

File No. 130121

Committee Item No. 7

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee

Date 02/13/2013

Board of Supervisors Meeting

Date \_\_\_\_\_

#### Cmte Board

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| <input type="checkbox"/>            | <input type="checkbox"/> | Youth Commission Report                      |
| <input type="checkbox"/>            | <input type="checkbox"/> | Introduction Form (for hearings)             |
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| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Budget                                 |
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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement                           |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Award Letter                                 |
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#### OTHER

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Completed by: Victor Young

Date February 8, 2013

Completed by: Victor Young

Date \_\_\_\_\_

1 [Lease - Los Altos Hotel Associates, LLC - Hotel Parking and Recreation Purposes - \$52,324  
2 Annually Plus Adjustments]

3 **Resolution authorizing the General Manager of the Public Utilities Commission to**  
4 **execute a 20 year lease, for \$52,324 annually plus an annual increase of 4%, with Los**  
5 **Altos Hotel Associates, LLC, for approximately 47,916 square feet of land known as**  
6 **Bay Division Pipelines 3 and 4, Parcel No. 232A, located in the City of Los Altos, Santa**  
7 **Clara County, California, for hotel parking and recreation purposes.**

8  
9 WHEREAS, The San Francisco Public Utilities Commission ("SFPUC") pursuant to  
10 Resolution Number 12-0213 approved the lease of 47,916 square feet of land known as  
11 Parcel 232A in the City of Los Altos, County of Santa Clara ("Lease"); and

12 WHEREAS, Section 9.118 of the charter requires that any lease of real property for a  
13 period in excess of ten years shall be subject to approval by resolution of the Board of  
14 Supervisors; and

15 WHEREAS, In 2002 Hotel entered into a ten-year lease with SFPUC for the Premises  
16 ("2002 Lease"); and

17 WHEREAS, The 2002 Lease expired on April 30, 2012, and Hotel is currently on a  
18 holdover month-to-month tenancy at a rental rate of \$48,183 per year; and

19 WHEREAS, There is no other likely or feasible tenant of this leasehold interest, given  
20 the existing improvements within the Premises benefit solely the owner adjacent to the  
21 Premises, which is Hotel; and

22 WHEREAS, In April, 2012, Associated Right of Way Services, Inc., pursuant to its  
23 formal appraisal, determined that the fair market rental value of the Premises is \$52,324 per  
24 year; and

1           WHEREAS, The Director of Property, pursuant to Section 23.32 of the San Francisco  
2 Administrative Code, finds that the rental rate of \$52,324 per year is no less than fair market  
3 rent; and

4           WHEREAS, SFPUC and Hotel have negotiated a new twenty-year Lease for the  
5 Premises, at an initial rent of \$52,324 per year with annual rental increases of 4%, plus three  
6 SFPUC options to readjust the rent to fair market rent, all on the terms and conditions set forth  
7 in the form of Lease on file with the Clerk of the Board of Supervisors in File No. 130121 and  
8 incorporated herein by reference; and

9           WHEREAS, On October 23, 2012, given the improvements within the Premises will not  
10 be modified in any substantive fashion, the SFPUC Bureau of Environmental Management  
11 determined that this action does not constitute a project under CEQA, according to the CEQA  
12 Guidelines 2012, section 15378; now, therefore, be it

13           RESOLVED, That the Board of Supervisors hereby approves the Lease and  
14 authorizes the General Manager of the SFPUC to execute the Lease with Hotel for a  
15 twenty-year term; and, be it

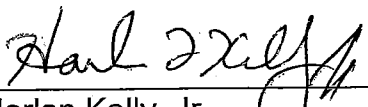
16           FURTHER RESOLVED, That the Board of Supervisors hereby authorizes the General  
17 Manager of the SFPUC to enter into any amendments or modifications to the Lease, including  
18 without limitation, any exhibits, that the General Manager of the SFPUC and the City's  
19 Director of Property determines, in consultation with the City Attorney, are in the best interest  
20 of the City, do not materially increase the obligations of the City, do not materially decrease  
21 the benefits to the City, are necessary or advisable to consummate the performance of the  
22 purposes and intent of this Resolution, and comply with all applicable laws, including the  
23 City's Charter; and, be it

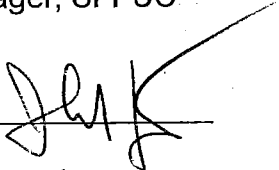
24           FURTHER RESOLVED, That all actions authorized by this Resolution and heretofore  
25 taken by any City official in connection with the Lease are hereby ratified, approved and

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confirmed by the Board of Supervisors.

RECOMMENDED:

  
\_\_\_\_\_  
Harlan Kelly, Jr.  
General Manager, SFPUC

  
\_\_\_\_\_  
John Updike  
Director of Property



Item 7

File 13-0121

Departments:

San Francisco Public Utilities Commission (PUC)

**EXECUTIVE SUMMARY****Legislative Objective**

- The proposed resolution would approve a new 20-year lease agreement between the San Francisco Public Utilities Commission (PUC) and Los Altos Hotel Associates, LLC for approximately 47,916 square feet of PUC-owned land in Santa Clara County, California, known as Parcel 232A, through which PUC's Bay Division Pipelines Numbers 3 and 4 pass. The lease would allow Los Altos Hotel Associates to use the land for parking, recreation, and landscaping for the adjacent hotel complex, the Marriott Residence Inn Palo Alto Los Altos.

**Key Points**

- Key components of the proposed lease agreement include: (1) lease period of 20 years from the commencement date; (2) security deposit of \$8,720; (3) first year base rent of \$4,360 per month, or \$52,324 annually; (4) an automatic 4 percent increase in rent annually, starting with the first day of the second lease year and then every year going forward; (5) adjustment of the base rent to fair market value on the first day of the fifth, tenth, and 15th year of the lease at the discretion of the PUC General Manager; and (6) no option to renew.
- The proposed lease is the second such lease agreement for the same parcel between the PUC and Los Altos Hotel Associates. The first lease agreement commenced on May 1, 2002, and expired on April 30, 2012. Because of delays in negotiating the proposed lease agreement, the prior lease between PUC and Los Altos Hotel Associates was held over on a month-to-month tenancy with rent of \$4,015 per month (\$48,183 annually) or \$36,138 for the nine-month period from May 1, 2012 through January 31, 2013.
- The proposed 20-year lease would be effective upon Board of Supervisors approval and execution by the Mayor.

**Fiscal Impact**

- The first year rent under the proposed lease is \$52,324, which is \$4,141 or 8.6 percent more than the annual rent of \$48,183 during the month-to-month holdover tenancy. The average rent per square foot will increase from approximately \$1.01 per square foot to \$1.09 per square foot for 47,916 square feet. According to Mr. Anthony Bardo, PUC Real Estate Services Division, the annual base rent of \$52,324 represents fair market value based on the appraisal by the third party appraiser, Associated Right of Way Services, Inc.
- Under the proposed lease, revenue to PUC in the first four years is \$222,192, including the annual 4 percent increase. As noted above, under the proposed lease agreement, the PUC General Manager has the option to adjust the base rent to fair market value on the first day of the fifth year of the lease.

**Recommendation**

- Approve the proposed resolution.

## MANDATE STATEMENT / BACKGROUND

### Mandate Statement

In accordance with City Charter Section 9.118(c), any lease exceeding ten years and/or having anticipated revenue of \$1,000,000 or greater is subject to the Board of Supervisors approval.

### Background

The proposed resolution would approve a new 20-year lease agreement between the San Francisco Public Utilities Commission (PUC) and Los Altos Hotel Associates, LLC for approximately 47,916 square feet of PUC-owned land in Santa Clara County, California, known as Parcel 232A, through which PUC's Bay Division Pipelines Numbers 3 and 4 pass. The lease would allow Los Altos Hotel Associates to use the PUC-owned land for parking, recreation, and landscaping for a hotel complex, the Marriott Residence Inn Palo Alto Los Altos. The proposed lease is the second such lease agreement for the same parcel between the PUC and Los Altos Hotel Associates.

In 1949, the PUC purchased the pipeline property from various property owners who reserved the right to cross over and farm on the properties in accordance with the deeds of sale. The application of the cross-over and agricultural provisions is at the discretion of the PUC. Los Altos Hotel Associates, as a current owner of an adjacent property, retained those cross-over and agricultural rights.

The first lease agreement between the PUC and Los Altos Hotel Associates was approved by the Board of Supervisors on March 11, 2002, following the 2001 construction of the hotel. The first lease agreement commenced on May 1, 2002 and expired on April 30, 2012. Because of delays in negotiating the proposed lease agreement, the proposed lease agreement could not be executed with the expiration of the original lease agreement. According to Mr. Anthony Bardo of the PUC Real Estate Services Division, the lease was not competitively bid because the Los Altos Hotel Associates had developed the adjacent property such that no other commercial use could be made of the parcel.

The Los Altos Hotel Associates has continued leasing the parcel since the April 30, 2012 expiration date of the original lease agreement. Los Altos Hotel Associates has been paying a holdover month-to-month rent of \$48,183 per year or \$4,015 per month until the commencement of the new lease agreement.

## DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve a new 20-year lease agreement between the City and County of San Francisco, acting through the PUC, and Los Altos Hotel Associates for approximately 47,916 square feet of PUC-owned land in Santa Clara County, California, known as Parcel 232A.

Key components of the proposed lease agreement include:

1. Lease period of 20 years from the commencement date;
2. Security deposit of \$8,720.00;

3. Base rent of \$4,360 per month, or \$52,324 per year in the first year;
4. Annual 4% increase in rent, starting with the first day of the second lease year and then every year going forward;
5. An option to reappraise the base rent to fair market value on the first day of the fifth, tenth, and 15<sup>th</sup> year of the lease at the discretion of the PUC General Manager; and
6. No option to renew.

The proposed new lease term was increased to a 20-year term, from the previous 10-year term because, as explained by Mr. Bardo, Los Altos Hotel Associates is presently engaged in refinancing of the adjacent hotel property and the refinancing application requires a 20-year minimum term.

The proposed lease will commence upon Board of Supervisors approval and execution by the Mayor.

**FISCAL IMPACTS**

The first year rent under the proposed lease is \$52,324, which is \$4,141 or 8.6 percent more than the annual rent of \$48,183 during the month-to-month holdover tenancy. The average rent per square foot will increase from approximately \$1.01 per square foot to \$1.09 per square foot for 47,916 square feet.<sup>1</sup> According to Mr. Bardo, the annual base rent of \$52,324 represents fair market value based on the appraisal by the third party appraiser, Associated Right of Way Services, Inc.

Under the proposed lease, revenue to PUC in the first four years is \$222,192, as shown in Table 1. As noted above, under the proposed lease agreement, the PUC General Manager has the option to adjust the base rent to fair market value on the first day of the fifth year of the lease.

**Table 1: Proposed Base Rent With Annual 4 Percent Increase**

Year	Base Rent	Annual 4 Percent Increase	Total
1	\$52,324	\$0	\$52,324
2	52,324	2,093	54,417
3	54,417	2,177	56,594
4	56,594	2,264	58,857
<b>Total</b>		<b>\$6,534</b>	<b>\$222,192</b>

**RECOMMENDATION**

Approve the proposed resolution.

<sup>1</sup> Under the original lease and month-to-month tenancy, Los Altos Hotel Associates had use of 47,916 square feet. Los Altos Hotel Associates paid rent of \$3.57 per square foot for 13,500 square feet and no rent for 34,416 square feet used for cross-over and landscaping in accordance with the deed as confirmed by the City Attorney. This resulted in an effective rental rate of approximately \$1.01 per square foot for 47,916 square feet. The appraiser, Associated Right of Way Services, determined that the use of the 34,416 square feet had expanded beyond the original cross-over and landscaping use and therefore, calculated rent of \$1.09 per square foot for the total 47,916 square foot parcel.



**SAN FRANCISCO PUBLIC UTILITIES COMMISSION**

**EDWIN M. LEE, MAYOR**

**GROUND LEASE**

**between**

**CITY AND COUNTY OF SAN FRANCISCO,  
as Landlord**

**and**

**Los Altos Hotel Associates, LLC,  
as Tenant**

**For the lease of  
Bay Division Pipelines 3 & 4 Parcel 232A  
Los Altos, California**

**October 23, 2012**

**PUBLIC UTILITIES COMMISSION**

**Anson B. Moran - President  
Art Torres - Vice President  
Ann Moller Caen - Commissioner  
Francesca Vietor - Commissioner  
Vince Courtney - Commissioner**

**Harlan L. Kelly, Jr.  
General Manager of Public Utilities Commission**

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LIST OF EXHIBITS

- EXHIBIT A      Legal Description of Premises
- EXHIBIT B      SFPUC Drawing of Premises
- EXHIBIT C      Form of Estoppel Certificate

# SAN FRANCISCO PUBLIC UTILITIES COMMISSION

## GROUND LEASE

THIS GROUND LEASE (this "Lease") dated for reference purposes only as of October 23, 2012, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City" or "Landlord"), acting by and through its Public Utilities Commission ("SFPUC"), and LOS ALTOS HOTEL ASSOCIATES, LLC, a California limited liability company ("Tenant").

City and Tenant hereby agree as follows:

### 1. BASIC LEASE INFORMATION

The following is a summary of basic lease information (the "Basic Lease Information"). Each item below shall be deemed to incorporate all of the terms set forth in this Lease pertaining to such item. In the event of any conflict between the information in this Section and any more specific provision of this Lease, the more specific provision shall control.

Lease Reference Date:	October 23, 2012
Landlord:	CITY AND COUNTY OF SAN FRANCISCO, acting by and through its Public Utilities Commission
Tenant:	LOS ALTOS HOTEL ASSOCIATES, LLC, a California limited liability company
Premises (Section 3.1):	Approximately 1.1 acre portion of that certain real property located in Los Altos, California, as more particularly described in <b>Exhibit A</b> and shown in <b>Exhibit B</b> , together with any appurtenances.
Term (Section 4.1):	Estimated Commencement Date: Commencement Date: "To Be Completed" Expiration Date: Twenty (20) years after the Commencement Date
Base Rent (Section 5.1):	\$52,324.00 annually (\$4,360.00 per month)
Adjustment Dates (Section 5.2):	As of the first (1st) day of the Second Lease Year of the Term, and on the first day of each Lease Year thereafter, the monthly Base Rent shall be increased to an amount equal to 104% of the Base Rent for the immediately preceding month, pursuant to Section 5.2.
Base Rent Reappraisal Option (Section 5.3)	City shall have three (3) Base Rent reappraisal options, effective as of the first day of the Fifth (5 <sup>th</sup> ) Lease Year, the Tenth (10 <sup>th</sup> ) Lease Year and the Fifteenth (15 <sup>th</sup> ) Lease Year, pursuant to Section 5.3.
Use (Section 7.1):	Parking, recreation court and landscaping in accordance with plans set forth in <u>Exhibit B</u> attached hereto; provided, however, in no event shall the gross weight of any vehicle (weight of the vehicle plus all cargo thereon) used or parked on the Premises exceed 20,000 pounds (10 tons).

Security Deposit (Section 24): \$8,720.00  
Pro Rata Share of Property Taxes: Tenant to reimburse City for 100% reimbursement of real property taxes allocated to the Premises.

