardous waste suitable for disposal at a Class II Landfill; and

WHEREAS, The SFPUC retained TRC Solutions, Inc. (TRC), an environmental and engineering firm, to review the results of the Phase II Report. TRC took no issue with the Phase II Report sampling and results and issued a report dated June 20, 2019 which compiled a $10,040,175 engineering cost estimate (Environmental Cost Estimate) to transport and dispose of the soil generated. TRC based its estimate on the remediation required for a proposed conceptual scope of work at 2000 Marin but those costs may ultimately be more or less depending on SFPUC's final plans for use of the site, which has not yet been determined; and

WHEREAS, On November 19, 2019, the Planning Department determined that the relocation of SFPUC's Power Enterprise Utility Field Services to Port property is exempt from the CEQA Guidelines Section 15301, Class 1 (Existing Conditions); and

WHEREAS, In addition to providing for the Exchange Transaction, the Amended Agreement also provides that:

1. The Developer will construct and install new tenant improvements for the SFPUC at Port leased facilities at Pier 23 and the Roundhouse Two (together, the Port Leased Premises.) The SFPUC desires such facilities to be temporary to give the SFPUC time (a) to undertake a long-term facility master planning process to determine the optimal use of 2000 Marin and other SFPUC property in the City and the scope of improvements necessary for such use, including improvements for the expanding Power Enterprise operations, and (b) to identify adequate funding for such improvements. The Developer will pay up to $2,700,000 for the costs of installing and constructing tenant improvements at the Port Leased Premises. City will reimburse the Developer for any tenant improvement costs above $2,700,000.

2. Promptly after the completion of the tenant improvements at the Port Leased Premises, and the City's acceptance of the tenant improvements, on a date mutually agreeable to the parties (Moving Date), the Developer will provide all services necessary (Moving Services), to move the Power Enterprise's personal property and equipment from the City Property and the City Leased Premises to the Port Leased Premises. The City will reimburse the Developer for its approved costs incurred in connection with the Moving Services.

3. Because the SFPUC's obligation to pay rent to the Port for the Port Leased Premises will commence on March 1, 2020 (Port Commencement Date), the Developer will either waive or reimburse the City for any rent or other payments required under the 651 Lease on or after the Port Commencement Date in order to prevent City from having to simultaneously pay rent for both the City Leased Premises and the Port Leased Premises. If the Developer acquires the City Leased Premises prior to close of escrow for the Exchange Transaction (Close of Escrow) and therefore becomes the City's landlord, the Developer will allow the SFPUC to occupy the City Leased Premises free of charge from the Port Commencement Date through the Moving Date. If the Developer does not acquire the City Leased Premises

prior to Close of Escrow, the Developer will pay or reimburse City for, and indemnify and hold City harmless from, all rent and other sums payable under the 651 Lease with respect to the period from and after the earlier of the Moving Date or the Port Commencement Date otherwise payable by City to the landlord of the City Leased Premises.

4. The Developer will deposit into escrow at the closing of the Exchange Transaction a flat sum of $1,000,000 (Transaction Costs) for the City's reimbursable expenses arising from the Exchange Transaction and the Developer's approved costs incurred in moving the SFPUC from the City Property and the City Leased Premises to the Port Leased Premises. After the Developer moves the SFPUC from City Property and the City Leased Premises, the Developer's agreed-upon moving costs will be disbursed to the Developer from the sums deposited in escrow and the balance of funds held in escrow will be disbursed to the City. City's Transaction Costs include **(a)** City's attorney's fees for negotiation and preparation of the Exchange Transaction documents; **(b)** City's costs incurred to investigate the physical condition, title, and suitability of 2000 Marin for City's use; **(c)** City's appraisal fees; **(d)** City's personnel, consultant, and other environmental review costs and fees; and **(e)** City's title insurance, escrow costs and other closing costs to acquire 2000 Marin. The Developer's obligation to pay the $1,000,000 will survive the termination or cancellation of the Amended Agreement.

6. The SFPUC will decommission the HP Tank on the City Property at its sole cost by abandoning it in place prior to Close of Escrow. The SFPUC has not determined if, where, or when a replacement HP tank will be installed. The SFPUC may seek to place a new hydrogen peroxide tank on land owned by the California Department of Transportation (Caltrans) which is located on or adjacent to Harrison Street, San Francisco between Merlin Street and Morris Street (Merlin Morris Site), or another suitable nearby site. The Developer has a professional relationship with Caltrans. If the SFPUC seeks to place a new hydrogen peroxide tank on or adjacent to the Merlin Morris Site or another suitable site owned by Caltrans, as further consideration to the SFPUC, and at Developer's sole expense, the Developer will use commercially reasonable efforts to obtain from Caltrans its complete authorization for the SFPUC's placement of a new hydrogen peroxide tank on the Merlin Morris Site or another suitable nearby site owned by Caltrans; and

WHEREAS, Under the Amended Agreement's terms, the Commission's declaration of surplus regarding the City Property and Close of Escrow are conditioned upon the completion of all required environmental review and satisfaction of certain conditions, including (1) the SFPUC Commission's review and acceptance of the environmental condition of 2000 Marin; (2) the SFPUC's de-commissioning of the HP Tank by abandoning it in place at 639 Bryant; and (3) the Board of Supervisors' waiver of certain development impact fees in exchange for Developer's dedication of a public park to the City as part of the Developer's Project (Park Fee Waiver); and

WHEREAS, Developer's obligation to complete the Exchange Transaction is conditioned on, among other things, the Board of Supervisors' approval of the Park Fee Waiver; and

WHEREAS, The fair market value of the City Property is $63,875,000, as determined by a MAI appraisal by Clifford Advisory, LLC dated May 15, 2018; and

WHEREAS, The fair market value of 2000 Marin is $63,600,000, as determined by a MAI appraisal by Clifford Advisory, LLC, both dated July 2, 2018; and

WHEREAS, In addition to providing for the exchange of 2000 Marin for the City Property, the Amended Agreement also provides for additional consideration from the Developer; and

