

RECORDING REQUESTED BY, AND
WHEN RECORDED RETURN TO:

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

and

ENERGY CENTER SAN FRANCISCO LLC
c/o Cordia Energy
One East Washington Street, Suite 440
Phoenix, AZ 85004
Attn: Regional General Manager – West

Portions of Assessor's Block 0788 Lot 001 (Space above this line reserved for Recorder's use only)

EASEMENT AGREEMENT
Access and Utility Easement

This Easement Agreement ("**Agreement**") is made on April ____, 2024, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**") acting by and through the Recreation and Park Department ("**SFRPD**"), and ENERGY CENTER SAN FRANCISCO LLC, a Delaware limited liability company ("**Grantee**").

RECITALS

A. City owns that certain real property in San Francisco, California, located at 355 McAllister Street, Assessor's Block 0788, Lot 001 ("**Civic Center Plaza**") which includes a subsurface public parking garage commonly known as the Civic Center Parking Garage ("**Parking Garage**") that is managed by City's Municipal Transportation Agency ("**SFMTA**") pursuant to the authority of §4.113 of the City's Charter. The Civic Center Plaza and Parking Garage may be referred to herein collectively as the "**City Property**".

B. On April ____, 2024, City, acting by and through the Real Estate Division, and Grantee entered into that certain Agreement for the Transfer of City Owned Personal Property, whereby ownership and operational responsibility for a steam distribution system encircling Civic Center Plaza ("**Steam Loop**") and servicing the Bill Graham Civic Auditorium, 101 Grove Street and San Francisco City Hall (collectively, "**City Buildings**") was transferred from City to Grantee for Grantee's continued operation and maintenance of the Steam Loop in its current location ("**Transfer Agreement**"), including those portions that are located in the Parking Garage. Pursuant to the Transfer Agreement, City and Grantee entered into a Steam Services Agreement, whereby Grantee shall provide steam services to the City Buildings per the terms and conditions contained therein.

C. The City desires to grant Grantee an easement so Grantee will have continued access to the existing portion of the Steam Loop located in the Parking Garage for Grantee's repair, ownership, operation and maintenance of the Steam Loop.

AGREEMENT

NOW, THEREFORE, for valuable consideration the receipt and sufficiency of which is hereby agreed to and acknowledged, City and Grantee agree as follows:

1. **Grant and Purpose of Easement.** City grants to Grantee a non-exclusive perpetual easement (the "**Easement**") for the following purposes: (i) to operate, maintain, repair, remove, replace and improve those portions of the Steam Loop to carry steam and condensate and any related materials (the "**Utility Facilities**") located in, on, over, under, across and along those portions of the City Property depicted on **Exhibit A** ("**Pipeline Area**") and (ii) to access and have ingress and egress (including, without limitation, by way of pedestrian and vehicular access, ingress and egress to and from the Utility Facilities) through the Parking Garage public entrance located on McAllister Street and the Parking Garage public exit located on Larkin Street ("**Access Area**" and together with the Pipeline Area, the "**Easement Area**") as reasonable necessary in connection with the permitted activities in subpart (i) above and for no other purpose whatsoever. The Easement is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, leases and licenses, easements, and rights of way pertaining to the City Property, whether or not of record. The use of the word "grant" will not imply any warranty on the part of City with respect to the Easement or the Easement Area. The Easement includes the right for Grantee to allow its contractors, subcontractors, agents, employees, or invitees to use the Easement Area in accordance with the terms of this Agreement.

2. **No Dedication for Public Use.** Nothing contained herein shall be deemed a gift or dedication of all or any portion of the City Property for the general public, or for any public use or purpose whatsoever.

3. **Easement Area Condition.** Grantee will, at its sole cost, operate, maintain, repair, and replace the Utility Facilities in the Easement Area in accordance with all laws, regulations, and regulatory requirements and in good, clean, safe, secure and sanitary condition. Grantee acknowledges that the Easement Area is located almost exclusively within an operating, publicly accessible parking garage and will use commercially reasonable efforts to minimize interference with the garage operations and the public's enjoyment of the Civic Center Plaza in the exercise of the rights granted herein. City will not be responsible for and Grantee releases City and its Agents (as defined in **Section 7(b)**) from responsibility for any damage to Grantee's Utility Facilities from (a) the weight of regular maintenance vehicles or by members of the public, (ii) subsurface Utility Facilities that are not clearly marked, or (iii) caused by City or any City contractor's, machinery, equipment, excavation, grading, or other ground disturbance, excluding only to the extent caused by City or its contractor's negligence or willful misconduct.