Notice Address of City (Section 25.1):  
Real Estate Services  
Public Utilities Commission  
525 Golden Gate Avenue, 10<sup>th</sup> Floor  
San Francisco, California 94102  
Attn: Real Estate Director  
Re: Los Altos Hotel Associates Lease

with a copy to:  
Office of the City Attorney  
City and County of San Francisco  
Room 234, City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102-4682  
Attn: Real Estate & Finance Team  
Re: Los Altos Hotel Associates Lease

Key Contact for City: Rosanna S. Russell

Telephone No.: (415) 487-5213

Notice Address of Tenant (Section 25.1):  
Los Altos Hotel Associates, LLC  
203 Redwood Shores Parkway, Suite 200  
Redwood City, CA 94065

Key Contact for Tenant: Ms. Yvonne Thornton

Telephone No.: (650) 949-8380

Email Address: Yvonne.Thornton@SandHillHotelMgmt.net

Brokers (Section 25.8): N/A

## 2. DEFINITIONS

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

**"Additional Charges"** means any and all real and personal property taxes, possessory interest taxes and other costs, impositions and expenses described in **Section 6** or otherwise payable by Tenant under this Lease.

**"Adjustment Date"** means the annual date for adjusting the Monthly Base Rent as specified in Basic Lease Information and **Section 5.2**.

**"Affiliate of Tenant"** means any person or entity which directly or indirectly, through one or more intermediaries, controls, is controlled by or is under the common control with, Tenant. As used above, the words "control," "controlled" and "controls" mean the right and power, directly or indirectly through one or more intermediaries, to direct or cause the direction

of substantially all of the management and policies of a person or entity through ownership of voting securities or by contract, including, but not limited to, the right to fifty percent (50%) or more of the capital or earnings of a partnership or, alternatively, ownership of fifty percent (50%) or more of the voting stock of a corporation.

**"Agents"** means, when used with reference to either Party to this Lease, the officers, directors, employees, agents and contractors of such Party, and their respective heirs, legal representatives, successors and assigns.

**"Alterations"** means any alterations, installations or additions to any Improvements or to the Premises.

**"Assignment"** has the meaning given in **Section 16.1**.

**"Award"** means all compensation, sums or value paid, awarded or received for a Taking, whether pursuant to judgment, agreement, settlement or otherwise.

**"Basic Lease Information"** means the information with respect to this Lease summarized in **Section 1**.

**"Base Rent"** means the annual Base Rent specified in the Basic Lease Information and described in **Section 5.1**.

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

**"Commencement Date"** means the date on which the Term of this Lease commences as described in **Section 4.2**.

**"Date of Taking"** means the earlier of (i) the date upon which title to the portion of the Premises taken passes to and vests in the condemnor or (ii) the date on which Tenant is dispossessed.

**"Effective Date"** means the date on which this Agreement becomes effective pursuant to **Section 4.5**.

**"Encumber"** means create any Encumbrance; **"Encumbrance"** means any mortgage, deed of trust, assignment of rents, fixture filing, security agreement, or similar security instrument, or other lien or encumbrance.

**"Encumbrancer"** means a mortgagee, beneficiary of a deed of trust or other holder of an Encumbrance.

**"Environmental Laws"** means any present or future federal, state or local Laws or policies relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal, discharge or storage) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises (including any permitted Improvements) and any other property, including, without limitation, soil, air and groundwater conditions.

**"Event of Default"** means any one of the events of default described in **Section 17.1**.

**"General Manager"** means the General Manager of the Public Utilities Commission.

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

authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Sections 9601 et seq.) or pursuant to Section 25281 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of any existing improvements on the Land, any Improvements to be constructed on the Land by or on behalf of Tenant, or are naturally occurring substances on, in or about the Land; and petroleum, including crude oil or any fraction thereof, and natural gas or natural gas liquids.

**"Hazardous Material Claims"** means any and all enforcement, Investigation, Remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to any Environmental Laws, together with any and all Losses made or threatened by any third party against City, the PUC, their Agents, or the Premises or any Improvements, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, release or discharge of any Hazardous Materials, including, without limitation, Losses based in common law. Hazardous Materials Claims include, without limitation, Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the Premises or any Improvements, the loss or restriction of the use or any amenity of the Premises or any Improvements, and attorneys' fees and consultants' fees and experts' fees and costs.

**"Improvements"** means any and all buildings, structures, fixtures and other improvements constructed, installed or placed on the Premises by or on behalf of Tenant pursuant to this Lease, including, without limitation, any trailers, mobile homes, permanent tent facilities, signs, billboards or other advertising materials, roads, trails, driveways, parking areas, curbs, walks, fences, walls, stairs, poles, plantings and landscaping.

**"Indemnify"** means indemnify, protect, defend and hold harmless forever.

**"Indemnified Parties"** means City, including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, including, without limitation, its PUC; and all of its and their respective Agents, and their respective heirs, legal representatives, successors and assigns, and each of them.

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

**"Invitees"** when used with respect to Tenant means the clients, customers, invitees, guests, members and licensees, assignees and subtenants of Tenant.

**"Land"** means the real property described in **Exhibit A** attached hereto.

**"Landlord"** means the City and County of San Francisco.

**"Law"** means any law, statute, ordinance, resolution, regulation, proclamation, order or decree of any municipal, county, state or federal government or other governmental or regulatory authority with jurisdiction over the Premises, or any portion thereof, whether currently in effect or adopted in the future and whether or not in the contemplation of the Parties.

"Lease" means this Lease as it may be amended in accordance with its terms.

"Lease Year" has the meaning given in **Section 5.2**.

"Losses" means any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, including, without limitation, reasonable attorneys' and consultants' fees and costs.

"Official Records" means the official records of the county(ies) in which the Premises are located.

"Party" means City or Tenant; "Parties" means both City and Tenant.

"Premises" has the meaning given in **Section 3.1**. The Premises shall include any existing and permitted future Improvements, together with any additions, modifications or other Alterations thereto permitted hereunder. Notwithstanding anything to the contrary in this Lease, the Premises do not include the SFPUC Facilities, nor any water, water rights, riparian rights, water stock, mineral rights or timber rights relating to the Premises.

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

"Release" when used with respect to Hazardous Material means any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any existing improvements or any Improvements constructed hereunder by or on behalf of Tenant, or in, on, under or about the Premises or SFPUC Facilities or any portion thereof.

"Remediation" when used with reference to Hazardous Material means any activities undertaken to clean up, remove, contain, treat, stabilize, monitor or otherwise control any Hazardous Material located in, on, under or about the Premises or SFPUC Facilities or which have been, are being, or threaten to be Released into the environment. Remediate includes, without limitation, those actions included within the definition of "remedy" or "remedial action" in California Health and Safety Code Section 25322 and "remove" or "removal" in California Health and Safety Code Section 25323.

"Rent" means the Base Rent, as adjusted pursuant to the provisions of **Section 5.2** and **Section 5.3**, together with any and all Additional Charges.

"SFPUC Facilities" means any and all water pipelines, drainage pipelines, hatch covers, wells and other surface and subsurface facilities owned by the SFPUC and now or later located in, under, on or about the Premises for the storage, transportation or distribution of water for municipal purposes, together with all appurtenances thereto and all monuments thereof.

"Sublease" has the meaning given in **Section 16.1**.

"Taking" means a taking or damaging, including severance damage, by eminent domain, inverse condemnation or for any public or quasi-public use under Law. A Taking may occur pursuant to the recording of a final order of condemnation, or by voluntary sale or conveyance in lieu of condemnation or in settlement of a condemnation action.

"Tenant" means the Party identified as Tenant in the Basic Lease Information and at the beginning of this Lease. Except when immediately followed by the word "itself," the term Tenant shall also refer to the successors and assigns of Tenant's interests under this Lease, provided that the rights and obligations of Tenant's successors and assigns shall be limited to

only those rights and obligations that this Lease permits to be transferred and that have been transferred in accordance with this Lease.

**"Tenant's Personal Property"** means the personal property of Tenant described in **Section 8.3**.

**"Term"** means the term of this Lease as determined under **Section 4.1**.

**"Transfer"** means any Assignment or Sublease.

**"Transferee"** means any recognized assignee of any part of Tenant's leasehold interest hereunder or any recognized subtenant of any portion of the Premises, pursuant to a Transfer that complies with **Section 16**.

**"Unmatured Event of Default"** means any default by Tenant under this Lease that, with the giving of notice or the passage of time, or both, would constitute an Event of Default hereunder.

### **3. PREMISES**

#### **3.1 Leased Premises**

Subject to the terms, covenants and conditions of this Lease, City leases to Tenant and Tenant leases from City, the real property described in the attached **Exhibit A**, together with any and all improvements existing thereon and owned by City as of the date of this Lease (the "Premises"), excluding therefrom and reserving during the Term unto City, its successors and assigns, the rights described in **Section 3.2**. The Premises are shown generally on the attached **Exhibit B**. Any acreage stated in this Lease with respect to the Premises is an estimate only, and City does not warrant it to be correct. However, the Parties agree that for all purposes of this Lease, any such acreage shall be deemed to be correct. Nothing in this Lease is intended to grant Tenant any right whatsoever to possess, use or operate the SFPUC Facilities, or any portion thereof.

#### **3.2 Rights Reserved to City**

Notwithstanding anything to the contrary in this Lease, City reserves and retains all of the following rights relating to the Premises:

(a) Any and all water and water rights, including, but not limited to (i) any and all surface water and surface water rights, including, without limitation, riparian rights and appropriative water rights to surface streams and the underflow of streams, and (ii) any and all groundwater and subterranean water rights, including, without limitation, the right to export percolating groundwater for use by City or its water customers;

(b) Any and all timber and timber rights, including, without limitation, all standing trees and downed timber;

(c) Any and all minerals and mineral rights of every kind and character now known to exist or hereafter discovered in the Premises, including, but not limited to, oil and gas rights thereto, together with the sole, exclusive, and perpetual right to explore for, remove, and dispose of those minerals by any means or methods suitable to City or its successors and assigns, but without entering upon or using the surface of the lands of the Premises and in such manner as not to damage the surface of the Premises or to interfere with the permitted use thereof by Tenant, without Tenant's prior written consent;



(d) All rights to use, operate, maintain, repair, enlarge, modify, expand, replace and reconstruct the SFPUC Facilities;

(e) The right to grant future easements and rights-of-way over, across, under, in and upon the Premises as City shall determine to be in the public interest, provided that any such easement or right-of-way shall be conditioned upon the grantee's assumption of liability to Tenant for damage to its property that Tenant may sustain hereunder as a result of the grantee's use of such easement or right-of-way;

(f) Without limiting the generality of **Section 3.2(e)**, the right to grant future easements, rights-of-way, permits and/or licenses over, across, under, in and upon the Premises for the installation, operation, maintenance, repair and removal of (i) equipment for furnishing cellular telephone, radio or other telecommunications services, including, without limitation, antennas, radio, devices, cables and other equipment associated with a telecommunications cell site, and (ii) commercial billboards, signs and/or advertising kiosks, provided that any such easement or right-of-way shall not materially interfere with Tenant's use of the Premises hereunder, and provided further that the grant of any such easement or right-of-way shall be conditioned upon the grantee's assumption of liability to Tenant for damage to its property that Tenant may sustain hereunder as a result of the grantee's use of such easement or right-of-way; and

(g) All rights of access provided for in **Section 20**.

### **3.3 Subject to Municipal Uses**

Tenant acknowledges that the property of which the Premises are a part constitutes a portion of City's pipeline right-of-way or the SFPUC water or power enterprise, which City holds for the purposes of transporting and distributing water and/or power for other municipal uses. Tenant's rights under this Lease shall be subject to City's use of the Premises for such purposes and for other City uses. However, so long as there is no Event of Default or Unmatured Event of Default on the part of Tenant outstanding hereunder and subject to the terms and conditions of this Lease, City shall use reasonable efforts to avoid interfering with Tenant's quiet use and enjoyment of the Premises. The use of the term "right-of-way" or similar terms in this document shall not be deemed to imply that City holds less than fee title to the Premises or otherwise call into question the nature of City's title to any of its property. Landlord shall in no way be liable for any damage or destruction to Tenant's property and/or improvements resulting from any pipeline break or from any pipeline repair or maintenance activities. Tenant shall, at Landlord's request, immediately remove any property or improvements on the Premises to allow Landlord access to the pipelines. In the event Landlord deems it necessary, in Landlord's sole discretion, Landlord shall have the right to remove any such property or improvements and Landlord shall not be responsible for restoring or returning same to its prior condition.

### **3.4 As Is Condition of Premises**

#### **(a) Inspection of Premises**

Tenant represents and warrants that Tenant has conducted a thorough and diligent inspection and investigation, either independently or through Agents of Tenant's own choosing, of the Premises and the suitability of the Premises for Tenant's intended use. Tenant is fully aware of the needs of its operations and has determined, based solely on its own investigation, that the Premises are suitable for its operations and intended uses.

**(b) As Is; Disclaimer of Representations**

Tenant acknowledges and agrees that the Premises are being leased and accepted strictly in their "**AS IS, WITH ALL FAULTS**" condition, without representation or warranty of any kind, and subject to all applicable Laws governing the use, occupancy, management, operation and possession of the Premises. Without limiting the foregoing, this Lease is made subject to any and all covenants, conditions, restrictions, easements and other title matters affecting the Premises, or any portion thereof, whether or not of record. Tenant acknowledges and agrees that neither City, PUC, nor any of their Agents have made, and City hereby disclaims, any representations or warranties, express or implied, concerning: (i) title or survey matters affecting the Premises, (ii) the physical, geological, seismological or environmental condition of the Premises, (iii) the quality, nature or adequacy of any utilities serving the Premises, (iv) the present or future suitability of the Premises for Tenant's business and intended uses, (v) the feasibility, cost or legality of constructing any Improvements on the Premises if required for Tenant's use and permitted under this Lease, or (vi) any other matter whatsoever relating to the Premises or their use, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

**4. TERM**

**4.1 Term of Lease Date**

The Premises are leased for a term (the "Term") commencing on the date specified in the Basic Lease Information as the commencement date (the "Commencement Date"), subject to this Lease becoming effective pursuant to **Section 4.5**. The Term of this Lease shall end on the expiration date specified in the Basic Lease Information, unless sooner terminated pursuant to the provisions of this Lease.

**4.2 Commencement Date and Expiration Date**

The dates on which the Term commences and terminates pursuant hereto are referred to respectively as the "Commencement Date" and the "Expiration Date."

**4.3 Delay in Delivery of Possession**

If City is unable to deliver possession of the Premises to Tenant on or before the Estimated Commencement Date, then the validity of this Lease shall not be affected thereby and City shall not be liable to Tenant for any Losses resulting therefrom. Tenant waives all provisions of any Laws to the contrary. In the event of any such delay in delivery of possession, the Term and regular payments of Base Rent and Additional Charges shall not commence until City delivers possession of the Premises. If the Term commences later or earlier than the Estimated Commencement Date, this Lease shall nevertheless expire on the Expiration Date, unless sooner terminated pursuant to the provisions of this Lease.

**4.4 Delays Caused by Tenant**

Notwithstanding anything to the contrary above, if City's inability to deliver possession of the Premises on the Estimated Commencement Date results from the acts or omissions of Tenant or any of Tenant's Agents, then the Base Rent and Additional Charges payable by Tenant hereunder shall commence on the date when City would have delivered possession of the Premises but for such acts or omissions.