WHEREAS, The SFPUC intends to use 2000 Marin for utility purposes after the SFPUC undertakes a facility planning process to determines the optimal use of all of its property in the City, including 2000 Marin, and the scope of improvements necessary for such use; now, therefore, be it

RESOLVED, This Commission hereby finds that existing space for the Power Enterprise at the City Property and the City Distribution Division (CDD) of the SFPUC Water Enterprise at 1990 Newcomb Avenue in San Francisco will not meet the SFPUC's anticipated future utility yard needs and both facilities require either expanding the existing facilities or securing replacement facilities soon; and be it

FURTHER RESOLVED, That the SFPUC is undertaking scheduled repair and replacement projects for all three enterprises and at various locations in San Francisco in the near term and has immediate need for additional space for storage of equipment and vehicles and temporary relocation of existing uses near its operational facilities. When specific plans are developed for any of these facilities, they will undergo CEQA review and consideration by this Commission prior to their approval; and be it

FURTHER RESOLVED, That 2000 Marin presents an extremely rare opportunity for the SFPUC to acquire industrial property with a sufficient area to meet its critical utility yard needs, particularly as the population in San Francisco increases, and the three SFPUC enterprises expand their operations to meet increased utility demand; and be it

FURTHER RESOLVED, That the SFPUC's acquisition of 2000 Marin under the terms and conditions stated in the proposed Amended Agreement could allow improved and more integrated SFPUC utilityyard operations for the SFPUC on a site that is five times larger than the City Property, with a location near the SFPUC's Southeast Treatment Plant and CDD and excellent access to public transportation, and will reduce the need for leased space for storage and construction staging; and be it

FURTHER RESOLVED, That, following acquisition of 2000 Marin, the SFPUC intends to undertake a long-term facility master planning process to determine the optimal use of 2000 Marin as well as other SFPUC property in the City, and this Commission will have an opportunity to review and approval such plans upon completion of all necessary technical, feasibility, planning, and environmental reviews; and be it

FURTHER RESOLVED, That this Commission has reviewed the Phase II Report and environmental remediation cost estimate for a potential use of 2000 Marin on file with the Commission Secretary and finds that the additional consideration being provided by the Developer and the opportunity to acquire one of the last large industrial parcels in San Francisco justifies proceeding with the Exchange Transaction notwithstanding the potential substantial cost of future hazardous materials remediation at 2000 Marin, and acknowledges that such costs will ultimately

depend upon SFPUC's plans for its future use of 2000 Marin, which is to be determined and approved by the Commission at a later date following completion of environmental review for any such project; and be it

FURTHER RESOLVED, That after Close of Escrow when the SFPUC acquires 2000 Marin, the City Property will be surplus to the SFPUC's utility needs; and, be it

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

FURTHER RESOLVED, That this Commission authorizes the General Manager of the SFPUC and/or City's Director of Property to seek approval of the Amended Agreement by City's Board of Supervisors and the Mayor, and upon such approval, to execute the Agreement in substantially the same form presented to this Commission; and be it

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

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

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

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of November 26, 2019.

Donna Hood

Secretary, Public Utilities Commission

CONDITIONAL LAND DISPOSITION AND ACQUISITION AGREEMENT

by and between the

CITY AND COUNTY OF SAN FRANCISCO

and

2000 MARIN PROPERTY, L.P.

for the conveyance and exchange of

639 Bryant Street, San Francisco, California

and

2000 Marin Street, San Francisco, CA

August 1, 2018

CONDITIONAL LAND DISPOSITION AND ACQUISITION AGREEMENT

This **CONDITIONAL LAND DISPOSITION AND ACQUISITION AGREEMENT** ("**Agreement**"), dated for reference purposes only as of August 7, 2018 (the "**Reference Date**"), is by and between the CITY AND COUNTY OF SAN FRANCISCO, a California municipal corporation ("**City**"), on the one hand, and 2000 MARIN PROPERTY, L.P., a Delaware limited partnership ("**2000 Marin Property**"), on the other hand. In this Agreement, 2000 Marin Property may be referred to as "**Developer,**" and City and Developer may each be referred to as a "**Party**" and together as the "**Parties.**"

RECITALS

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

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

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

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

and 79,291 gross square feet of residential; and incorporating an approximately 40,000 square foot public park (the "**Development Project**").

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

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

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

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

to the SFPUC's Commission that will generate sufficient revenue to allow the SFPUC to repay Developer the Reimbursable Costs (defined below in Section 1.5(d)) as contemplated in Section 1.5(d).

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

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

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

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

Review and all approvals and authorizations ("**Approvals**") in connection with such Environmental Review and as otherwise required by all applicable state and local law.

AGREEMENT

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

ARTICLE 1: DEFINITIONS; PROPERTY EXCHANGE AND ESCROW

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

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

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

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

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

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

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

"**Attorneys' Fees and Costs**" shall mean any and all reasonable attorneys' fees, costs, expenses, and disbursements, including, but not limited to, consultants' and expert witnesses' fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, exhibit preparation, courier, postage, facsimile, long-distance and communications expenses, court costs, and the costs and fees associated with any other legal, administrative or alternative dispute resolution proceeding, fees and costs associated with execution upon any

judgment or order, and costs on appeal. For purposes of this Agreement, City's reasonable attorneys' fees shall be based on the fees regularly charged by private attorneys in San Francisco with comparable experience notwithstanding City's use of its own attorneys.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.4 **Exchange Values; Additional Consideration**.

(a) Based on a MAI appraisal of the City Property by Clifford Advisory, LLC dated May 15, 2018, which assumed that the City Property would be developed and used in a manner consistent with the CSP (defined below in Section 4.1), the Parties agree that, for purposes of the Exchange Transaction, the fair market value of the City Property is no more than Sixty-Three Million Eight Hundred Seventy-Five Thousand Dollars ($63,875,000).