4. **Restrictions on Use.** Grantee agrees that, by way of example only and without limitation, the following uses of the Easement Area by Grantee, or any other person claiming a right of use by or through Grantee, are inconsistent with the limited purpose of this Agreement and are strictly prohibited as provided below:

a. Impact to Revenue Generated by Parking Garage. Grantee's access to and use of the Easement Area shall at all times be in a manner that has the least commercially reasonable impact to Parking Garage operations, including the daily revenues generated from the Parking Garage.

b. Improvements. Except as otherwise expressly provided herein, Grantee will not construct or place any temporary or permanent structures or improvements in, on, under or about the Easement Area, nor will Grantee make any alterations or additions to any non-Utility Facilities structures or improvements on the Easement Area, unless Grantee first obtains City's prior written consent, which City may condition or withhold in its sole discretion. Grantee may not expand or increase the Utility Facilities without the prior written consent of the City which shall not be unreasonably withheld. Any expansion must be related to and necessary for providing steam services to the City.

c. Dumping. Grantee will not cause or permit the dumping or other disposal on, under or about the Easement Area of landfill, refuse, Hazardous Material (as defined below) or any other materials that are unsightly or could pose a hazard to the human health or safety, native vegetation or wildlife, or the environment.

d. Nuisances. Grantee will not conduct any activities on or about the Easement Area that constitute waste, nuisance or unreasonable annoyance or that are not reasonably consistent with parking garage uses (including, without limitation, emission of objectionable odors, noises or lights).

e. Use of Adjoining Land. Grantee acknowledges that the privilege given under this Agreement will be limited strictly to the Easement Area. Grantee will not use any adjoining lands owned by City except as may be permitted under other agreements.

5. Rights Reserved to City. Notwithstanding anything to the contrary in this Agreement, City reserves and retains all of the following rights relating to the Easement Area: (i) all water, timber, mineral and oil rights of any kind; (ii) the right to grant future easements and rights of way over, across, under, in and on the Easement Area as City determines, provided the easements and rights of way do not interfere with Grantee's rights; (iii) the right to allow public access in and around the Easement Area as part of a public parking garage and public open space, and (v) the right to use the Easement Area in any way that is not inconsistent with Grantee's rights under the Easement and this Agreement.

6. Ownership. Any and all Utility Facilities shall at all times remain the property of Grantee, and City shall not have any right, title or interest therein, whether or not such property shall be permanently affixed to the real estate. All Utility Facilities constructed or placed upon the Easement Area by, or on behalf of, Grantee may be removed, repaired or replaced by Grantee subject to the requirements of this Agreement.

7. **Work by Grantee in the Easement Area.**

a. **Regulatory Permits and Approvals.** Before beginning any Work (as defined below) in the Easement Area, Grantee will obtain all permits, licenses and approvals of all regulatory agencies and other third parties that are required to complete the Work (collectively, “**Approvals**”). Promptly on receipt of such Approvals, Grantee will deliver copies to City. Grantee recognizes and agrees that no approval by City for purposes of Grantee’s work under this Agreement will be deemed to constitute an approval of any federal, state or local regulatory authority with jurisdiction (including the San Francisco Public Utilities Commission), and nothing in this Agreement will limit Grantee’s obligation to obtain all necessary regulatory Approvals, at Grantee’s sole cost. Any use of Civic Center Plaza is not subject to the terms of this Agreement and Grantee will be required to obtain a permit from SFRPD for use of any portion of Civic Center Plaza (except for the Easement and rights granted to Grantee herein).

b. **Exercise of Due Care.** Grantee will use, and will cause its agents, employees, officers, contractors, subcontractors, and representatives (“**Agents**,” and when used in reference to City, the term “**Agents**” includes City’s commissions, departments, boards and members), to use due care at all times to avoid damage or harm to City’s property.