#### 4.5 Effective Date

This Lease shall become effective on the last to occur of the following (the "Effective Date"): (i) the PUC passes a resolution approving this Lease, (ii) the effective date of a Board of Supervisors resolution approving this Lease and Mayoral approval, and (iii) the Parties hereto have duly executed and delivered this Lease.

### 5. RENT

#### 5.1 Base Rent

Tenant shall pay to City during the Term of this Lease, beginning on the Commencement Date, the Monthly Base Rent specified in the Basic Lease Information, as it may be adjusted pursuant to this Lease (as adjusted, the "Base Rent"). The Base Rent shall be payable in monthly installments on or before the first day of each month, in advance, at the San Francisco Public Utilities Commission, Customer Service Bureau, Attention: Real Estate Billing, 525 Golden Gate Avenue, 3<sup>rd</sup> Floor, San Francisco, California 94102 (reference SFPUC lease number), or such other place as City may designate in writing. If the Commencement Date occurs on a day other than the first day of a calendar month, or if the Expiration Date occurs on a day other than the last day of a calendar month, then the monthly payment of the Base Rent for such fractional month shall be prorated based on a thirty (30) day month.

#### 5.2 Adjustments in Base Rent

Each twelve (12) month period following the Commencement Date is a "Lease Year". On the first day of the second Lease Year of the Term, and on the first day of each Lease Year thereafter (each, an "Adjustment Date"), the monthly Base Rent for each month during the Lease Year immediately following an Adjustment Date shall be increased to an amount equal to one hundred four percent (104%) of the Base Rent due and payable each month during the immediately preceding Lease Year.

#### 5.3 Reappraisal Option

(a) In addition to the adjustments to Base Rent pursuant to **Section 5.2**, the Base Rent may be adjusted up to three (3) additional times during the Term of this Lease to the then-current "Fair Market Rent" at the option of City as provided in this Section (each such option, a "Reappraisal Option"). The exercise of any Reappraisal Option and any other actions on behalf of the City under this Section shall be taken by the General Manager, in his or her discretion, or by his or her delegate. The first Reappraisal Option may be exercised by City at any time on or after the date that is one hundred twenty (120) days prior to the first day of the fifth (5<sup>th</sup>) Lease Year. The second Reappraisal Option may be exercised by City at any time on or after the date that is one hundred twenty (120) days prior to the first day of the tenth (10<sup>th</sup>) Lease Year, and the third Reappraisal Option may be exercised City at any time on or after the date that is one hundred twenty (120) days prior to the first day of the fifteenth (15<sup>th</sup>) Lease Year.

(b) The Base Rent shall be adjusted as a result of the exercise of any Reappraisal Option on the later of (i) the date on which the reappraised Fair Market Rent has been finally determined pursuant to this Section, or (ii) one hundred twenty (120) days after the applicable Reappraisal Notice (as defined below) has been given (the "Reappraisal Date"); provided, however, that if a Reappraisal Option is exercised at any time during the one hundred twenty (120) days immediately preceding the first day of the fifth (5<sup>th</sup>), tenth (10<sup>th</sup>) or fifteenth (15<sup>th</sup>) Lease Years, respectively, the Base Rent shall be adjusted to the Fair Market Rent, in lieu of the regular adjustment of Base Rent pursuant to **Section 5.2**, effective on the Adjustment Date immediately following such one hundred twenty (120) day period (i.e., on the first day of the fifth (5<sup>th</sup>), tenth (10<sup>th</sup>) or fifteenth (15<sup>th</sup>) Lease Year, as the case may be), and if the Fair Market

Rent has not been finally determined pursuant to this Section by such Adjustment Date, Tenant shall pay the Base Rent in effect immediately prior to such Adjustment Date until such time as the Fair Market Rent is finally determined, at which time City shall refund any excess amount to Tenant or Tenant shall pay any shortage to City, as the case may be.

(c) City may notify Tenant in writing of its exercise of the applicable Reappraisal Option (each, a "Reappraisal Notice"). During the thirty (30) days following receipt of such notice (the "Consultation Period"), the Parties shall attempt in good faith to meet no less than two (2) times, at a mutually agreeable time and place, to negotiate the Fair Market Rent for the Premises. The Parties may, by an instrument in writing, mutually agree to extend the Consultation Period for a reasonable period to resolve their disagreement if the Parties are negotiating in good faith and would be unable to resolve their differences within such thirty (30) day period.

(d) As used herein, "Fair Market Rent" for the Premises shall be determined by applying a market-derived yield rate to the fair market value of the fee interest in the Premises, in accordance with the following procedures and requirements:

(i) The fair market value of the fee interest in the Premises shall be determined on an average per square foot basis, based on the prevailing market rate for space of comparable size, location and use to the Premises situated within the San Francisco Bay Area.

(ii) The per square foot fee value shall be multiplied by the total square footage of the Premises, and the resulting product shall be multiplied by the then-prevailing market yield for ground leases of property located in the San Francisco Bay Area to determine the annual Fair Market Rent for the Premises.

(e) If the Parties agree on the Fair Market Rent prior to the expiration of the Consultation Period, the Base Rent as of the applicable Reappraisal Date shall be the agreed Fair Market Rent. If the Parties have not agreed on the Fair Market Rent within the Consultation Period, each Party will appoint an appraiser who shall determine, by written appraisal, the Fair Market Rent, in strict compliance with the definition set forth in (d) above, within the thirty (30) days following expiration of the Consultation Period (the "Appraisal Period"). If one Party fails to designate an appraiser within the Appraisal Period, or if one Party's designated appraiser fails to deliver its written appraisal to the Parties within the Appraisal Period or fails to comply with the definition of Fair Market Rent, the determination of Fair Market Rent of the one appraiser who has timely delivered its compliant written appraisal will be binding on both Parties.

(f) The appraisers will submit their determinations of Fair Market Rent to both Parties in writing during the Appraisal Period. If the difference between the two determinations is ten percent (10%) or less of the higher appraisal, then the average between the two determinations will be the Base Rent for the Premises commencing on the applicable Reappraisal Date.

(g) If the difference between the two appraisers' determinations is greater than ten percent (10%), then City and Tenant shall submit the matter to arbitration by a single appraiser (the "Independent Appraiser") in accordance with the following procedure.

(i) City and Tenant by mutual agreement shall select the Independent Appraiser within ten (10) days after the end of the Appraisal Period. If the Parties are unable to reach agreement on selection of the Independent Appraiser within such period, the two appraisers chosen by the Parties shall jointly prepare and submit to the Parties within fifteen (15) days following the Appraisal Period a list of seven (7) qualified appraisers. Each Party shall have ten (10) days from receipt of such list in which to strike up to three (3) names objected to, number the remaining names in order of preference, and return the list to the appraisers. If a

Party does not return the list within the time specified, all appraisers named therein shall be deemed acceptable to such Party. From among the appraisers who have been approved on both lists, and in accordance with the designated order of mutual preference, the two appraisers shall designate the Independent Appraiser.

(ii) Upon the selection of the Independent Appraiser, City and Tenant shall each submit to the Independent Appraiser and to the other Party the figure such Party's appraiser determined to be the Fair Market Rent of the Premises, together with any opinions of value, appraisals or other relevant written information concerning the Fair Market Rent such Party wishes to provide. The Independent Appraiser may request any additional information he or she deems appropriate by written request to both Parties, and the Parties shall respond by providing any requested information in writing to the Independent Appraiser and to the other Party. Upon considering such information provided by the Parties, the Independent Appraiser shall, by written notice to the Parties within thirty (30) days of his or her selection, choose either the figure provided by City or the figure provided by Tenant as the Fair Market Rent (the Independent Appraiser may not select any other figure, and may not deviate from the definition of Fair Market Rent set forth in (d) above). Such determination shall be binding on the Parties for purposes hereof.

(iii) Each of the appraisers specified herein (including the Independent Appraiser) shall be a member of the Appraisal Institute (MAI) with not less than five (5) continuous years of recent experience appraising commercial properties in the San Francisco Bay Area, and shall have significant experience with ground leases. All appraisals prepared hereunder shall be in conformity with the Uniform Standards of Professional Appraisal Practice, Code of Professional Ethics and the Standards of Professional Practice of the Appraisal Institute. The Independent Appraiser shall not have had any prior dealings with City or Tenant with respect to the matter to be determined hereunder. City and Tenant shall each pay one-half of the cost of the Independent Appraiser plus one-half of any other costs incurred in the arbitration (excluding its own attorneys' fees and experts' costs), notwithstanding the provisions of **Section 25.12** hereof.

#### **5.4 Late Charge**

If Tenant fails to pay any Rent within five (5) days after the date the same is due and payable, such unpaid amount will be subject to a late payment charge equal to six percent (6%) of the unpaid amount in each instance. The late payment charge has been agreed upon by City and Tenant, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that City will incur as a result of any such failure by Tenant, the actual costs thereof being extremely difficult if not impossible to determine. The late payment charge constitutes liquidated damages to compensate City for its damages resulting from such failure to pay and Tenant shall promptly pay such charge to City together with such unpaid amount.

#### **5.5 Default Interest**

If any Rent is not paid within five (5) days following the due date, such unpaid amount shall bear interest from the due date until paid at the rate of ten percent (10%) per year or, if a higher rate is legally permissible, at the highest rate an individual is permitted to charge under Law. However, interest shall not be payable on late charges incurred by Tenant nor on any amounts on which late charges are paid by Tenant to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Tenant.

## 5.6 Net Lease

This Lease is a "net lease." Accordingly, Tenant shall pay to City the Base Rent, Additional Charges and any other payments hereunder free of any charges, assessments or deductions of any kind, without prior demand and without abatement, counterclaim or setoff. Under no circumstances, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties, shall City be expected or required to make any payment of any kind whatsoever with respect to Tenant's use or occupancy of the Premises and any permitted Improvements or this Lease, except as may otherwise be expressly set forth herein. Without limiting the foregoing, Tenant shall be solely responsible for paying each item of cost or expense of every kind and nature whatsoever, the payment of which City would otherwise be or become liable by reason of its estate or interests in the Premises and any Improvements, any rights or interests of City in or under this Lease, or the ownership, leasing, operation, management, maintenance, repair, rebuilding, remodeling, renovation, use or occupancy of the Premises, any permitted Improvements, or any portion thereof. Except as may be specifically and expressly provided otherwise in this Lease, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its liability to pay all of the sums required by any of the provisions of this Lease, or shall otherwise relieve Tenant from any of its obligations under this Lease, or shall give Tenant any right to terminate this Lease in whole or in part. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease or to receive any abatement, diminution, reduction or suspension of payment of such sums, on account of any such occurrence or situation.

## 5.7 Processing Fee

Upon execution of this Lease, Tenant shall pay SFPUC the sum of Three Thousand Dollars (\$3,000.00) as a fee for processing this Lease.

## 6. TAXES, ASSESSMENTS AND OTHER EXPENSES

### 6.1 Taxes and Assessments, Licenses, Permit Fees and Liens

#### (a) Payment Responsibility

Tenant shall pay any and all real and personal property taxes, general and special assessments, excises, licenses, permit fees and other charges and impositions of every description levied on or assessed against the Premises, any Improvements, Tenant's Personal Property, the leasehold estate or any subleasehold estate, or Tenant's use of the Premises or any Improvements. Tenant shall make all such payments directly to the charging authority when due and payable and at least ten (10) days before delinquency, subject to Tenant's right to contest the validity of such charge pursuant to **Section 6.1(c)**. However, with respect to real property taxes and assessments levied on or assessed against the Premises for which City receives the tax bill directly from the taxing authority, Tenant shall reimburse City for payment of such sums immediately upon demand.

#### (b) Taxability of Possessory Interest

Without limiting the foregoing, Tenant recognizes and agrees that this Lease may create a possessory interest subject to property taxation and that Tenant may be subject to the payment of property taxes levied on such interest.

**(c) No Liens**

Tenant shall not allow or suffer a lien for any taxes payable by Tenant hereunder to be imposed upon the Premises or upon any equipment or other property located thereon without promptly discharging the same. Tenant may have a reasonable opportunity to contest the validity of any such taxes provided Tenant, before commencement of any proceeding or contest, furnishes to City a surety bond issued by a surety company qualified to do business in California and acceptable to City's Controller. The amount of such bond shall be equal to one hundred twenty-five percent (125%) of the amount of taxes in dispute and shall be in such form as approved by the City Attorney of City. The bond shall insure payment of any judgment that may be rendered should Tenant be unsuccessful in any such contest. Tenant shall Indemnify City, the other Indemnified Parties, and the Premises from and against any Losses arising out of any proceeding or contest provided for hereunder. The foregoing Indemnity shall not be limited by the amount of the bond.

**(d) Reporting Requirement**

Tenant agrees to provide such information as City may request to enable City to comply with any tax reporting requirements applicable to this Lease.

**6.2 Other Expenses**

Tenant shall be responsible for any and all other charges, costs and expenses related to its use, occupancy, operation or enjoyment of the Premises or any Improvements permitted thereon, including, without limitation, the cost of any utilities or services necessary for Tenant's use.

**6.3 Evidence of Payment**

Tenant shall, upon City's request, furnish to City within ten (10) days after the date when any charges are due and payable, official receipts of the appropriate taxing authority or other evidence reasonably satisfactory to City, evidencing payment thereof.

**7. USE; COVENANTS TO PROTECT PREMISES AND SFPUC FACILITIES**

**7.1 Tenant's Permitted Use**

Tenant may use the Premises and any Improvements allowed hereunder only for the use specified in the Basic Lease Information, and for no other purpose.

**7.2 Covenants Regarding Use**

As a material inducement to City to enter into this Lease, Tenant covenants with City as follows:

**(a) No Unlawful Uses or Nuisances**

Tenant shall not use or occupy any of the Premises or any Improvements, or permit the use or occupancy thereof, in any unlawful manner or for any illegal purpose, or permit to be carried on any offensive, immoral, noisy or hazardous use or any use in violation of the conditions of any certificate of occupancy. Tenant shall take all precautions to eliminate immediately any nuisances or hazards relating to its activities on or about the Premises or any Improvements permitted hereunder.

**(b) Covenant Against Waste**

Tenant shall not cause or permit any waste, damage or injury to the Premises.

**(c) Covenant to Protect SFPUC Facilities**

At all times during the Term of this Lease, Tenant shall protect the SFPUC Facilities from any damage, injury or disturbance. If Tenant or any of its Agents or Invitees damages, injures or disturbs any of the SFPUC Facilities, or any portion of the SFPUC Facilities (including monuments), Tenant shall immediately notify City of that occurrence. City may, without limiting any of its other rights hereunder, take all actions it deems proper to repair such SFPUC Facilities (including relocation of monuments) at Tenant's sole expense. Tenant shall promptly, upon City's request, remove or alter to City's satisfaction and at Tenant's sole cost, any Improvements, Alterations or Tenant's Personal Property placed on the Premises by or on behalf of Tenant as necessary to avoid interference with City's use of the Premises for municipal utility purposes. Alternatively, subject to the SFPUC General Manager's approval in his or her sole discretion, Tenant may pay City for the costs determined by the SFPUC General Manager that City will incur as a result of such interference.

City may adopt from time to time such rules and regulations with regard to Tenant's facilities and operations hereunder as City may determine are necessary or appropriate to safeguard against corrosion of City's pipelines and related SFPUC Facilities. Tenant shall comply with all such rules and regulations upon receipt of a copy thereof.