(b) Based on a MAI appraisal of the Replacement Property by Clifford Advisory, LLC dated May 15, 2018, the Parties agree that, for purposes of the Exchange

Transaction, the fair market value of the Replacement Property is no more than Sixty-Three Million Six Hundred Thousand Dollars ($63,600,000).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) City's actual out-of-pocket transaction and relocation costs ("**Transaction Costs**"), subject to a maximum relocation cost limit ("**Cost Limit**") of Six Hundred Ninety Thousand Dollars ($690,000) incurred during the period commencing on the day after the Effective Date and ending on the earlier of (A) the date that this Agreement is terminated pursuant to its terms, or (B) the Closing

(defined below). Subject to the Cost Limit, Transaction Costs will include all costs that City incurs after the Effective Date because of, or in connection with, City's proposed transfer to Developer of the City Property, proposed vacation of the City Property and the City Leased Premises, proposed acquisition of and relocation to the Replacement Property, and otherwise in connection with the Exchange Transaction, including, without limitation, all of the following:

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

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

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

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

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

(6) costs of relocating City's personal property and equipment to the Replacement Property from the City Property and City Leased Premises (which may include costs and fees payable to third-party relocation firms retained by City pursuant to bidding procedures required by law); and

(7) any costs, including attorneys' and consultants' fees, incurred in connection with the evaluation, negotiation, documentation, preparation, and implementation of this Agreement,

escrow instructions, and any other documents or instruments entered into by City in connection with the Exchange Transaction.

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

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

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

(a) **City's Vacation of City Property and Developer's Relocation of City's Personal Property.** City shall vacate the City Property and the City Leased Premises entirely on a specified date (as set forth below) and move ("**Vacate and Move**") to a to-be-built temporary facility and associated fencing as described below (the "**Temporary SFPUC Facility**") on the portion of the Replacement Property designated as the "Developer Work Area" (the "**Developer Work Area**") on the attached **Exhibit F-1**. At its sole cost, and as a condition to the City's obligation to Vacate and Move, Developer shall provide, or cause to be provided, and pay for all services necessary to move and relocate all of City's personal property from the City Property and the City Leased Premises to the new Temporary SFPUC Facility (the "**Moving Services**"). As a condition to the City's obligation to Vacate and Move, Developer shall obtain all necessary approvals from all federal, state, or local governmental authorities and agencies with jurisdiction ("**Construction Approvals**") for the construction of the Temporary SFPUC Facility, which will include appropriate fencing acceptable to the SFPUC on and completely surrounding the Developer Work Area, in accordance with the parameters and criteria set forth on the attached **Exhibit F** (the "**Limited Scope of Construction**"). Once the Construction Approvals are obtained by Developer, Developer shall complete all

construction of the Temporary SFPUC Facility (Developer's obligations to obtain the Construction Approvals and complete the construction of the Temporary SFPUC Facility are sometimes referred to collectively below as "**Developer's Work**") in accordance with the requirements and timeline set forth in Section 1.5(b) below:

(b) **Developer's Work.**

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

(ii) Construction of Temporary SFPUC Facility. As soon as reasonably practicable after the Parties' mutual approval of the Approved Final Plans and Budget, Developer shall obtain all Construction Approvals. As soon as reasonably practicable after the Closing Authorization Action, Developer shall commence construction, and diligently continue construction until completed, of the Temporary SFPUC Facility on the Developer Work Area in accordance with the Final Plans and Budget. City shall cooperate with Developer on a regular basis during the construction process as necessary to enable Developer to complete the construction as soon as possible. The construction of the Temporary SFPUC Facility will be completed within ninety (90) days after the Closing Authorization Action, as such period may be extended by Developer at its discretion.

(iii) Completion of the Work and City Inspection. Upon completion of the Developer's Work and the issuance by City's Department of Building Inspection of a temporary certificate of occupancy with respect to the completed Developer's Work at the Replacement Property (a "**TCO**"), Developer shall deliver a notice to City (the "**Completion Notice**"), accompanied by a copy of the TCO,

advising City of the completion of the Temporary SFPUC Facility. Within ten (10) business days following its receipt of the Completion Notice and TCO, City shall inspect the completed Temporary SFPUC Facility and either (A) approve the Temporary SFPUC Facility, as built, by providing Developer an executed certificate of full compliance in the form attached as Exhibit G (the "**Certificate of Compliance**") or (B) provide Developer with a punchlist of items to be corrected (a "**Punchlist**") to the Temporary SFPUC Facility.

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

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

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

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

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

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

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

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

Either:

(A) delivery to City of a fully executed Replacement Property Lease and such assignment(s) as are requested by City or

(B) the identification and securing of an Alternate Revenue Source, enforceable by City, and acceptable to, the SFPUC's Commission, acting at its sole discretion,

shall be a condition of Closing.

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

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

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

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

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

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

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

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

(viii) Prior to, and as a condition of, the Closing Authorization Action, the Parties shall agree in writing to the final form of an agreement and, if necessary,

other documents to evidence and state City's obligations to pay Developer the Reimbursable Costs pursuant to the terms and conditions stated in this Agreement. (the "**Reimbursement Documents**"); provided that City's obligation to pay Developer the Reimbursable Costs shall not be secured by any lien, mortgage, deed of trust, or other security interest.

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

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

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

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

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

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

(i) require City by written notice to assign to Developer its interest in the 651 Bryant Lease (assuming that Landlord consents to such assignment and a complete release of all of City's obligations under the 651 Bryant Lease arising or accruing after the date of such assignment), and, in the event the Moving Date has

not yet occurred at the time of such assignment and release, City shall continue to occupy, as Developer's subtenant, the City Leased Premises pursuant to the 651 Bryant Lease (including the obligation to pay rent as required by the 651 Bryant Lease), from the date Developer accepts such assignment until the Moving Date; or

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

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

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

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

(c) **Completion of the HP Tank Relocation and City Inspection**. Upon completion of all of Developer's construction work required by the HP Plans, Developer shall notify City in writing of the completion of such work. Within ten (10) business days following its receipt of such notice, City shall inspect the relocated HP Tank and any related

appurtenances constructed pursuant to the HP Plans, and either (i) deliver to Developer City's written approval of the relocated HP Tank and such related appurtenances, as built, or (ii) provide Developer with a Punchlist of items to be corrected with respect to the HP Tank or such related appurtenances.