**(d) Covenant to Protect Water Courses**

Tenant shall not cause any ponding on the Premises or any flooding on adjacent land. Tenant shall not engage in any activity that causes any change, disturbance, fill, alteration or impairment to the bed, bank or channel of any natural water course, wetland, or other body of water on, in, under or about the Premises, nor shall Tenant engage in any activity that would pollute or degrade any surface or subsurface waters or result in the diminution or drainage of such waters.

**(e) Covenant Against Dumping**

Tenant shall not cause or permit the dumping or other disposal on, under or about the Premises of landfill, refuse, Hazardous Material or other materials that are unsightly or could pose a hazard to the human health or safety, native vegetation or wildlife, or the environment.

**(f) Covenant to Protect Trees or Other Native Vegetation**

Tenant shall not engage in or permit the cutting, removal, or destruction of trees or any other native vegetation on the Premises, without the prior written approval of the SFPUC.

**(g) No Tree Planting**

Tenant shall not plant any trees on the Premises, nor shall Tenant plant any other vegetation on the Premises except as otherwise expressly provided herein.

**(h) Covenant Against Hunting or Fishing**

Tenant shall not engage in or permit any hunting, trapping or fishing on or about the Premises, except for hunting or trapping for the purpose of controlling predators or problem animals by the appropriate use of selective control techniques approved in advance by the SFPUC provided such hunting and trapping is done in strict accordance with all applicable Laws.



Whenever possible, all measures used for such control shall be limited in their application to the specific problem animals. Tenant shall not use poison bait, cyanide guns, traps or other similar non-selective control techniques. In no event may Tenant use any prophylactic predator control measures. The restrictions of this Section applicable to the identification and control of predators and problem animals shall not apply to commensal rodents.

**(i) Pesticides Prohibition**

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

**(j) Weed Control**

Tenant shall not introduce any noxious weeds on or about the Premises. Tenant shall control noxious weeds, provided that Tenant may use chemical herbicides only if such use complies with the requirements of **Section 7.2(i)**.

**(k) Maintenance of Roads**

Tenant shall keep all roads on the Premises open and in the same condition as such roads are now in, ordinary wear and tear excepted, and shall not interfere with any travel on such roads.

**(l) Covenant Against Burning**

Tenant shall not burn any weeds, debris or other substances on or about the Premises.

**(m) No Off-Road Vehicles**

Tenant shall not use or permit the use of off-road vehicles on any portion of the Premises except on existing roads and in the manner for which such roads are intended.

**(n) Restrictions on Heavy Equipment and Vehicles**

To prevent damage to City's underground pipelines, Tenant shall strictly adhere to the following restrictions when using vehicles and equipment within twenty feet (20') of City's pipelines:

**(i)** The depth of soil cover over the tops of City's pipelines must be at least three feet (3') for steel cylinder pipe and four feet (4') for reinforced pre-stressed concrete cylinder pipe to accommodate the loading as defined below in item (ii). If any equipment with axle loading exceeds the weight stated in item (ii) below or if the depth of soil cover is less than stated above, Tenant shall submit to SFPUC for review and approval, engineering calculations prepared by a registered civil engineer to provide adequate protection of the pipelines showing that City's pipelines will not be adversely affected.

(ii) The effects of vehicle and equipment loads to the pipe must not exceed the effects of the "AASHO Standard H-10 Loading." H-10 loading is defined as loading caused by a two-axle truck with a gross weight of ten tons (20,000 lbs.), axles fourteen feet (14') apart, and rear axle carrying eight tons (16,000 lbs.). Tenant shall be responsible to provide SFPUC adequate evidence that Tenant's equipment and vehicles meet the foregoing requirements.

(iii) Tenant shall not use vibrating compaction equipment unless it first obtains City's written approval.

(iv) If the depth of the soil cover over the pipeline (determined by potholing or other proof procedure) is less than the minimum stated in (i) above, unless an alternate method is approved by City all excavation and grading over the pipeline shall be performed manually. For any machinery equipment excavation and grading over and within twenty feet (20') on each side of the centerline of the pipeline (measured on the surface), Tenant shall submit a written proposal together with all supporting calculations and data to SFPUC for review and approval. In any case, the two feet (2') of soil around the pipeline shall be removed manually or by other methods approved by SFPUC with due care as provided above.

#### (o) **Watershed Management Plan**

Tenant shall comply with any and all other regulations or requirements resulting from City's development of a watershed management plan, and any modifications or additions to such plan, provided that such regulations or requirements do not unreasonably interfere with Tenant's use and enjoyment of the Premises hereunder.

## **8. IMPROVEMENTS**

### **8.1 Construction of Improvements**

Tenant shall not construct or install any Improvements nor make or permit any Alterations in, to or about the Premises, without SFPUC's prior written consent in each instance, which SFPUC may give or withhold in its sole and absolute discretion. Subject to SFPUC's consent as provided above, any permitted Improvements or Alterations shall be done at Tenant's sole expense (i) in strict accordance with plans and specifications approved in advance by SFPUC in writing, (ii) by duly licensed and bonded contractors or mechanics approved by SFPUC, (iii) in a good and professional manner, (iv) in strict compliance with all Laws, and (v) subject to all other conditions that SFPUC may reasonably impose, including, without limitation, provision of such completion security as is acceptable to SFPUC. In no event shall the construction or installation of any such Improvements or the making of any Alterations impair the use or operation of the SFPUC Facilities, or any portion thereof, or SFPUC's access thereto. Before the commencement of any work on the Premises to construct any permitted Improvements or make any permitted Alterations, Tenant, at its sole expense, shall procure all required permits and approvals and shall promptly upon receipt deliver copies of all such documents to SFPUC. No material change from the plans and specifications approved by SFPUC may be made without SFPUC's prior consent. SFPUC and its Agents shall have the right to inspect the course of such construction at all times. Upon completion of such Improvements or Alterations, Tenant shall furnish SFPUC with a complete set of final as-built plans and specifications. Tenant shall require from each contractor and subcontractor performing any work on or about the Premises a policy of general public liability insurance, with such limits as may reasonably be required by City from time to time, but in any event not less than One Million Dollars (\$1,000,000) combined single limit. Such insurance shall also be in compliance with the requirements set forth in **Section 19.2(c)**.

## 8.2 Ownership of Improvements

Any Improvements or Alterations constructed on or affixed to the Premises by or on behalf of Tenant pursuant to the terms and limitations of **Section 8.1** shall be and remain Tenant's property during the Term. Before the Expiration Date or immediately upon any earlier termination of this Lease, Tenant shall remove all such Improvements and Alterations from the Premises in accordance with the provisions of **Section 22.1**, unless SFPUC, at its sole option and without limiting any of the provisions of **Section 8.1**, requires as a condition to approval of any such Improvements or Alterations that such Alterations or Improvements remain on the Premises at the expiration or termination of this Lease or unless SFPUC as a condition of such approval reserves the right to elect by notice to Tenant not less than thirty (30) days before the end of the Term to have such Improvements or Alterations remain on the Premises.

## 8.3 Tenant's Personal Property

All furniture, furnishings and articles of movable personal property and equipment installed in the Premises by or for the account of Tenant that can be removed without structural or other material damage to the Premises (all of which are herein called "Tenant's Personal Property") shall be and remain the property of Tenant and may be removed by it subject to the provisions of **Section 22.1**. At least ten (10) days before delinquency, Tenant shall pay all taxes levied or assessed upon Tenant's Personal Property and shall deliver satisfactory evidence of such payment to City.

## 9. REPAIRS AND MAINTENANCE

### 9.1 Tenant Responsible for Maintenance and Repair

Tenant assumes full and sole responsibility for the condition, operation, repair and maintenance and management of the Premises and any permitted Improvements from and after the Commencement Date. City shall not under any circumstances be responsible for the performance of any repairs, changes or alterations to the Premises or any adjoining property (including, without limitation, access roads, utilities and other infrastructure serving the Premises), nor shall City be liable for any portion of the cost thereof. Tenant shall make all repairs and replacements, interior and exterior, structural as well as non-structural, ordinary as well as extraordinary, foreseen and unforeseen, that may be necessary to maintain the Premises including the existing building and any permitted Improvements at all times in clean, safe, attractive and sanitary condition and in good order and repair, to City's reasonable satisfaction and so that the Premises, including the existing building, shall be at least equal in quality, value and utility to the Premises as it exist on the Commencement Date. If any portion of the Premises or any of City's property located on or about the Premises is damaged by any of the activities conducted by Tenant or its Agents or Invitees hereunder, Tenant shall immediately, at its sole cost, repair any and all such damage and restore the Premises or City's property to its previous condition.

### 9.2 Utilities

City has no responsibility or liability of any kind with respect to any utilities that may be on or about the Premises. Tenant has the sole responsibility to locate such utilities and protect them from damage. Tenant shall make all arrangements directly with the utility companies for, and shall pay for, any and all utilities and services furnished to or used by it, including, without limitation, gas, electricity, water, sewage, telephone service, trash collection, and janitorial service, and for all deposits, connection and installation charges. Tenant shall be responsible for installation and maintenance of all facilities required in connection with such utility services. The Parties agree that any and all utility improvements shall be subject to the provisions of **Section 8.1** and that such improvements shall be deemed part of City's real property, and not

personal property or trade fixtures of Tenant. During the Term, Tenant shall be obligated to repair and maintain any and all utility systems and improvements located on or within the Premises (except for the SFPUC Facilities) in good operating condition. City shall not be liable for any failure or interruption of any utility service furnished to the Premises, and no such failure or interruption shall entitle Tenant to any abatement in Rent or to terminate this Lease.

### **9.3 Maintenance of Fences**

Tenant shall maintain in good condition and repair and its expense the existing fence along or about the property line of the Premises.

### **9.4 No Right to Repair and Deduct**

Tenant expressly waives the benefit of any existing or future Law or judicial or administrative decision that would otherwise permit Tenant to make repairs or replacements at City's expense, or to terminate this Lease because of City's failure to keep the Premises or any adjoining property (including, without limitation, access roads, utilities and other infrastructure serving the Premises) or any part thereof in good order, condition or repair, or to abate or reduce any of Tenant's obligations hereunder on account of the Premises or any adjoining property (including, without limitation, access roads, utilities and other infrastructure serving the Premises) or any part thereof being in need of repair or replacement. Without limiting the foregoing, Tenant expressly waives the provisions of California Civil Code Sections 1932, 1941 and 1942 or any similar Laws with respect to any right of Tenant to terminate this Lease and with respect to any obligations of City for tenantability of the Premises and any right of Tenant to make repairs or replacements and deduct the cost thereof from Rent.

## **10. LIENS**

Tenant shall keep the Premises and all of City's property free (including, without limitation, the SFPUC Facilities) from any liens arising out of any work performed, material furnished or obligations incurred by or for Tenant. In the event Tenant does not, within five (5) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, City shall have in addition to all other remedies provided herein and by Law or equity the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by City and all expenses it incurs in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to City by Tenant upon demand. City shall have the right at all times to post and keep posted on the Premises any notices permitted or required by Law or that City deems proper for its protection and protection of the Premises and City's property, from mechanics' and material supplier's liens. Tenant shall give City at least fifteen (15) days' prior written notice of the commencement of any repair or construction on any of the Premises. Notwithstanding the foregoing, Tenant shall have the right, upon posting of an adequate bond or other security acceptable to City, to contest any such lien, and in such case City shall not seek to satisfy or discharge such lien unless Tenant has failed to do so within ten (10) days after final determination of the validity thereof. Tenant shall Indemnify City, the other Indemnified Parties and the Premises against any and all Losses arising out of any such contest.

## **11. COMPLIANCE WITH LAWS**

### **11.1 Compliance with Laws**

Tenant shall promptly, at no cost to City, maintain the Premises, including any Improvements and Tenant's use and operations thereon in strict compliance at all times with all present and future Laws, whether foreseen or unforeseen, ordinary as well as extraordinary.

Such Laws shall include, without limitation, all Laws relating to health and safety and disabled accessibility including, without limitation, the Americans with Disabilities Act, 42 U.S.C. Sections 12101 et seq. and Title 24 of the California Code of Regulations, all present and future Environmental Laws (as defined in this Lease below), and all present and future life safety, fire sprinkler, seismic retrofit and other building code requirements. The Parties acknowledge and agree that Tenant's obligation to comply with all laws as provided herein is a material part of the bargained-for consideration under this Lease. Tenant's obligation under this Section shall include, without limitation, the responsibility of Tenant to make substantial or structural repairs and alterations to the Premises (including any Improvements), regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term, the relative benefit of the repairs to Tenant or City, the degree to which the curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the parties contemplated the particular Law involved, and whether the Law involved is related to Tenant's particular use of the Premises. Without limiting **Section 5.5**, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its obligations hereunder, or shall give Tenant any right to terminate this Lease in whole or in part or to otherwise seek redress against City. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel City to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

## **11.2 Regulatory Approvals**

### **(a) Responsible Party**

Tenant understands and agrees that Tenant's use of the Premises may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises. Tenant shall be solely responsible for obtaining any and all such regulatory approvals. Tenant shall not seek any regulatory approval without first obtaining the written consent of the SFPUC. Tenant shall bear all costs associated with applying for, obtaining and maintaining any necessary or appropriate regulatory approval and shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval. Any fines or penalties levied as a result of Tenant's failure to comply with the terms and conditions of any regulatory approval shall be immediately paid and discharged by Tenant, and City shall have no liability, monetary or otherwise, for any such fines or penalties. Tenant shall Indemnify City and the other Indemnified Parties against all Losses arising in connection with Tenant's failure to obtain or comply with the terms and conditions of any regulatory approval.

### **(b) City Acting as Owner of Real Property**

Tenant further understands and agrees that City, acting by and through its PUC, is entering into this Lease in its capacity as a property owner with a proprietary interest in the Premises and not as a regulatory agency with police powers. Nothing in this Lease shall limit in any way Tenant's obligation to obtain any required approvals from City departments, boards or commissions having jurisdiction over the Premises. By entering into this Lease, City is in no way modifying or limiting Tenant's obligation to cause the Premises or any permitted Improvements to be used and occupied in accordance with all applicable Laws, as provided further above.

## **11.3 Compliance with City's Risk Management Requirements**

Tenant shall not do anything, or permit anything to be done, in or about the Premises or any Improvements permitted hereunder that would create any unusual fire risk, and shall take commercially reasonable steps to protect City from any potential premises liability.

Tenant shall faithfully observe, at its expense, any and all reasonable requirements of City's Risk Manager with respect thereto and with the requirements of any policies of public liability, fire or other policies of insurance at any time in force with respect to the Premises and any Improvements as required hereunder.

#### **11.4 Reports**

Tenant shall submit a report and provide such documentation to City as City may from time to time request regarding Tenant's operations and evidencing compliance with this Lease and all Laws.

### **12. FINANCING; ENCUMBRANCES; SUBORDINATION**

#### **12.1 Encumbrance of Landlord's Fee Interest**

The following provisions shall apply notwithstanding anything to the contrary contained in this Lease.

##### **(a) Encumbrance by City**

To the extent permitted by applicable Law, City may at any time sell or otherwise transfer or encumber its fee estate in any portion of the Premises provided that (i) any such sale or Encumbrance shall be subject and subordinate to all of the terms of this Lease and the leasehold estate created hereby, (ii) the right of possession of Tenant to the Premises shall not be affected or disturbed by any such sale or Encumbrance, or by the exercise of any rights or remedies by any purchaser or Encumbrancer arising out of any instrument reflecting such sale or Encumbrance so long as no Event of Default or Unmatured Event of Default is outstanding hereunder.

##### **(b) Encumbrance By Tenant**

Tenant shall not under any circumstances whatsoever Encumber in any manner the Premises, the SFPUC Facilities, City's estate in the Premises or any adjoining property, City's interest under this Lease, or any portion thereof.

#### **12.2 Leasehold Encumbrances**

Without limiting **Section 16**, Tenant shall not Encumber this Lease, or assign or pledge assignment of the same as security for any debt, without first obtaining the written consent of City, which City may give or withhold in its sole discretion.

### **13. DAMAGE OR DESTRUCTION**

#### **13.1 Damage or Destruction to the Improvements**

In the case of damage to or destruction of the Premises by fire or any other casualty, whether insured or uninsured, Tenant shall, at its sole cost and with reasonable promptness and diligence, restore, repair, replace or rebuild the Premises as nearly as possible to the same condition, quality and class the Premises were in immediately before such damage or destruction, unless such damage or destruction was caused solely and directly by the gross negligence or willful misconduct of City or its Agents. With respect to any damage to or destruction by fire or any other casualty to any Improvements permitted hereunder made by or on behalf of Tenant during the Term, Tenant may, at its option and at its sole cost, restore, repair, replace or rebuild such Improvements to the condition such Improvements were in before such damage or destruction, subject to any changes made in strict accordance with the requirements of

**Section 8.1.** However, if Tenant does not notify City in writing within thirty (30) days after the date of such damage or destruction of Tenant's election to restore, repair, replace or rebuild any such damaged or destroyed Improvements as provided above, Tenant shall promptly, at its sole cost, demolish such Improvements and remove them (including all debris) from the Premises in compliance with the provisions of **Section 22.1**.

### **13.2 Abatement in Rent**

In the event of any damage or destruction to the Premises or any permitted Improvements, there shall be no abatement in the Base Rent or Additional Charges payable hereunder.

### **13.3 Waiver**

The Parties understand and agree that the foregoing provisions of this Section are intended to govern fully the rights and obligations of the Parties in the event of damage or destruction to the Premises or Improvements, and City and Tenant each hereby waives and releases any right to terminate this Lease in whole or in part under Sections 1932.2 and 1933.4 of the Civil Code of California or under any similar Laws now or hereafter in effect, to the extent such rights are inconsistent with the provisions of this Lease.

## **14. INTENTIONALLY OMITTED**

## **15. EMINENT DOMAIN**

### **15.1 General**

If during the Term or during the period between the execution of this Lease and the Commencement Date, any Taking of all or any part of the Premises or any interest in this Lease occurs, the rights and obligations of the Parties shall be determined pursuant to this Section. City and Tenant intend that the provisions hereof govern fully in the event of a Taking and accordingly, the Parties each hereby waives any right to terminate this Lease in whole or in part under Sections 1265.120 and 1265.130 of the California Code of Civil Procedure or under any similar Law now or hereafter in effect.

### **15.2 Total Taking; Automatic Termination**

If a total Taking of the Premises occurs, then this Lease shall terminate as of the Date of Taking.

### **15.3 Partial Taking; Election to Terminate**

(a) If a Taking of any portion (but less than all) of the Premises occurs, then this Lease shall terminate in its entirety under either of the following circumstances: (i) if all of the following exist: (A) the partial Taking renders the remaining portion of the Premises untenantable or unsuitable for continued use by Tenant, (B) the condition rendering the Premises untenantable or unsuitable either is not curable or is curable but City is unwilling or unable to cure such condition, and (C) Tenant elects to terminate; or (ii) if City elects to terminate, except that this Lease shall not terminate if Tenant agrees to, and does, pay full Rent and Additional Charges, without abatement, and otherwise agrees to, and does, fully perform all of its obligations hereunder.

(b) If a partial Taking of a substantial portion of the SFPUC Facilities or any of City's adjoining real property, but not the Premises, occurs, City shall have the right to terminate this Lease in its entirety.

(c) Either Party electing to terminate under the provisions of this **Section 15** shall do so by giving written notice to the other Party before or within thirty (30) days after the Date of Taking, and thereafter this Lease shall terminate upon the later of the thirtieth day after such written notice is given or the Date of Taking.

#### **15.4 Termination of Lease; Rent and Award**

Upon termination of this Lease in its entirety pursuant to **Section 15.2**, or pursuant to an election under **Section 15.3**, then: (i) Tenant's obligation to pay Rent shall continue up until the date of termination and thereafter shall cease, and (ii) City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease), and Tenant shall have no claim against City for the value of any unexpired term of this Lease, provided that Tenant may make a separate claim for compensation, and Tenant shall receive any Award made specifically to Tenant, for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's Personal Property.

#### **15.5 Partial Taking; Continuation of Lease**

If a partial Taking of the Premises occurs and this Lease is not terminated in its entirety under **Section 15.3**, then this Lease shall terminate as to the portion of the Premises so taken, but shall remain in full force and effect as to the portion not taken, and the rights and obligations of the Parties shall be as follows: (i) Base Rent shall be reduced by an amount that is in the same ratio to the Base Rent as the area of the Premises taken bears to the area of the Premises before the Date of Taking, and (ii) City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease). Tenant shall have no claim against City for the value of any unexpired Term of this Lease, provided that Tenant may make a separate claim for compensation. Tenant shall retain any Award made specifically to Tenant for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's Personal Property.

#### **15.6 Temporary Takings**

Notwithstanding anything to contrary in this Section, if a Taking occurs with respect to all or any part of the Premises for a limited period of time not in excess of sixty (60) consecutive days, this Lease shall remain unaffected thereby, and Tenant shall continue to pay Rent and to perform all of the terms, conditions and covenants of this Lease. In the event of such temporary Taking, Tenant shall be entitled to receive that portion of any Award representing compensation for the use or occupancy of the Premises during the Term up to the total Rent owing by Tenant for the period of the Taking, and City shall be entitled to receive the balance of any Award.

### **16. ASSIGNMENT AND SUBLETTING**

#### **16.1 Restriction on Assignment and Subletting**

Tenant shall not directly or indirectly (including, without limitation, by merger, acquisition, sale or other transfer of any controlling interest in Tenant), voluntarily or by operation of Law, sell, assign, encumber, pledge or otherwise transfer any part of its interest in or rights with respect to the Premises, the business, any Improvements or its leasehold estate hereunder (collectively, "Assignment"), or permit any portion of the Premises or any Improvements to be occupied by anyone other than itself, or sublet any portion of the Premises or any permitted Improvements thereon (collectively, "Sublease"), without the PUC's prior written consent in each instance, which the PUC may withhold in its sole discretion. Any Assignment or Sublease, without the PUC's prior consent, shall be voidable at the option of the



City in its sole and absolute discretion; and the General Manager shall have the right to terminate immediately this Lease by sending written notice to Tenant.

Tenant further agrees and understands that the intent and purpose of this Lease is to allow for use or uses as provided in the Basic Lease Information, and not for the purpose of creating an investment in property. Therefore, while Tenant may charge to an assignee or sublessee an amount in excess of that rent which is at the time being charged by City to Tenant, all rental income or other consideration received by Tenant which is attributable to the value of the leasehold estate created by this Lease over and above that Rent charged to Tenant by City shall be paid directly to City with no profit, direct or indirect, to Tenant attributable to the value of the leasehold estate created by this Lease.

## **16.2 Notice of Proposed Transfer**

If Tenant desires to enter into an Assignment or a Sublease, then it shall give written notice (a "Notice of Proposed Transfer") to the PUC of its intention to do so. The Notice of Proposed Transfer shall include a copy of the proposed Assignment or Sublease, identify the Transferee and state the terms and conditions under which Tenant is willing to enter into such proposed Assignment or Sublease, including a copy of the proposed Assignment or Sublease agreement. Tenant shall provide the PUC with financial statements for the proposed Transferee and such additional information regarding the proposed Transfer as the PUC may reasonably request.

## **16.3 PUC's Response**

Within twenty (20) business days after PUC's receipt of the Notice of Proposed Transfer and any such additional information requested by PUC (the "Response Period"), the PUC may, by written notice to Tenant, elect to: (a) sublease the portion of the Premises specified in the Notice of Proposed Transfer on the terms and conditions set forth in such notice, except as otherwise provided in **Section 16.4**, or (b) terminate this Lease as to the portion (including all) of the Premises that is specified in the Notice of Proposed Transfer, with a proportionate reduction in Base Rent (a "Recapture").

If the PUC declines to exercise either of the options provided in clauses (a) and (b) above, then Tenant shall be entitled for a period of ninety (90) days following the earlier of PUC's notice that it will not elect either such option or the expiration of the Response Period, to enter into such Assignment or Sublease, subject to the PUC's prior written approval of the proposed Transferee and the terms and conditions of the proposed Transfer. The parties recognize and agree that the purpose of this Lease is to allow for the permitted uses and not to create an investment in property, and therefore City may condition its consent to any Assignment or Sublease on the receipt of some or all of the consideration realized by Tenant under any such Assignment or Sublease (or the amount thereof attributable to the Premises if the transaction includes other properties) in excess of the Base Rent and Additional Charges payable hereunder, after deducting the proportionate share of any reasonable broker's commissions or transaction costs incurred by Tenant. Tenant shall provide the PUC with such information regarding the proposed Transferee and the proposed Assignment or Sublease as the PUC may reasonably request.

Notwithstanding the foregoing, if following the PUC's decline to exercise the foregoing options Tenant desires to enter into such Assignment or Sublease on terms and conditions materially more favorable to Tenant than those contained in the Notice of Proposed Transfer, then Tenant shall give PUC a new Notice of Proposed Transfer, which notice shall state the terms and conditions of such Assignment or Sublease and identify the proposed Transferee, and PUC shall again be entitled to elect one of the options provided in clauses (a) and (b) above at

any time within fifteen (15) business days after the PUC's receipt of such new Notice of Proposed Transfer.

In the event the PUC elects either of the options provided in clauses (a) or (b) above, the PUC shall be entitled, at its sole option, to enter into a lease, sublease or assignment agreement with respect to the Premises (or portion thereof specified in such new Notice of Proposed Transfer) with the proposed Transferee identified in Tenant's notice.

Notwithstanding the foregoing, if any Event of Default or Unmatured Event of Default by Tenant is outstanding hereunder at the time of Tenant's Notice of Proposed Transfer, then City may elect by notice to Tenant to refuse to consent to Tenant's proposed Transfer and pursue any of its rights or remedies hereunder or at Law or in equity.

#### **16.4 Sublease or Recapture Premises**

If City elects to Sublease or Recapture from Tenant as provided in **Section 16.3**, the following shall apply:

##### **(a) Sublease**

In the case of a Sublease, (i) City shall have the right to use the portion of the Premises covered by the Notice of Proposed Transfer (the "Sublease Premises") for any legal purpose, (ii) the rent payable by City to Tenant shall be the lesser of that set forth in the Notice of Proposed Transfer or the Rent payable by Tenant under this Lease at the time of the Sublease (or the amount thereof proportionate to the Sublease Premises if for less than the entire Premises), (iii) City may make alterations and improvements to the Sublease Premises as it may elect, and City may remove any such alterations or improvements, in whole or in part, before or upon the expiration of the Sublease, provided that City shall repair any damage or injury to the Sublease Premises caused by such removal, (iv) City shall have the right to further sublease or assign the Sublease Premises to any party, without the consent of Tenant, and (v) Tenant shall pay to City on demand any costs incurred by City in physically separating the Sublease Premises (if less than the entire Premises) from the balance of the Premises and in complying with any applicable Laws relating to such separation.

##### **(b) Recapture**

In the case of Recapture, (i) the portion of the Premises subject to the Recapture (the "Recapture Premises") shall be deleted from the Premises for all purposes hereunder, and Tenant and City shall be relieved of all of their rights and obligations hereunder with respect to the Recapture Premises except to the extent the same would survive the Expiration Date or other termination of this Lease pursuant to the provisions hereof, and (ii) City shall pay any cost incurred in physically separating the Recapture Premises (if less than the entire Premises) from the balance of the Premises and in complying with any applicable governmental Laws relating to such separation.

#### **16.5 Effect of Transfer**

No Sublease or Assignment by Tenant nor any consent by City thereto shall relieve Tenant, or any guarantor, of any obligation to be performed by Tenant under this Lease. Any Sublease or Assignment that is not in compliance with this Section shall, at the option of the City in its sole and absolute discretion, be void and, at City's option, shall constitute a material Event of Default by Tenant under this Lease. The acceptance of any Rent or other payments by City from a proposed Transferee shall not constitute consent to such Sublease or Assignment by City or a recognition of any Transferee, or a waiver by City of any failure of Tenant or other transferor to comply with this Section.

## **16.6 Assumption by Transferee**

Each Transferee shall assume all obligations of Tenant under this Lease and shall be and remain liable jointly and severally the assignor or sublessor for the payment of Rent, and for the performance of all of the terms, covenants and conditions to be performed by Tenant under this Lease. No Assignment shall be binding on City unless Tenant or Transferee shall deliver to City a counterpart of the Assignment and an instrument that contains a covenant of assumption by such Transferee satisfactory in substance and form to City, and consistent with the requirements of this Section. However, the failure or refusal of such Transferee to execute such instrument of assumption shall not release such Transferee from its liability as set forth above. Tenant shall reimburse City on demand for any reasonable costs that may be incurred by City in connection with any proposed Transfer, including, without limitation, the costs of making investigations as to the acceptability of the proposed Transferee and legal costs incurred in connection with the granting of any requested consent.

## **16.7 Indemnity for Relocation Benefits**

Without limiting Section 16.6, Tenant shall cause any Transferee to expressly waive entitlement to any and all relocation assistance and benefits in connection with this Lease. Tenant shall Indemnify City and the other Indemnified Parties for any and all Losses arising out of any relocation assistance or benefits payable to any Transferee.

## **16.8 IPM Plan and Form HRC-12B-101**

As a condition to any Assignment or Sublease, the Transferee shall execute Form HRC-12B-101 (as such term is defined in Section 29.22 (Non Discrimination in City Contracts and Benefits Ordinance)) with supporting documentation and secure the San Francisco Human Rights Commission approval of such form. As a condition to any Assignment or Sublease, the Transferee shall assume the IPM plan of Tenant or submit a new IPM plan in accordance with the requirements of Section 7.2(i) (Covenant Against Use of Chemical Herbicides and Pesticides) or obtain an exemption, through SFPUC. Any transferee must also comply with all other provisions of this Lease, including but not limited to the insurance provisions.