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

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

ARTICLE 2: INVESTIGATIONS

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

2.2 **Developer's Independent Investigation**. Developer represents and warrants to City that, as of the Reference Date, Developer had the opportunity to perform a diligent and thorough inspection and investigation of all matters related to the City Property, either independently or through Developer's Agents (defined in Section 10.15 below), including, without limitation, the following:

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

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

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

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

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

2.4 **As-Is Condition of City Property; Release of City.** Developer represents and warrants to City that, as of the Reference Date, Developer has had the opportunity to perform a diligent and thorough inspection and investigation of each and every aspect of the City Property, either independently or through its Agents, including, without limitation, the following matters: DEVELOPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT CITY IS CONVEYING AND DEVELOPER IS ACQUIRING CITY'S INTEREST IN THE CITY PROPERTY ON AN "AS IS WITH ALL FAULTS" BASIS. DEVELOPER IS RELYING SOLELY ON ITS INDEPENDENT INVESTIGATION AND, OTHER THAN THE REPRESENTATIONS AND WARRANTIES OF CITY EXPRESSLY SET FORTH IN THIS AGREEMENT, NOT ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM CITY OR ITS AGENTS AS TO ANY MATTERS CONCERNING THE CITY PROPERTY, ITS SUITABILITY FOR DEVELOPER'S INTENDED USES, OR ANY OF THE PROPERTY CONDITIONS OF THE CITY PROPERTY. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 5.2 BELOW, CITY DOES NOT GUARANTEE THE LEGAL, PHYSICAL, GEOLOGICAL, ENVIRONMENTAL, ZONING, OR OTHER CONDITIONS OF THE CITY PROPERTY OR THE SUITABILITY OF THE CITY PROPERTY FOR ANY USE, NOR DOES IT ASSUME ANY RESPONSIBILITY FOR THE COMPLIANCE OF THE CITY PROPERTY OR ITS USE WITH ANY APPLICABLE LAWS (DEFINED IN SECTION 10.8). IT IS DEVELOPER'S SOLE RESPONSIBILITY TO DETERMINE ALL BUILDING, PLANNING, ZONING, AND OTHER REGULATIONS AND APPLICABLE LAWS, INCLUDING ANY PUBLIC TRUST CLAIMS, RELATING TO THE CITY PROPERTY AND THE USES TO WHICH IT MAY BE PUT.

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

In connection with the foregoing release, Developer expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

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

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

INITIALS: ____________; __________; __________

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

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

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

(c) The environmental condition of the Replacement Property, including review of all reports delivered by Developer as part of the Replacement Property Documents relating to the environmental condition of the Replacement Property, including but not limited to any such reports provided to Developer by the then-current owner. Notwithstanding the content of such reports and anything else to the contrary in this <u>Section 2.5</u>, however, City withholds its acceptance of the environmental condition of the Replacement Property until after it has an opportunity to review and approve such condition after receipt of a Phase 2 ESA prepared by a licensed engineering or environmental firm selected by City but to be retained and paid for by Developer promptly after the Effective Date that shows to City's sole satisfaction that the Replacement Property (including soil and groundwater conditions and the improvements) has not been contaminated or is threatened to be contaminated with any hazardous material in a manner that makes the Replacement Property unsuitable for commercial development, occupancy, or use with implementation of appropriate remediation or mitigation of hazardous soils and groundwater. Developer shall be solely responsible for obtaining any necessary approvals

in connection with the performance of such Phase 2 ESA that may be required by any federal, state, or local governmental authorities or agencies (including, without limitation, the California Department of Toxic Substances Control) with jurisdiction over the Replacement Property or activities conducted on or about the Replacement Property.

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

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

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

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

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

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

INITIALS: City: _____

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

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

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

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

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

ARTICLE 3: TITLE

3.1 **Permitted Title Exceptions; Cure of Defects**.

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

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

and will not affect the value or intended use of the Replacement Property ("**Replacement Property Permitted Title Exceptions**").

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

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

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

ARTICLE 4: CEQA COMPLIANCE; PROJECT APPROVALS

4.1 **CEQA Compliance.** In the Spring of 2013, City's Planning Department commenced the Central SOMA Environmental Impact Report ("**CSEIR**") for environmental review of a proposed Central SOMA Plan (Case No. 2011.1356E) ("**CSP**"). The City Property is located within the Central SOMA Plan Area. The Parties anticipate that the CSEIR will include

analysis of potential uses of the City Property and will include zoning and development controls applicable to the City Property and adjoining parcels. City may not transfer the City Property under this Agreement and neither the Closing nor the Exchange Transaction shall occur until any and all Environmental Review required by CEQA and other Applicable Laws is completed and all required City approvals based on such Environmental Review and on public review have been obtained. Despite execution of this Agreement, the Closing and consummation of the Exchange Transaction shall be dependent upon further City Approvals and actions after completion of the Environmental Review process and on other public review and hearing processes. Acting in its regulatory capacity, City will review and consider the final environmental documents relating to the proposed Exchange Transaction before deciding whether to approve the Exchange Transaction, including, without limitation, the Closing, any associated rezoning, Municipal Code or General Plan amendments, or other matters related to the proposed Exchange Transaction. City, including the SFPUC and Board of Supervisors, will retain the sole and absolute discretion to: (a) make such modifications to the proposed Exchange Transaction as are deemed necessary to mitigate significant impacts identified in the Environmental Review; (b) select other feasible alternatives to avoid such impacts; (c) balance the benefits against unavoidable significant impacts prior to taking final action if such significant impacts cannot otherwise be avoided; or (d) determine not to proceed with the proposed Exchange Transaction based upon the information generated by the environmental review process.

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

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

Transaction Review Costs (if not previously paid and subject to the Cost Limit), incurred prior to the date of such termination shall survive such termination.

ARTICLE 5: REPRESENTATIONS AND WARRANTIES

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

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

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

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

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

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

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

(g) To Developer's actual knowledge, at the time of Closing, except for matters of record, there will be no outstanding written or oral contracts made by Developer

applicable to the Replacement Property that have not been fully paid for and Developer shall cause to be discharged all mechanics' or materialmen's liens arising from any labor or materials furnished to the Replacement Property prior to the time of Closing.