## **17. DEFAULT; REMEDIES**

### **17.1 Events of Default**

Any of the following shall constitute an event of default ("Event of Default") by Tenant hereunder:

#### **(a) Rent**

Any failure to pay any Rent or other sums as and when due, provided Tenant shall have a period of three (3) days from the date of written notice of such failure from City within which to cure any default in the payment of Rent or other sums; provided, however, that City shall not be required to provide such notice regarding Tenant's failure to make such payments when due more than twice during any calendar year, and any such failure by Tenant after Tenant has received two such notices in any calendar year from City shall constitute a default by Tenant hereunder without any requirement on the part of City to give Tenant notice of such failure or an opportunity to cure except as may be required by Section 1161 of the California Code of Civil Procedure;

**(b) Covenants, Conditions and Representations**

Any failure to perform or comply with any other covenant, condition or representation made under this Lease, provided Tenant shall have a period of fifteen (15) days from the date of written notice from City of such failure within which to cure such default under this Lease, or, if such default is not capable of cure within such 15-day period, Tenant shall have a reasonable period to complete such cure if Tenant promptly undertakes action to cure such default within such 15-day period and thereafter diligently prosecutes the same to completion and Tenant uses its best efforts to complete such cure within sixty (60) days after the receipt of notice of default from City; provided, however, that upon the occurrence during the Term of two defaults of the same obligation City shall not be required to provide any notice regarding Tenant's failure to perform such obligation, and any subsequent failure by Tenant after Tenant has received two such notices shall constitute a default by Tenant hereunder without any requirement on the part of City to give Tenant notice of such failure or an opportunity to cure;

**(c) Vacation or Abandonment**

Any vacation or abandonment of the Premises for more than fourteen (14) consecutive days; and

**(d) Bankruptcy**

The appointment of a receiver to take possession of all or substantially all of the assets of Tenant, or an assignment by Tenant for the benefit of creditors, or any action taken or suffered by Tenant under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, whether now existing or hereafter amended or enacted, if any such receiver, assignment or action is not released, discharged, dismissed or vacated within sixty (60) days.

**17.2 Remedies**

Upon the occurrence of an Event of Default by Tenant, City shall have the following rights and remedies in addition to all other rights and remedies available to City at Law or in equity:

**(a) Terminate Lease and Recover Damages**

The rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate Tenant's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Base Rent and Additional Charges for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that Tenant proves could be reasonably avoided, as computed pursuant to subsection (b) of such Section 1951.2. City's efforts to mitigate the damages caused by Tenant's breach of this Lease shall not waive City's rights to recover damages upon termination.

**(b) Continue Lease and Enforce Rights**

The rights and remedies provided by California Civil Code Section 1951.4 (continuation of lease after breach and abandonment), which allows City to continue this Lease in effect and to enforce all of its rights and remedies under this Lease, including the right to recover Rent as it becomes due, for so long as City does not terminate Tenant's right to possession, if Tenant has the right to sublet or assign, subject only to reasonable limitations. For purposes hereof, none of the following shall constitute a termination of Tenant's right of possession: acts of maintenance or preservation; efforts to relet the Premises or the appointment

of a receiver upon City's initiative to protect its interest under this Lease; or withholding consent to an Assignment or Sublease, or terminating an Assignment or Sublease, if the withholding or termination does not violate the rights of Tenant specified in subdivision (b) of California Civil Code Section 1951.4. If City exercises its remedy under California Civil Code Section 1951.4, City may from time to time sublet the Premises or any part thereof for such term or terms (which may extend beyond the Term) and at such rent and upon such other terms as City in its sole discretion may deem advisable, with the right to make alterations and repairs to the Premises. Upon each such subletting, Tenant shall be immediately liable for payment to City of, in addition to Base Rent and Additional Charges due hereunder, the cost of such subletting and such alterations and repairs incurred by City and the amount, if any, by which the Base Rent and Additional Charges owing hereunder for the period of such subletting (to the extent such period does not exceed the Term) exceeds the amount to be paid as Base Rent and Additional Charges for the Premises for such period pursuant to such subletting. No action taken by City pursuant to this **Section 17.2(b)** shall be deemed a waiver of any default by Tenant and, notwithstanding any such subletting without termination, City may at any time thereafter elect to terminate this Lease for such previous default.

**(c) Appointment of Receiver**

The right to have a receiver appointed for Tenant upon application by City to take possession of the Premises and to apply any rental collected from the Premises and to exercise all other rights and remedies granted to City pursuant to this Lease.

**17.3 City's Right to Cure Tenant's Defaults**

If Tenant defaults in the performance of any of its obligations under this Lease, then City may at any time thereafter with three (3) days prior oral or written notice (except in the event of an emergency as determined by City), remedy such Event of Default for Tenant's account and at Tenant's expense. Tenant shall pay to City, as Additional Rent, promptly upon demand, all sums expended by City, or other costs, damages, expenses or liabilities incurred by City, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such Event of Default. Tenant's obligations under this Section shall survive the termination of this Lease. Nothing herein shall imply any duty of City to do any act that Tenant is obligated to perform under any provision of this Lease, and City's cure or attempted cure of Tenant's Event of Default shall not constitute a waiver of Tenant's Event of Default or any rights or remedies of City on account of such Event of Default.

**17.4 Special Administrative Charges.**

Without limiting Landlord's other rights and remedies set forth in this Lease, at law or in equity, in the event Tenant (i) constructs or installs any Alteration or Improvement without the written approval of Landlord as required by Section 8 of this Lease, or (ii) fails to make a repair required by Section 9 on a timely basis, or (iii) fails to provide evidence of the required insurance coverage described in Section 19 below on a timely basis, then upon written notice from Landlord of such failure or unauthorized action, Tenant shall pay, as an additional charge, the respective amount specified in the table below in consideration of Landlord's administrative cost and expense in providing notice or performing inspections. In the event Tenant fails to remove the unauthorized Alteration or Improvement and restore the Premises or perform the necessary repair or provide the necessary document, as applicable, within the time period set forth in such notice and Landlord delivers to Tenant additional written notice requesting such document or evidence of such repair, or performs additional inspections to verify compliance, then Tenant shall pay to Landlord, as an additional charge, the respective amount specified in the table below for each additional written notice Landlord delivers to Tenant requesting such corrective action.

<u>Violation</u>	<u>Lease Section</u>	<u>Initial inspection and/or notice</u>	<u>Follow up inspection and/or notice</u>
Construction of Improvements or Alterations that are not approved by Landlord	8	\$350.00	\$400.00
Failure to make required repairs	9	\$300.00	\$350.00
Failure to obtain/maintain insurance	19	\$300.00	\$350.00

Such administrative fees shall be due and payable as Additional Rent. The parties agree that the charges set forth in this Section represent a fair and reasonable estimate of the administrative cost and expense which Landlord will incur in connection with providing notices or performing inspections as set forth above and that Landlord's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this Lease, at law or in equity.

## 18. WAIVER OF CLAIMS; INDEMNIFICATION

### 18.1 Waiver of Claims

Tenant covenants and agrees that City shall not be responsible for or liable to Tenant for, and, to the fullest extent allowed by Law, Tenant hereby waives all rights against City and its Agents and releases City and its Agents from, any and all Losses, including, but not limited to, incidental and consequential damages, relating to any injury, accident or death of any person or loss or damage to any property, in or about the Premises or any other City property, from any cause whatsoever. Nothing herein shall relieve City from liability caused solely and directly by the gross negligence or willful misconduct of City or its Agents, but City shall not be liable under any circumstances for any consequential, incidental or punitive damages. Without limiting the foregoing:

(a) Tenant expressly acknowledges and agrees that the Rent payable hereunder does not take into account any potential liability of City for any consequential or incidental damages including, but not limited to, lost profits arising out of disruption to the Improvements or Tenant's uses hereunder. City would not be willing to enter into this Lease in the absence of a complete waiver of liability for consequential or incidental damages due to the acts or omissions of City or its Agents, and Tenant expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Tenant or other waivers contained in this Lease and as a material part of the consideration for this Lease, Tenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against City for consequential and incidental damages (including without limitation, lost profits), and covenants not to sue for such damages, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, arising out of this Lease or the uses authorized hereunder, including, without limitation, any interference with uses conducted by Tenant pursuant to this Lease regardless of the cause, and whether or not due to the negligence or gross negligence of City or its Agents.

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

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

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

## **18.2 Tenant's Indemnity**

Tenant, on behalf of itself and its successors and assigns, shall Indemnify City and the other Indemnified Parties from and against any and all Losses incurred in connection with or arising directly or indirectly, in whole or in part, out of: (a) any accident, injury to or death of a person, including, without limitation, Agents and Invitees of Tenant, or loss of or damage to property (including, without limitation, the SFPUC Facilities) howsoever or by whomsoever caused, occurring in, or on the Premises; (b) any default by Tenant in the observation or performance of any of the terms, covenants or conditions of this Lease to be observed or performed on Tenant's part; (c) the use, occupancy, conduct or management, or manner of use, occupancy, conduct or management by Tenant, its Agents or Invitees or any person or entity claiming through or under any of them, of the Premises or any Improvements; (d) the condition of the Premises or any Improvements; (e) any construction or other work undertaken by Tenant on or about the Premises or any Improvements whether before or during the Term of this Lease; or (f) any acts, omissions or negligence of Tenant, its Agents or Invitees, or of any trespassers, in, on or about the Premises or any Improvements; all regardless of the sole negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on, the Indemnified Parties, except to the extent that such Indemnity is void or otherwise unenforceable under applicable Law in effect on or validly retroactive to the date of this Lease and further except only such Losses as are caused exclusively by the gross negligence and intentional wrongful acts and omissions of the Indemnified Parties. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any Loss. Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend City and the other Indemnified Parties from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Tenant by City and continues at all times thereafter. Tenant's obligations under this Section shall survive the expiration or sooner termination of the Lease.

## **19. INSURANCE**

### **19.1 Tenant's Insurance**

Tenant shall procure and maintain throughout the Term of this Lease and pay the cost thereof, insurance in the following amounts and coverages:

#### **(a) Property Insurance**

Property insurance, on an all-risk form, including earthquake and flood, for one hundred percent (100%) of the full insurable value of the Premises and the permitted Improvements, with any deductible not to exceed Ten Thousand Dollars (\$10,000) each occurrence. Such insurance shall include Tenant and City as named insureds as their respective

interests may appear. With respect to the City's interest, such insurance shall, include rental interruption coverage in an amount equal to twelve months Base Rent. "Full insurable value" shall mean the actual replacement cost of the Improvements and the existing improvements; which are included in the Premises (excluding foundation and excavation costs but without deduction for physical depreciation). It shall be determined at inception and each renewal by Insurer selected and paid by Tenant and reasonably acceptable to City; provided, however, that City shall have the right, at any time, to ascertain the full insurable value at its own expense, except that in the event such full insurance value exceeds the value of the then existing amount of insurance coverage procured by Tenant, Tenant shall pay the expense of determining the full insurable value.

**(b) Boiler and Machinery Insurance**

Boiler and Machinery insurance, commercial form, covering damage to pressure vessels, heating and air conditioning systems, electrical apparatus and similar property in an amount not less than One Million Dollars (\$1,000,000) each accident, including Tenant and City as named insureds as their respective interests may appear, with any deductible not to exceed Ten Thousand Dollars (\$10,000) each accident.

**(c) Commercial General Liability Insurance**

Commercial General Liability Insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including contractual liability, broad-form property damage, independent contractors, liquor liability, personal injury, products and completed operations.

**(d) Builder's Risk Insurance**

Builder's Risk Insurance, on an all-risk form, including earthquake and flood, for one hundred percent (100%) of the completed value of any Improvements, Alterations or other new construction, including materials in transit and storage off-site, in the event that such construction is beyond the scope of coverage in the property policy for remodeling or renovation. Such policy shall include as named insureds Tenant, City, any contractor in connection with such construction and subcontractors of all tiers, with any deductible not to exceed Ten Thousand Dollars (\$10,000) each occurrence.

**(e) Worker's Compensation Insurance**

Worker's Compensation Insurance in statutory amounts, with employer's liability coverage not less than One Million Dollars (\$1,000,000) each accident.

**(f) Business Automobile Liability**

Business Automobile liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including owned and non-owned and hired vehicles as applicable, if Tenant uses or causes to be used any vehicles in connection with its use of the Premises.

**(g) Environmental Pollution Liability**

If Tenant intends to or is required to perform any Hazardous Material Remediation on or about the Premises, then Tenant shall first notify City of the proposed work and following City's approval, Tenant or its contractor shall maintain in force, throughout the performance and completion of the Remediation, environmental pollution liability insurance with limits not less than \$1,000,000 each occurrence combined single limit (true occurrence



form), including coverages for on-site or off-site third party claims for bodily injury and property damage, or such higher limits as may be reasonably required by City's Risk Manager based upon the scope of work.

**(h) Other Insurance**

City reserves the right to change amounts and types of insurance as permitted use of the property may change from time to time.

**19.2 General Requirements**

All insurance provided for under this Lease shall be effected under valid enforceable policies issued by insurers of recognized responsibility and reasonably approved by City.

**(a)** Should any of the required insurance be provided under a claims-made form, Tenant shall maintain such coverage continuously throughout the Term and, without lapse, for a period of three (3) years beyond the expiration or termination of this Lease, to the effect that, should occurrences during the Term give rise to claims made after expiration or termination of this Lease, such claims shall be covered by such claims-made policies.

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

**(c)** All liability insurance policies shall be endorsed to provide the following:

**(i)** Name the City and County of San Francisco, its officers, agents and employees, as additional insureds, as their respective interests may appear hereunder.

**(ii)** That such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Lease, and that insurance applies separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limit of liability.

**(iii)** All insurance policies required to be maintained by Tenant hereunder shall be endorsed to provide thirty (30) days' prior written notice of cancellation for any reason, intended non-renewal, or reduction in coverage to both Tenant and City. Notice to City shall be mailed to the address(es) for City set forth in the Basic Lease Information.

**19.3 Proof of Insurance**

Tenant shall deliver to City certificates of insurance and additional insured policy endorsements from insurers in a form satisfactory to City, evidencing the coverages required hereunder, on or before the Commencement Date, together with complete copies of the policies promptly upon City's request, and Tenant shall provide City with certificates or policies thereafter at least ten (10) days before the expiration dates of expiring policies. In the event Tenant shall fail to procure such insurance, or to deliver such policies or certificates, City may, at its option, procure the same for the account of Tenant, and the cost thereof shall be paid to City within five (5) days after delivery to Tenant of bills therefore.

**19.4 Review of Insurance Requirements**

Tenant and City shall periodically review the limits and types of insurance carried pursuant to this Section. If the general commercial practice in the City and County of

San Francisco is to carry liability insurance in an amount or coverage materially greater than the amount or coverage then being carried by Tenant with respect to risks comparable to those associated with the Premises, then, at City's option, Tenant shall increase at its sole cost the amounts or coverages carried by Tenant to conform to such general commercial practice.

### **19.5 No Limitation on Indemnities**

Tenant's compliance with the provisions of this Section shall in no way relieve or decrease Tenant's indemnification obligations under **Sections 18.2** and **23.2**, or any of Tenant's other obligations or liabilities under this Lease.

### **19.6 Lapse of Insurance**

Notwithstanding anything to the contrary in this Lease, City may elect, in City's sole and absolute discretion, to terminate this Lease upon the lapse of any required insurance coverage by written notice to Tenant.

### **19.7 Tenant's Personal Property**

Tenant may, at its expense, insure Tenant's Personal Property.

### **19.8 Waiver of Subrogation**

Notwithstanding anything to the contrary contained herein, City and Tenant (each a "Waiving Party") each waives any right of recovery against the other party for any loss or damage sustained by such other party with respect to the Premises or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party, to the extent such loss or damage is covered by insurance that is required to be purchased by the Waiving Party under this Lease or is actually covered by insurance obtained by the Waiving Party. Each Waiving Party agrees to cause its insurers to issue appropriate waiver of subrogation rights endorsements to all policies relating to the Property or the Premises; provided, the failure to obtain any such endorsement shall not affect the above waiver.

## **20. ACCESS BY CITY**

### **20.1 Access to Premises by City**

#### **(a) General Access**

City reserves for itself and its designated Agents, the right to enter the Premises and any portion thereof at all reasonable times upon not less than forty-eight (48) hours oral or written notice to Tenant (except in the event of an emergency) for any purpose.

#### **(b) Emergency Access**

In the event of any emergency, as determined by City, City may, at its sole option and without notice, enter the Premises and alter or remove Tenant's Personal Property on or about the Premises. City shall have the right to use any and all means City considers appropriate to gain access to any portion of the Premises in an emergency. In such case, City shall not be responsible for any damage or injury to any such property, nor for the replacement of any such property and any such emergency entry shall not be deemed to be a forcible or unlawful entry onto or a detainer of, the Premises, or an eviction, actual or constructive, of Tenant from the Premises or any portion thereof.

**(c) No Liability**

City shall not be liable in any manner, and Tenant hereby waives any claims, for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of City's entry onto the Premises, except damage resulting directly and exclusively from the gross negligence or willful misconduct of City or its Agents and not contributed to by the acts, omissions or negligence of Tenant, its Agents or Invitees.

**(d) No Abatement**

Tenant shall not be entitled to any abatement in Rent if City exercises any rights reserved in this Section.

**(e) Minimize Disruption**

City shall use its reasonable good faith efforts to conduct any activities on the Premises allowed under this Section in a manner that, to the extent practicable, will minimize any disruption to Tenant's use hereunder.

**20.2 Pipeline and Utility Installations**

Without limiting **Section 20.1**, City shall have the right at all times, to enter upon the Premises upon forty-eight (48) hours advance written or oral notice (except in cases of emergency as determined by City), to use, install, construct, repair, maintain, operate, replace, inspect, and remove SFPUC Facilities or any other public utility facilities. City shall bear the expense of any such activities, unless the need is occasioned by the acts, omissions or negligence of Tenant, its Agents or Invitees. City shall not be responsible for any temporary loss or disruption of Tenant's use of the Premises occasioned by any such facility installations or other activities.

**20.3 Roadways**

City and its Agents shall have the right to enter upon and pass through and across the Premises on any existing or future roadways and as City otherwise determines necessary or appropriate for purposes of the SFPUC Facilities.

**21. ESTOPPEL CERTIFICATES**

Either Party hereto shall, from time to time during the Term upon not less than twenty (20) days' prior written notice from the other Party, execute, acknowledge and deliver to the other Party, or such persons or entities designated by such other Party, a statement in writing certifying: (a) the Expiration Date of this Lease, (b) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), (c) that there are no known defaults under this Lease (or if so, specifying the same), and (d) the dates, if any, to which the Rent has been paid. Any such certificate shall be in the form attached as **Exhibit C**, and may be relied upon by the other Party or any prospective purchaser or Encumbrancer of its estate. The General Manager shall be authorized to execute, acknowledge and deliver any such certificates of the City.

**22. SURRENDER**

**22.1 Surrender of the Premises**

Upon the Expiration Date or any earlier termination of this Lease pursuant hereto, Tenant shall surrender to City the Premises, in good condition, order and repair, free from debris and

hazards, and free and clear of all liens, easements and other Encumbrances created or suffered by, through or under Tenant. On or before the Expiration Date or any earlier termination of this Lease, Tenant shall, at its sole cost, remove any and all of Tenant's Personal Property from the Premises and demolish and remove any and all Improvements and Alterations from the Premises (except for the building and other improvements existing on the Commencement Date and any other Improvements or Alterations that City agrees are to remain part of the Premises pursuant to the provisions of **Section 8.2**). In addition, Tenant shall, at its sole expense, repair any damage to the Premises resulting from the removal of any such items and restore the Premises to their condition immediately prior to the presence of any Improvements or Alterations. In connection therewith, Tenant shall obtain any and all necessary permits and approvals, including, without limitation, any environmental permits, and execute any manifests or other documents necessary to complete the demolition, removal or restoration work required hereunder. Tenant's obligations under this Section shall survive the Expiration Date or other termination of this Lease. Any items of Tenant's Personal Property remaining on or about the Premises after the Expiration Date of this Lease may, at City's option, be deemed abandoned and in such case City may dispose of such property in accordance with Section 1980 et seq. of the California Civil Code or in any other manner allowed by Law.

If Tenant fails to surrender the Premises to City on the Expiration Date or earlier termination of the Term as required by this Section, Tenant shall indemnify City against all Losses resulting therefrom, including, without limitation, Losses made by a succeeding tenant resulting from Tenant's failure to surrender the Premises.

Tenant hereby waives any and all rights, benefits or privileges of the California Relocation Assistance Law, California Government Code Sections 7260 et seq., and the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. Sections 4601 et seq., or under any similar law, statute or ordinance now or hereafter in effect, except as provided in **Section 15** (Eminent Domain).

## **22.2 Automatic Reversion**

Upon the Expiration Date or earlier termination of this Lease, the Premises shall automatically, and without further act or conveyance on the part of Tenant or City, become the property of City, free and clear of all liens and Encumbrances and without payment therefore by City and shall be surrendered to City upon such date. Upon or at any time after the date of termination of this Lease, if requested by City, Tenant shall promptly deliver to City, without charge, a quitclaim deed to the Premises suitable for recordation and any other instrument reasonably requested by City to evidence or otherwise effect the termination of Tenant's leasehold estate hereunder and to effect such transfer or vesting of title to the Premises or any permitted Improvements or Alterations that City agrees are to remain part of the Premises pursuant to the provisions of **Section 8.2**.

## **23. HAZARDOUS MATERIALS**

### **23.1 No Hazardous Materials**

Tenant covenants and agrees that neither Tenant nor any of its Agents or Invitees shall cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or any Improvements or transported to or from the Premises or any Improvements. Tenant shall immediately notify City if and when Tenant learns or has reason to believe there has been any Release of Hazardous Material in, on or about the Premises or any Improvements. City may from time to time request Tenant to provide adequate information for City to determine that any Hazardous Material permitted hereunder is being handled in compliance with all applicable Environmental Laws, and Tenant shall promptly provide all such information. Without limiting **Section 20**, City and its Agents shall have the

right to inspect the Premises for Hazardous Material and compliance with the provisions of this Lease at all reasonable times upon reasonable advance oral or written notice to Tenant (except in the event of an emergency).

### **23.2 Tenant's Environmental Indemnity**

If Tenant breaches any of its obligations contained in **Section 23.1**, or, if any act or omission or negligence of Tenant or any of its Agents or Invitees results in any Release of Hazardous Material in, on, under or about the Premises (including any Improvements thereon) or any other City property, without limiting Tenant's general Indemnity contained in **Section 18.2**, Tenant, on behalf of itself and its successors and assigns, shall Indemnify City and the Indemnified Parties, and each of them, from and against all Hazardous Materials Claims arising during or after the Term of this Lease and relating to such Release. The foregoing Indemnity includes, without limitation, all costs associated with the Investigation and Remediation of Hazardous Material and with the restoration of the Premises or any other City property to its prior condition including, without limitation, fines and penalties imposed by regulatory agencies, natural resource damages and losses, and revegetation of the Premises or other City property. Without limiting the foregoing, if Tenant or any of Tenant's Agents or Invitees, causes or permits the Release of any Hazardous Materials in, on, under or about the Premises or any other City property, Tenant shall, immediately, at no expense to City, take any and all appropriate actions to return the Premises or other City property affected thereby to the condition existing prior to such Release and otherwise Investigate and Remediate the Release in accordance with all Environmental Laws. Tenant shall provide City with written notice of and afford City a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, permit, approvals, or other compromise or proceeding involving Hazardous Material.

### **24. SECURITY DEPOSIT**

Tenant shall pay to City upon execution of this Lease the sum specified for the security deposit in the Basic Lease Information as security for the faithful performance of all terms, covenants and conditions of this Lease. Tenant agrees that City may (but shall not be required to) apply the security deposit in whole or in part to remedy any damage to the Premises or SFPUC Facilities caused by Tenant, its Agents or Invitees, to pay any fines assessed against Tenant under this Lease, or for any other failure of Tenant to perform any other terms, covenants or conditions contained in this Lease, without waiving any of City's other rights and remedies hereunder or at Law or in equity. Should City use any portion of the security deposit to cure any Event of Default by Tenant or pay any fine of Tenant, then Tenant shall immediately replenish the security deposit to the original amount, and Tenant's failure to do so within five (5) days of City's notice shall constitute a material Event of Default under this Lease. City's obligations with respect to the security deposit are solely that of debtor and not trustee. City shall not be required to keep the security deposit separate from its general funds, and Tenant shall not be entitled to any interest on such deposit. The amount of the security deposit shall not be deemed to limit Tenant's liability for the performance of any of its obligations under this Lease.

### **25. GENERAL PROVISIONS**

#### **25.1 Notices**

Except as otherwise expressly provided in this Lease, any notice given hereunder shall be effective only if in writing and given by delivering the notice in person, or by sending it first-class mail or certified mail with a return receipt requested or reliable commercial overnight courier, return receipt requested, with postage prepaid, to: (a) Tenant (i) at Tenant's address set forth in the Basic Lease Information, if sent before Tenant's taking possession of the Premises, or (ii) at the Premises if sent on or subsequent to Tenant's taking possession of the Premises, or

(iii) at any place where Tenant or any Agent of Tenant may be found if sent subsequent to Tenant's vacating, abandoning or surrendering the Premises; or (b) City at City's address set forth in the Basic Lease Information; or (c) to such other address as either City or Tenant may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Section at least ten (10) days before the effective date of such change. Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first-class or certified mail, one day after the date it is made if sent by commercial overnight courier, or upon the date personal delivery is made, and any refusal by either Party to accept the attempted delivery of any notice, if such attempted delivery is in compliance with this **Section 25.1** and applicable Laws, shall be deemed receipt of such notice. For convenience of the Parties, copies of notices may also be given by telefacsimile to the telefacsimile number set forth in the Basic Lease Information or such other number as may be provided from time to time; however, neither party may give official or binding notice by telefacsimile. The effective time of a notice shall not be affected by the receipt, before receipt of the original, of a telefacsimile copy of the notice.

### **25.2 No Implied Waiver**

No failure by City to insist upon the strict performance of any obligation of Tenant under this Lease or to exercise any right, power or remedy arising out of a breach, irrespective of the length of time for which such failure continues, no acceptance of full or partial Base Rent or Additional Charges during the continuance of any such breach, or possession of the Premises before the expiration of the Term by any Agent of City, shall constitute a waiver of such breach or of City's right to demand strict compliance with such term, covenant or condition or operate as a surrender of this Lease. No express written waiver of any default or the performance of any provision of this Lease shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision of this Lease shall not be deemed to be a waiver of a subsequent default or performance. The consent of City given in any instance under the terms of this Lease shall not relieve Tenant of any obligation to secure the consent of City in any other or future instance under the terms of this Lease.

### **25.3 Amendments**

Neither this Lease nor any term or provision of this Lease may be changed, waived, discharged or terminated, except by a written instrument signed by the Parties hereto.

### **25.4 Authority**

If Tenant signs as a corporation, a partnership or a limited liability company, each of the persons executing this Lease on behalf of Tenant does hereby covenant and warrant that Tenant is a duly authorized and existing entity, that Tenant has and is qualified to do business in California, that Tenant has full right and authority to enter into this Lease, and that each and all of the persons signing on behalf of Tenant are authorized to do so. Upon City's request, Tenant shall provide City with evidence reasonably satisfactory to City confirming the foregoing representations and warranties.

### **25.5 Joint and Several Obligations**

The word "Tenant" as used herein shall include the plural as well as the singular. If there is more than one Tenant, the obligations and liabilities under this Lease imposed on Tenant shall be joint and several.

## **25.6 Interpretation of Lease**

The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Lease. This Lease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the party responsible for drafting any part of this Lease. Provisions in this Lease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or City holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Lease, whether or not language of non-limitation, such as "without limitation" or similar words, are used. Unless otherwise provided herein, whenever the consent of City is required to be obtained by Tenant hereunder, City may give or withhold such consent in its sole and absolute discretion.

## **25.7 Successors and Assigns**

Subject to the provisions of **Section 16** relating to Assignment and Subletting, the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of City and Tenant and, except as otherwise provided herein, their personal representatives and successors and assigns; provided, however, that upon any sale, assignment or transfer by City named herein (or by any subsequent landlord) of its interest in the Premises as owner or lessee, including any transfer by operation of Law, City (or any subsequent landlord) shall be relieved from all subsequent obligations and liabilities arising under this Lease subsequent to such sale, assignment or transfer.

## **25.8 Brokers**

Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the lease contemplated herein except as identified in the Basic Lease Information, whose commission, if any is due, shall be paid pursuant to a separate written agreement between such broker and the party through which such broker contracted. In the event that any other broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes a claim shall be responsible for such commission or fee and shall Indemnify the other party from any and all Losses incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Lease.

## **25.9 Severability**

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

## **25.10 Governing Law**

This Lease shall be construed and enforced in accordance with the Laws of the State of California.

## **25.11 Entire Agreement**

This instrument (including the exhibits hereto, which are made a part of this Lease) contains the entire agreement between the Parties and supersedes all prior written or oral negotiations, discussions, understandings and agreements. The Parties further intend that this Lease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts and any changes from such drafts) may be introduced in any judicial, administrative or other legal proceeding involving this Lease. Tenant hereby acknowledges that neither City nor City's Agents have made any representations or warranties with respect to the Premises or this Lease except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Tenant by implication or otherwise unless expressly set forth herein.

## **25.12 Attorneys' Fees**

In the event that either City or Tenant fails to perform any of its obligations under this Lease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Lease, the defaulting party or the non-prevailing party in such dispute, as the case may be, shall pay the prevailing party reasonable attorneys' and experts' fees and costs, and all court costs and other costs of action incurred by the prevailing party in connection with the prosecution or defense of such action and enforcing or establishing its rights hereunder (whether or not such action is prosecuted to a judgment). For purposes of this Lease, reasonable attorneys' fees of the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney. The term "attorneys' fees" shall also include, without limitation, all such fees incurred with respect to appeals, mediations, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees were incurred. The term "costs" shall mean the costs and expenses of counsel to the parties, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, and others not admitted to the bar but performing services under the supervision of an attorney.

## **25.13 Holding Over**

Any holding over after the expiration of the Term with the express consent of City shall be construed to automatically extend the Term of this Lease on a month-to-month basis with ongoing adjustments in Base Rent on each Adjustment Date as set forth in **Section 5.2** (Adjustments in Base Rent) or at such other Base Rent as determined by City as part of its consent, and shall otherwise be on the terms and conditions herein specified so far as applicable (except for those pertaining to the Term). Any holding over without City's consent shall constitute a default by Tenant, shall be at a Base Rent equal to 150% of the Base Rent in effect at the start of the holdover, and shall entitle City to exercise any or all of its remedies as provided herein, notwithstanding that City may elect to accept one or more payments of Rent.

## **25.14 Time of Essence**

Time is of the essence with respect to all provisions of this Lease in which a definite time for performance is specified.



### **25.15 Cumulative Remedies**

All rights and remedies of either party hereto set forth in this Lease shall be cumulative, except as may otherwise be provided herein.

### **25.16 Survival of Indemnities**

Termination of this Lease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Lease, nor shall it affect any provision of this Lease that expressly states it shall survive termination of this Lease. Tenant specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Lease, Tenant has an immediate and independent obligation to defend City and the other Indemnified Parties from any claim which actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Tenant by City and continues at all times thereafter.