(h) Developer is an entity duly organized and validly existing under the laws of the State of Delaware and in good standing under the laws of the State of Delaware; this Agreement and all documents executed by Developer that are to be delivered to City at the Closing are, or at the Closing will be, duly authorized, executed, and delivered by Developer, or at the Closing will be, legal, valid, and binding obligations of such party, enforceable against such party in accordance with their respective terms, and are, or at the Closing will be, sufficient to convey good and marketable title (if they purport to do so), and do not, and at the Closing will not, violate any provision of any agreement or judicial order to which such party is a party or to which or the Replacement Property is subject.

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

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

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

(k) Developer has not been suspended by or prohibited from contracting with, any federal, state, or local governmental agency. If Developer has been so suspended or prohibited from contracting with any governmental agency, it shall immediately notify the City of same and the reasons therefor together with any relevant facts or information

requested by City. Any such suspension or prohibition may result in the termination or suspension of this Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) **Review of Survey and Title.** City's acceptance of the Replacement Property shall be subject to City's and Escrow Company's review and acceptance of a current ALTA survey or, at City's discretion, a current CLTA survey, of the Replacement Property and any and all other documents relating to title not previously disclosed and reviewed pursuant to Section 2.5, which would allow Escrow Company to issue to City the City Title Policy described in Section 3.2 above.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6.2 **Failure of City's Conditions Precedent; Cooperation of Developer.** Each City Condition Precedent is intended solely for City's benefit. If any City Condition Precedent is not satisfied by the Closing Date or by the date otherwise provided above, at its sole election and by written notice to Developer, City may extend the date for satisfaction of the condition, waive the condition in whole or part, conditionally waive the condition in whole or in part, or terminate this Agreement. Notwithstanding anything to the contrary in the foregoing, if any such conditional waiver is not acceptable to Developer, at its sole discretion, Developer may reject such conditional waiver, in which event the original City Condition Precedent shall remain effective, and if not satisfied, shall entitle City to terminate this Agreement. If City elects to so terminate this Agreement, then upon any such termination, neither Party shall have any further rights nor obligations hereunder except for those that expressly survive termination of this Agreement.

including, without limitation, Developer's obligation to pay, or reimburse City, for all of City's Pre-Agreement Costs (if not previously paid), Environmental Costs (if not previously paid and subject to the Environmental Cost Limit) and Transaction Review Costs (if not previously paid and subject to the Cost Limit), incurred prior to the date of such termination.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

During the period commencing on the Effective Date through and ending on the Closing Date, Developer shall promptly deliver written notice to City if Developer becomes aware of or receives notice of any actual or threatened litigation with respect to the Replacement Property, any violation of any Applicable Laws affecting or related to the Replacement Property (except with respect to any violations of Environmental Laws that may exist with respect to the City Property),

or any other material adverse change in the condition of the Replacement Property. Such notification shall include all material facts known by Developer relative to such matter.

ARTICLE 7: CLOSING

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

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

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

(b) a certified copy of the CLDAA Resolution;

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

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

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

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

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

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

(i) an FSA approved by City.

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

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

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

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

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

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

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

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

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

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

7.5 Expenses.

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

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

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

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

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

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

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

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

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

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

7.9 **Post-Closing Obligation**. Within thirty (30) days after the Closing Date, City shall (a) Vacate and Move and (b) deliver possession of the City Property free of occupants, users and tenants (with realty improvements remaining, but all personalty removed from City Property by Developer).

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

ARTICLE 8: RISK OF LOSS

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

ARTICLE 9: DEFAULT AND REMEDIES

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

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

9.3 Exculpation. Developer's liability arising out of or in connection with this Agreement shall be limited to Developer's assets and any proceeds of insurance policies required of Developer by this Agreement and City shall not look to any property or assets of any direct or indirect partner, member, manager, shareholder, director, officer, principal, employee, or agent of Developer (collectively, "**Developer Parties**") in seeking either to enforce Developer's obligations or to satisfy a judgment for Developer's failure to perform such obligations and none of the Developer Parties shall be personally liable for the performance of Developer's obligations under this Agreement. In no event shall either party be liable for, and each party, on behalf of itself and, to the extent applicable to such party, its respective officers, employees, elected officials, supervisors, boards, commissions, commissioners, direct or indirect partners, members, managers, shareholders, directors, officers, principals, employees, and agents, hereby waives any claim against the other party for, any indirect or consequential damages, including loss of profits or business opportunity, arising under or in connection with this Agreement. Further, in no event shall either party's respective officers, employees, elected officials, supervisors, boards, commissions, commissioners, direct or indirect partners, members, managers, shareholders, directors, officers, principals, employees, or agents be liable to the other party for any punitive damages provided, however, that neither City nor the Developer shall be excused from any punitive damages imposed by a court of competent jurisdiction, after all appeal periods have run with their having been no appeal. Notwithstanding the foregoing, at City's request, Developer will provide security with a value of not less than the sum of the Pre-Agreement Costs, the

Environmental Cost Limit, and the Cost Limit for the performance of the Developer's obligations pursuant to this Agreement to pay to City its Pre-Agreement Costs, Environmental Costs, and Transaction Review Costs (to the extent not payable or secured by insurance to be provided by Developer pursuant to, or in connection with, this Agreement), which security, at Developer's option and if reasonably acceptable to City, may be provided in a commercially reasonable form by a letter of credit, a performance bond or similar instrument, or a guaranty by an affiliate of Developer (such as the affiliate of Developer which controls the rights to purchase the 598 Brannan Street property).

ARTICLE 10: GENERAL PROVISIONS

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

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

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

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

Real Estate Services Division
San Francisco Public Utilities Commission
525 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102
Attn: Real Estate Director
E-mail: RES@sfwater.org

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

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

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

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

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

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

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

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

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

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

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

10.11 **Interpretation of Agreement**.