### **25.17 Relationship of Parties**

City is not, and none of the provisions in this Lease shall be deemed to render City, a partner in Tenant's business, or joint venturer or member in any joint enterprise with Tenant. Neither party shall act as the agent of the other party in any respect hereunder, and neither party shall have any authority to commit or bind the other party without such party's consent as provided herein. This Lease is not intended nor shall it be construed to create any third-party beneficiary rights in any third party, unless otherwise expressly provided. The granting of this Lease by City does not constitute authorization or approval by City of any activity conducted by Tenant on, in or relating to the Premises.

### **25.18 Transfer by City**

If City sells or otherwise transfers the Premises, City shall be released from its obligations hereunder arising on or after the date of such sale or transfer and Tenant shall look solely to the successor-in-interest to City. Upon a sale of the Premises by City, Tenant shall attorn to the purchaser or transferee, such attornment to be effective and self-operative without the execution of any further instruments on the part of the parties to this Lease. This Lease shall not be deemed to constitute any commitment by City, or create any priority or right in favor of Tenant, with regard to any future sale or other disposition of all or any part of the Premises.

### **25.19 Recording**

Tenant agrees that it shall not record this Lease nor any memorandum or short form of this Lease in the Official Records.

### **25.20 Non-Liability of City Officials, Employees and Agents**

No elective or appointive board, commission, member, officer, employee or other Agent of City shall be personally liable to Tenant, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Tenant, its successors and assigns, or for any obligation of City under this Agreement.

### **25.21 Wages and Working Conditions**

With respect to the construction of the Improvements and any Alterations, any employee performing services for Tenant shall be paid not less than the highest prevailing rate of wages (as determined under Section 6.22(E) of the San Francisco Administrative Code for work in

San Francisco, and as determined in the local jurisdiction if in a different county), shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in the county in which the Premises are located. Tenant shall require any contractor to provide, and shall deliver to City upon request, certified payroll reports with respect to all persons performing labor in the construction of any Improvements or Alterations to the Premises.

## **25.22 Non-Discrimination in City Contracts and Benefits Ordinance**

### **(a) Covenant Not to Discriminate**

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

### **(b) Subleases and Other Subcontracts**

Tenant shall include in all Subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such Subtenant or other subcontractor in substantially the form of subsection (a) above. In addition, Tenant shall incorporate by reference in all subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subtenants and other subcontractors to comply with such provisions. Tenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

### **(c) Non-Discrimination in Benefits**

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

### **(d) Condition to Lease**

As a condition to this Lease, Tenant shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

### **(e) Incorporation of Administrative Code Provisions by Reference**

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are

incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Tenant shall comply fully with and be bound by all of the provisions that apply to this Lease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Tenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Lease may be assessed against Tenant and/or deducted from any payments due Tenant.

### **25.23 Requiring Health Benefits for Covered Employees**

Unless exempt, Tenant agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q (Chapter 12Q), including the implementing regulations, as the same may be amended or updated from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Lease as though fully set forth herein. The text of the HCAO is currently available on the web at <http://www.sfgov.org/olse/hcao>. Capitalized terms used in this Section and not defined in this Lease shall have the meanings assigned to such terms in Chapter 12Q.

(a) For each Covered Employee Tenant shall provide the applicable health benefit set forth in Section 12Q.3 of the HCAO. If Tenant chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

(b) Notwithstanding the above, if Tenant meets the requirements of a "small business" as described in Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with part (a) above.

(c) Tenant's failure to comply with the requirements of the HCAO shall constitute a material breach by Tenant of this Lease. If, within thirty (30) days after receiving City's written notice of a breach of this Lease for violating the HCAO, Tenant fails to cure such breach or, if such breach cannot reasonably be cured within such thirty- (30-) day period, Tenant fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

(d) Any Sublease or Contract regarding services to be performed on the Premises entered into by Tenant shall require the Subtenant or Contractor and Subcontractors, as applicable, to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Tenant shall notify the Purchasing Department when it enters into such a Sublease or Contract and shall certify to the Purchasing Department that it has notified the Subtenant or Contractor of the obligations under the HCAO and has imposed the requirements of the HCAO on the Subtenant or Contractor through written agreement with such Subtenant or Contractor. Tenant shall be responsible for ensuring compliance with the HCAO by each Subtenant, Contractor and Subcontractor performing services on the Premises. If any Subtenant, Contractor or Subcontractor fails to comply, City may pursue the remedies set forth in this Section against Tenant based on the Subtenant's, Contractor's, or Subcontractor's failure to comply, provided that the Contracting Department has first provided Tenant with notice and an opportunity to cure the violation.

(e) Tenant shall not discharge, reprimand, penalize, reduce the compensation of, or otherwise discriminate against, any employee for notifying City of any issue relating to the HCAO, for opposing any practice proscribed by the HCAO, for participating in any proceedings

related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) Tenant represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the requirements of the HCAO.

(g) Tenant shall keep itself informed of the requirements of the HCAO, as they may change from time to time.

(h) Upon request, Tenant shall provide reports to City in accordance with any reporting standards promulgated by City under the HCAO, including reports on Subtenants, Contractors, and Subcontractors.

(i) Within five (5) business days after any request by City, Tenant shall provide City with access to pertinent records relating to any Tenant's compliance with the HCAO. In addition, City and its agents may conduct random audits of Tenant at any time during the term of this Lease. Tenant agrees to cooperate with City in connection with any such audit.

#### **25.24 Notification of Limitations on Contributions**

Through its execution of this Lease, Tenant acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, 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. Tenant 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. Tenant further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Tenant's board of directors, chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Tenant; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Tenant. Additionally, Tenant acknowledges that Tenant must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Tenant further agrees to provide to City the names of each person, entity or committee described above.

#### **25.25 No Relocation Assistance; Waiver of Claims**

Tenant acknowledges that it will not be a displaced person at the time this Lease is terminated or expires by its own terms, and Tenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action (including, without limitation, consequential and incidental damages) against, and covenants not to sue, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any Laws, including, without limitation, any and all claims for relocation benefits or assistance from City under federal and state relocation assistance laws (including, but not limited to, California Government Code Section 7260 et seq.), except as otherwise specifically provided in this Lease with respect to a Taking.

## **25.26 MacBride Principles - Northern Ireland**

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

## **25.27 Conflicts of Interest**

Through its execution of this Lease, Tenant acknowledges that it is familiar with the provisions of Sections 15.103 of the San Francisco Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code and Sections 87100 et seq. and Sections 1090 et seq. of the Government Code of the State of California and certifies that it does not know of any facts, which would constitute a violation of said provision, and agrees that if Tenant becomes aware of any such fact during the term of this Lease, Tenant shall immediately notify the City.

## **25.28 Charter Provisions**

This Lease is governed by and subject to the provisions of the Charter of the City and County of San Francisco.

## **25.29 Tropical Hardwood and Virgin Redwood Ban**

The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Tenant shall not provide any items to the construction of the Improvements or the Alterations, or otherwise in the performance of this Lease which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Tenant fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Tenant shall be liable for liquidated damages for each violation in any amount equal to Tenant's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

## **25.30 Prohibition of Tobacco Sales and Advertising**

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

## **25.31 Prohibition of Alcoholic Beverage Advertising**

Tenant acknowledges and agrees that no advertising of alcoholic beverages is allowed on the Premises. For purposes of this section, "alcoholic beverage" shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies and other products and substances not intended for drinking. This

advertising prohibition includes the placement of the name of a company producing, selling or distributing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of alcoholic beverages, (ii) encourage people not to drink alcohol or to stop drinking alcohol, or (iii) provide or publicize drug or alcohol treatment or rehabilitation services.

### **25.32 Consents, Approvals, Elections and Options**

Any consent or approval required by the SFPUC, or any election or option exercisable by the SFPUC, must be given or exercised pursuant to a resolution duly passed by the SFPUC in its discretion. No consent, approval, election or option shall be effective unless evidenced by a written instrument.

### **25.33 Counterparts**

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

### **25.34 Disclosure**

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

### **25.35 Food Service Waste Reduction**

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

### **25.36 Cooperative Drafting**

This Lease has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Lease reviewed and revised by legal counsel. No party shall be considered the drafter of this Lease, 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 Lease.

**NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, TENANT ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY HERETO UNLESS AND UNTIL A RESOLUTION OF THE PUC AND OF THE BOARD OF SUPERVISORS SHALL HAVE BEEN DULY PASSED APPROVING THIS LEASE AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY AND THE**

**MAYOR APPROVES THE SAME. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON PASSAGE OF SUCH RESOLUTIONS, AND THIS LEASE SHALL NOT BE EFFECTIVE UNLESS AND UNTIL THE PUC AND THE BOARD OF SUPERVISORS APPROVE THIS LEASE, EACH IN THEIR SOLE AND ABSOLUTE DISCRETION, AND IN ACCORDANCE WITH ALL APPLICABLE LAWS.**

*[SIGNATURES ON FOLLOWING PAGE]*

City and Tenant have executed this Lease in triplicate as of the date first written above.

**TENANT:**

**LOS ALTOS HOTEL ASSOCIATES, LLC**  
a California limited liability company

By: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

**CITY:**

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

By: \_\_\_\_\_

Its: General Manager  
Public Utilities Commission



AUTHORIZED BY

PUBLIC UTILITIES COMMISSION

Resolution No. \_\_\_\_\_

Adopted: \_\_\_\_\_

Attested: \_\_\_\_\_

Secretary  
Public Utilities Commission

Board of Supervisors Resolution

No. \_\_\_\_\_

Adopted \_\_\_\_\_

APPROVED AS TO FORM:

DENNIS J. HERRERA

City Attorney

By: \_\_\_\_\_

Hazel M. Brandt  
Deputy City Attorney

## **EXHIBIT A**

### **Legal Description of Premises**

All that certain real property located in Santa Clara County, California, described as follows:

A portion of the Bay Division Pipelines Nos. 3 and 4 right of way, known as SFPUC Parcel 232A, consisting of approximately 1.1. acres more or less, according to SFPUC records, and as shown on Drawing No. B-4905 attached hereto as Exhibit B and made a part hereof.

**EXHIBIT B**

SFPUC Drawing of Premises

Working Drawing No. B-4905  
(consisting of 1 page)

**EXHIBIT C**

Form of Estoppel Certificate

**LANDLORD ESTOPPEL CERTIFICATE**

[address]

Re: Lease, dated \_\_\_\_\_, 20\_\_ (the "Lease"), by and between the City and County of San Francisco, a municipal corporation, acting by and through its Public Utilities Commission ("Landlord") and \_\_\_\_\_, a \_\_\_\_\_ ("Tenant"), relating to certain property located in \_\_\_\_\_ County, California (the "Premises")

Ladies and Gentlemen:

The undersigned hereby confirms, represents and warrants to Tenant that:

1. Attached hereto is a true and correct copy of the Lease;
2. The Expiration Date of the Lease is \_\_\_\_\_;
3. The Lease is in full force and effect and, except as shown in the attachments to this Certificate, has not been assigned, modified, supplemented or amended in any way;
4. The Lease represents the entire agreement between Tenant and Landlord with respect to the Premises;
5. To Landlord's knowledge, on this date, there are no known defaults under this Lease and no event has occurred, which with the giving of notice, the passage of time or both, would constitute a default by Landlord or Tenant under the Lease [except as set forth in Schedule A attached to this Certificate];
6. All rent amounts due and owing to date have been paid, and no rental, other than for the current month, has been paid in advance [except as set forth in Schedule A to this Certificate];
7. The undersigned executing this estoppel certificate represents and warrants that he or she is duly authorized to execute this certificate on behalf of Landlord.

The truth and accuracy of the certifications contained herein may be relied upon by Tenant and the addressee set forth above, and their successors and assigns.

Very truly yours

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation, acting through its Public  
Utilities Commission

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

TENANT ESTOPPEL CERTIFICATE

[address]

Re: Lease, dated \_\_\_\_\_, 20\_\_ (the "Lease"), by and between the City and County of San Francisco, a municipal corporation, acting by and through its Public Utilities Commission ("Landlord") and \_\_\_\_\_, a \_\_\_\_\_ ("Tenant"), relating to certain property located in \_\_\_\_\_ County, California (the "Premises")

Ladies and Gentlemen:

The undersigned hereby confirms, represents and warrants to Landlord that:

1. Attached hereto is a true and correct copy of the Lease;
2. Tenant has accepted possession of the Premises under the Lease;
3. The Expiration Date of the Lease is \_\_\_\_\_;
4. The Lease is in full force and effect and, except as shown in the attachments to this Certificate, has not been assigned, modified, supplemented or amended in any way;
5. The Lease represents the entire agreement between Tenant and Landlord with respect to the Premises;
6. To Tenant's knowledge, on this date, there are no known defaults under this Lease and no event has occurred, which with the giving of notice, the passage of time or both, would constitute a default by Landlord or Tenant under the Lease [except as set forth in Schedule A attached to this Certificate];
7. All rent amounts due and owing to date have been paid, and no rental, other than for the current month, has been paid in advance [except as set forth in Schedule A to this Certificate];
8. The undersigned executing this estoppel certificate represents and warrants that he or she is duly authorized to execute this certificate on behalf of Tenant.

The truth and accuracy of the certifications contained herein may be relied upon by Landlord and the addressee set forth above, and their successors and assigns.

Very truly yours

[signature block for Tenant]

OFFICE OF THE MAYOR  
SAN FRANCISCO



EDWIN M. LEE  
MAYOR

TO: Angela Calvillo, Clerk of the Board of Supervisors  
FROM: *pa* Mayor Edwin M. Lee *je*  
RE: Lease of SFPUC Property in Los Altos, Santa Clara County (APN 167-11-040), for Hotel Parking and Recreation Purposes  
DATE: February 5, 2013

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Attached for introduction to the Board of Supervisors is the resolution 1) authorizing the General Manager of the San Francisco Public Utilities Commission to execute a twenty-year lease with Los Altos Hotel Associates, LLC ("Hotel") for approximately 47,916 square feet of land known as Bay Division Pipelines 3&4, Parcel 232A, located in the City of Los Altos, Santa Clara County, California ("Premises").

I request that this item be calendared in Budget and Finance Committee.

Should you have any questions, please contact Jason Elliott (415) 554-5105.

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO

2013 FEB - 5 PM 3:40

130/21  
✓

**FORM SFEC-126:**  
**NOTIFICATION OF CONTRACT APPROVAL**  
(S.F. Campaign and Governmental Conduct Code § 1.126)

<b>City Elective Officer Information</b> <i>(Please print clearly.)</i>	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors
<b>Contractor Information</b> <i>(Please print clearly.)</i>	
Name of contractor: Los Altos Hotel Associates, LLC	
<i>Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.</i>	
Peter Pau, CEO/Member	
Contractor address: Los Altos Hotel Associates, LLC	
Date that contract was approved: <i>(By the SF Board of Supervisors)</i>	Amount of contract: \$52,324 per year, with 4% annual increases. City has 3 market rent appraisal options.
Describe the nature of the contract that was approved: A 20 year lease with Los Altos Hotel Associates, LLC for approximately 47,916 square feet of land known as Bay Division Pipelines 3 and 4, Parcel 232A, located in Los Altos.	
Comments:	

This contract was approved by (check applicable):

the City elective officer(s) identified on this form

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

the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

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

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

Date Signed

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

Date Signed