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

(b) **Captions.** Whenever a section, article, or paragraph is referenced, it refers to this Agreement unless otherwise specifically identified. The captions preceding the articles and sections of this Agreement have been inserted for convenience of reference

only. Such captions shall not define or limit the scope or intent of any provision of this Agreement.

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

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

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

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

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

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

10.15 Parties and Their Agents. As used herein, the term "**Agents**" when used with respect to either Party shall include the agents, employees, officers, contractors, and representatives of such Party. Developer is comprised of more than one party, and Developer's obligations under this Agreement shall be joint and several among such Parties.

10.16 Attorneys' Fees. If either Party hereto fails to perform any of its respective obligations under this Agreement or if any dispute arises between the Parties hereto concerning the meaning or interpretation of any provision of this Agreement, then the defaulting Party or the

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

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

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

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

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

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

10.22 **First Source Hiring Program**.

(a) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth in this Agreement. Contractor shall comply fully with, and be bound by, all of the provisions that

apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

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

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

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

(iii) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and

hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

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

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

(vi) Set the term of the requirements.

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

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

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

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

(e) **Liquidated Damages.** Developer agrees:

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

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

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

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

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

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

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

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

therefore, liquidated damages that total $5,000 for first violations and $10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to

quantify the harm caused to the City by the failure of a contractor to comply with its first source referral contractual obligations.

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

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

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

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

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

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

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

Developer. Additionally, Developer acknowledges that Developer must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Developer further agrees to provide to City the names of each person, entity, or committee described above.

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

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

[Signature page follows]

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

DEVELOPER:

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

Date: August 1, , 2018

By: _____
Name: Michael R. Benner
Its: Vice President and Secretary

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

Date: August 1 , 2018

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

By _____
Andrico Penick, ~~Acting~~ Director of Property

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Richard Handel, Deputy City Attorney

[CONSENT OF ESCROW COMPANY ON FOLLOWING PAGE]

CONSENT OF ESCROW COMPANY:

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

ESCROW COMPANY:

CHICAGO TITLE INSURANCE COMPANY

By: _____
Its: _____
Date: _____

LIST OF EXHIBITS:

Exhibit A – City Property Legal Description

Exhibit B – Replacement Property Legal Description

Exhibit C – Replacement Property Documents

Exhibit D – Form of City Deed

Exhibit E – Form of Developer Deed

Exhibit F – Limited Scope of Construction of Temporary SFPUC Facility

Exhibit F-1 – Depiction of Replacement Property That Shows Developer Work Area and Replacement Property Lease Area

Exhibit G – Form of Certificate of Compliance

EXHIBIT A

CITY PROPERTY LEGAL DESCRIPTION

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

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

EXHIBIT B

REPLACEMENT PROPERTY LEGAL DESCRIPTION

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

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

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

APN: Block 4346, Lot 003

EXHIBIT C

REPLACEMENT PROPERTY DOCUMENTS

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

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

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

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

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

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

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

EXHIBIT D

FORM OF CITY DEED

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

_____

_____

_____

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

_____

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

QUITCLAIM DEED
(Assessor's Parcel No. _____)

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

Executed as of _____, 201_.

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

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

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

State of California)
) ss
County of San Francisco)

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

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

Witness my hand and official seal.

Signature _____ (Seal)

EXHIBIT 1 TO CITY DEED

LEGAL DESCRIPTION

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

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

EXHIBIT E

FORM OF DEVELOPER DEED

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

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

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

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

GRANT DEED
(Assessor's Parcel No. _____)

The undersigned grantor declares:

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

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

Grantor's liability arising out of or in connection with this Deed shall be limited to Grantor's assets and any proceeds of insurance policies required of Grantor by this Agreement and Grantee shall not look to any property or assets of any direct or indirect partner, member, manager, shareholder, director, officer, principal, employee, or agent of Grantor (collectively, "**Grantor**

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

Executed as of _______________.

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

CERTIFICATE OF ACCEPTANCE

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

Dated: _____ By: _____

Andrico Penick, Acting Director of Property

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

State of California)
) ss
County of San Francisco)

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

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

Witness my hand and official seal.

Signature _____ (Seal)

EXHIBIT 1 TO DEVELOPER DEED

LEGAL DESCRIPTION

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

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

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

APN: Block 4346, Lot 003

EXHIBIT F

LIMITED SCOPE OF CONSTRUCTION OF TEMPORARY SFPUC FACILITY

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

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

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

   c. Installation of another structure containing:

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

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

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

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

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

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

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

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

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

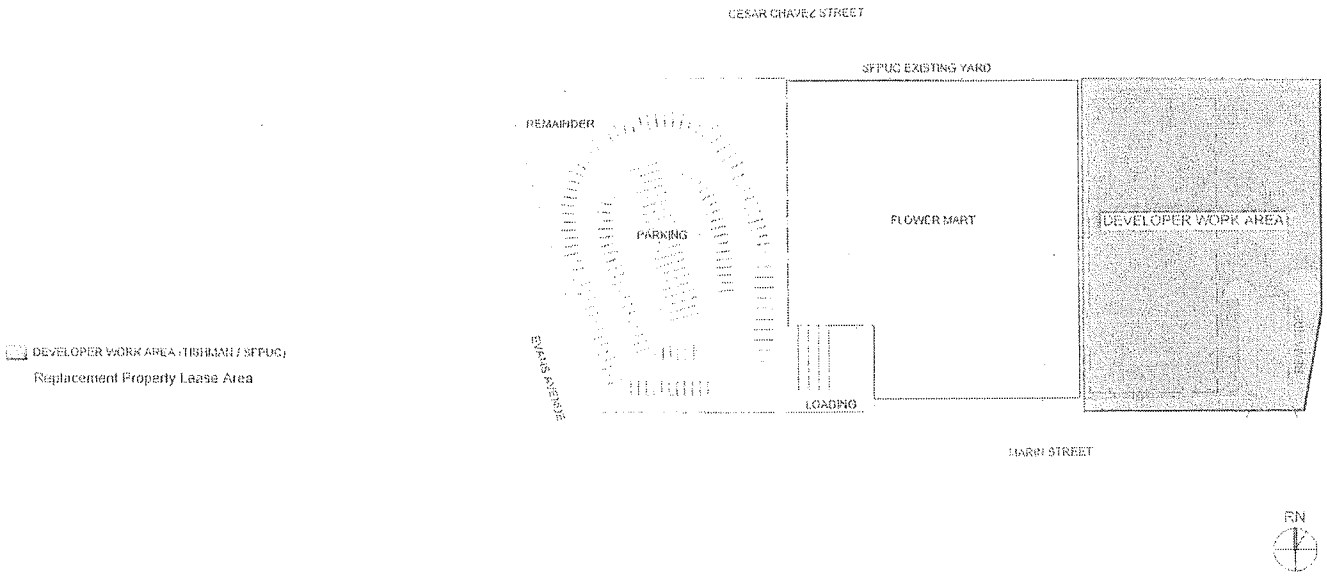
Work to be restored to its original condition to the SFPUC's satisfaction.

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

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

EXHIBIT F-1

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



GROSS AREA DIAGRAM

1.2 WHOLESALE FLOWER MARKET
INTERIM FACILITY

SKIDMORE OWINGS & MERRILL

EXHIBIT G

FORM OF CERTIFICATE OF COMPLIANCE

FOR

TEMPORARY SFPUC FACILITY

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

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

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

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

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

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

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

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

By: _____
Andrico Penick,
Acting Director of Property

AMENDED IN COMMITTEE
7/18/2018

FILE NO. 180550 RESOLUTION NO. 248-18

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

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

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

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

WHEREAS, 2000 Marin Property, L.P., a Delaware limited partnership ("Developer"), owns certain real property known as 2000 Marin Street, Assessor's Parcel Block No. 4346,

Lot No. 002 ("2000 Marin"), an approximately 7.98-acre parcel with a 74,000 square-foot building built in 1989; and

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

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

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

WHEREAS, The Central SOMA Plan was recommended for approval by the Planning Commission on May 10, 2018 and requires approval by the Board of Supervisors to become effective; and

WHEREAS, Developer and the City have negotiated a Conditional Land Disposition and Acquisition Agreement, a copy of which is on file with the Clerk of the Board of Supervisors in File No. 180550 (the "Agreement"), which, upon the satisfaction of certain conditions, provides for (a) the exchange of the City Property for 2000 Marin; (b) the SFPUC's obligation to reimburse Developer for the costs of new temporary utility yard facilities ("Temporary SFPUC Facility") to be constructed by Developer for the SFPUC on a portion of 2000 Marin from a proposed short-term lease to Kilroy Realty Corporation, a Maryland corporation, or one of its affiliates (collectively, "Kilroy") of the remaining portion of 2000 Marin

or from an alternative revenue source; and (c) Developer's obligations (the "Additional Developer Consideration") to (i) relocate the SFPUC's personal property, at the Developer's cost, from the City Property and the City Leased Premises to 2000 Marin; (ii) relocate a SFPUC hydrogen peroxide tank from the City Property to a nearby location, at the Developer's cost; (iii) construct or place the new "Temporary SFPUC Facility" for the SFPUC on a portion of 2000 Marin; and (iv) pay the SFPUC for certain transactional costs the SFPUC has incurred in connection with the proposed property exchange; and

WHEREAS, The Agreement provides that Developer's proposed lease to Kilroy of a portion of 2000 Marin is subject to approval by the SFPUC Commission; and

WHEREAS, The SFPUC intends that any such lease of 2000 Marin will be short-term because the SFPUC intends to occupy and use the entirety of the 2000 Marin in the long term for utility yard purposes; and

WHEREAS, The Agreement does not require the City to approve the Central SOMA Plan or any proposed development, including any development of the City Property or 2000 Marin; and

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

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

WHEREAS, 2000 Marin has soil contamination stemming from former uses that is subject to regulation by the State of California Department of Toxic Substance Control; and

WHEREAS, Assessment of the environmental remediation costs that the SFPUC would incur regarding the SFPUC's future development and use of 2000 Marin is a condition of closing of the property exchange; and

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

WHEREAS, The City will review and consider each of the environmental review documents that relate respectively to the Central SOMA Plan, the Developer Project, and the City's plan to develop and use 2000 Marin (individually, a "Project" and collectively, the "Projects") before deciding whether to approve each Project, including any associated rezoning, Municipal Code or General Plan amendments or waivers, and design, demolition, and building permits; and

WHEREAS, The City retains absolute discretion to: (a) require modifications in one or more of the Projects to mitigate significant adverse environmental impacts; (b) select feasible alternatives that avoid significant adverse impacts of one or more of the Projects; (c) require the implementation of specific measures to mitigate the significant adverse environmental impacts of one or more of the Projects, as identified through environmental review; (d) reject all or part of one or more of the Projects as proposed if the economic and social benefits of the Project do not outweigh otherwise unavoidable significant adverse impacts of that Project; and (e) approve one or more of the Projects upon a finding that the economic and social benefits of the Project outweigh otherwise unavoidable significant adverse environmental impacts of that Project; and

WHEREAS, Although the City has obtained appraisals of the City Property at $63,875,000 and 2000 Marin at $63,600,000, the combined value of 2000 Marin and the Additional Developer Consideration currently exceed the value of the City Property; and

WHEREAS, The Board understands and agrees that if the combined value of 2000 Marin and the Additional Developer Consideration exceed the value of the City Property, the excess value shall be deemed a gift by Developer to the City; and

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

WHEREAS, On July 10, 2018, the SFPUC, by Commission Resolution No. 18-0121, authorized the General Manager of the SFPUC to execute the Agreement, subject to approval by the Board of Supervisors; and

WHEREAS, Entering into the Agreement with Developer is in the City's best interest, and the SFPUC has found in Resolution No. 18-0121 that (a) the existing space at the City Property will not meet the SFPUC's anticipated future utility yard operational needs, so either expansion of the existing facility or securing a replacement facility will be necessary in the near future and (b) the 2000 Marin is expected to result in improved and more integrated SFPUC utility operations on a site that is five times larger than the City Property, with excellent access to transportation routes, and therefore, if all of the conditions for the proposed property exchange are satisfied, acquisition of 2000 Marin would render the City Property surplus to the SFPUC's utility needs; and

WHEREAS, The proposed use of the City Property by Developer may yield more appropriate land uses within the Central SOMA Plan Area; and

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

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

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

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

RECOMMENDED:

Andrico Penick, Acting Director of Property

Harlan L. Kelly, Jr., General Manager, SFPUC

City and County of San Francisco
Tails
Resolution

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 180550 **Date Passed:** July 24, 2018

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

July 18, 2018 Government Audit and Oversight Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE

July 18, 2018 Government Audit and Oversight Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE

July 18, 2018 Government Audit and Oversight Committee - RECOMMENDED AS AMENDED

July 24, 2018 Board of Supervisors - ADOPTED

Ayes: 9 - Cohen, Brown, Kim, Mandelman, Peskin, Ronen, Safai, Stefani and Yee

Excused: 2 - Fewer and Tang

File No. 180550

I hereby certify that the foregoing Resolution was ADOPTED on 7/24/2018 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

London N. Breed
Mayor

8-2-18
Date Approved

San Francisco
Water Power Sewer
Services of the San Francisco Public Utilities Commission

525 Golden Gate Avenue, 13th Floor
San Francisco, CA 94102
T 415.554.3155
F 415.554.3161
TTY 415.554.3488

TO: **Supervisor Haney**

FROM: **Mona Panchal, Policy and Government Affairs**

DATE: **December 17, 2019**

SUBJECT: **Ordinance approving an Amended and Restated Land Disposition and Acquisition Agreement with 2000 Marin Property, L.P**

Dear Supervisor Haney,

Please see the attached Ordinance approving an Amended and Restated Land Disposition and Acquisition Agreement with 2000 Marin Property, L.P for the City's transfer of real property at 639 Bryant Street under the jurisdiction of the San Francisco Public Utilities Commission in exchange for real property at 2000 Marin Street.

Enclosed you will find the following items:

1. 2000 Marin Ordinance
2. Legislative Digest for 2000 Marin Ordinance
3. SFPUC Commission Resolution 19-0227
4. Board of Supervisors File #180550
5. Original fully executed 2000 Marin DLAA
6. Draft Amendments to the 2000 Marin DLAA

We have also forwarded you electronic copies of all the documents listed above.

Please contact me if you need any additional information on these items.

OUR MISSION: To provide our customers with high-quality, efficient and reliable water, power and sewer services in a manner that values environmental and community interests and sustains the resources entrusted to our care.

COB, Leg Dep, Leg Clerks, LU Clerk

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2020 JAN 30 AM 10: 01

DATE:	January 27, 2020
TO:	Angela Calvillo Clerk of the Board of Supervisors
FROM:	Supervisor Aaron Peskin, Chair, Land Use and Transportation Committee
RE:	Land Use and Transportation Committee COMMITTEE REPORTS

Pursuant to Board Rule 4.20, as Chair of the Land Use and Transportation Committee, I have deemed the following matters are of an urgent nature and request they be considered by the full Board on Tuesday, February 4, 2020, as Committee Reports:

191252 **Resolution of Intent for Street Vacation - 301 Mission Street Millennium Tower**

Resolution declaring the intent of the Board of Supervisors to order the vacation of the sidewalk portion of streets on the south side of Mission Street, at the intersection of Mission and Fremont Streets, and on the east side of Fremont Street at the same intersection to allow a structural upgrade of the 301 Mission Street high-rise building known as Millennium Tower; and setting the Board of Supervisors hearing date, sitting as a Committee of the Whole, for all persons interested in the proposed vacation of said street areas.

191280 **Amended and Restated Land Disposition and Acquisition Agreement - Exchange of 639 Bryant Street for 2000 Marin Street**

Ordinance approving an Amended and Restated Land Disposition and Acquisition Agreement with 2000 Marin Property, L.P. for the City's transfer of real property at 639 Bryant Street (Assessor's Parcel Block No. 3777, Lot No. 052) under the jurisdiction of the San Francisco Public Utilities Commission in exchange for real property at 2000 Marin Street (Assessor's Parcel Block No. 4346, Lot No. 003), subject to several conditions, including the reimbursement of certain transaction costs; waiving the Administrative Code, Section 23.3, appraisal and fair market value requirements; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and adopting findings under the California Environmental Quality Act, including the adoption of a Mitigation Monitoring and Reporting Program.

These matters will be heard in the Land Use and Transportation Committee at a Regular Meeting on Monday, February 3, 2020, at 1:30 p.m.

Print Form

Introduction Form

By a Member of the Board of Supervisors or Mayor

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2015 DEC 17 PM 1:25
BY AK

Time stamp or meeting date

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

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

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

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

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

Sponsor(s):

Haney

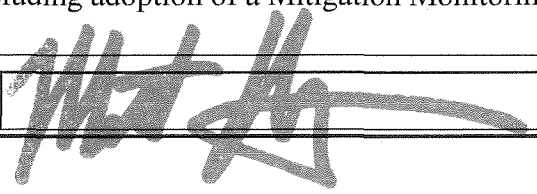
Subject:

[Amended and Restated Land Disposition and Acquisition Agreement – Exchange of 639 Bryant Street for 2000 Marin Street]

The text is listed:

Ordinance approving an Amended and Restated Land Disposition and Acquisition Agreement with 2000 Marin Property, L.P. for the City's transfer of real property at 639 Bryant Street (Assessor's Parcel Block No. 3777, Lot No. 052) under the jurisdiction of the San Francisco Public Utilities Commission in exchange for real property at 2000 Marin Street (Assessor's Parcel Block No. 4346, Lot No. 003), subject to several conditions, including the reimbursement of certain transaction costs; waiving the Administrative Code, Section 23.3 appraisal and fair market value requirements; making findings of consistency with the General Plan and Planning Code Section 101.1; and adopting findings under the California Environmental Quality Act, including adoption of a Mitigation Monitoring and Reporting Program.

Signature of Sponsoring Supervisor:



For Clerk's Use Only