c. **Notice of Routine Maintenance, Planned and Emergency Work.**

i. **Routine Maintenance and Planned Work.** Prior to commencing any maintenance, removal, or replacement on or of the Steam Loop within the Easement Area, including, without limitation, routine maintenance and inspection activities, (collectively, “**Work**”), Grantee will provide City at least seven (7) calendar days’ notice (each a “**Work Notice**”). Such Work Notice shall be provided as follows:

To SFMTA: Rob Malone
Senior Manager
Parking & Curb Management
Office 415.646.4528
Mobile 415.939.6974

To SFRPD: Dana Ketcham
Director of Property Management, Permits and Reservations
San Francisco Recreation and Parks Department
501 Stanyan Street
San Francisco, CA 94117
415-831-6868
dana.ketcham@sfgov.org

Each Work Notice will include plans and specifications or a work plan, as applicable. Such plans and specifications or work plan must identify any parking space or other portion of the Easement Area that will be utilized for performance of the respective Work, including any temporary construction staging, laydown and storage areas, as well as an estimated time for completing said Work. Grantee shall pay City parking fees equal to the maximum daily amount for each parking space made unavailable (and during which no separate parking spaces are available) multiplied by

the number of days to complete the Work that such parking spaces are unavailable for public use as a direct result of performance of the Work (and during which no separate parking spaces are available), except for unavailability that results from acts or omissions of City, its contractors or agents (“CITY LDS”). **THE PARTIES HAVE AGREED THAT CITY’S ACTUAL DAMAGES IN THE EVENT OF UNAVAILABILITY OF PARKING SPACES WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. AFTER NEGOTIATION, THE PARTIES HAVE AGREED THAT, CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, THE AMOUNT OF THE CITY LDS IS A REASONABLE ESTIMATE OF THE DAMAGES THAT THE CITY WOULD INCUR PURSUANT TO THIS SECTION AND SHALL BE THE SOLE AND EXCLUSIVE REMEDY AVAILABLE TO THE CITY FOR SUCH UNAVAILABILITY OF PARKING SPACES.**

ii. Emergency Work. Grantee will notify City of Emergency Work in the Easement Area as soon as practical, including notice via telephone or email. “**Emergency Work**” means any Work that must be completed on less than seven (7) calendar days’ prior notice to (1) prevent damage to persons or property (including without limitation, the City Property), (2) prevent flooding on adjacent property or within the City Property, or (3) maintain compliance with this Agreement and any laws due to unforeseen circumstances.

8. **Dangerous Conditions.** If Grantee’s use of the Easement Area creates or exacerbates a dangerous condition on the City Property, Grantee will cure the dangerous condition within one (1) calendar day after notice from the City (which notice may be verbal) or Grantee’s actual knowledge of the dangerous condition, whichever is sooner; provided, however, if the nature of the dangerous condition will require more than one (1) day to remedy, Grantee will have secured the area or taken such other measures as necessary to protect the public from harm within one (1) calendar day and commenced and prosecuted to completion a cure immediately thereafter. If Grantee has not (a) completed said Work within one (1) calendar day (if in accordance with this section), (b) secured the area and taken measures to protect the public within one (1) calendar day (if the Work will take longer than one day to complete) and commenced a cure within two (2) calendar days, or (c) otherwise diligently prosecuted the Work, City has the right (but not the obligation) to cure the condition at Grantee’s expense. Grantee will reimburse City for its reasonable costs within thirty (30) calendar days after receipt of an invoice. As used in this Section, “dangerous condition” shall mean any condition of the Utility Facilities that creates an immediate material threat to persons or property.

9. **Utility Facility Removal.** Within thirty (30) calendar days after any replacement of any Utility Facilities or cessation of use of any Utility Facilities, Grantee will decommission and remove such Utility Facilities in accordance with standard utility practice. At such time, Grantee will repair, at its cost, any damage to the Easement Area caused by the decommissioning or removal. Grantee’s obligations under this Section will survive any termination of the Easement.

10. **Term.** Subject to the City’s suspension rights specified herein, this Easement will be perpetual in nature and will be a burden on the City Property. In the event this Easement is terminated, City and Grantee shall work in good faith to record a quitclaim deed of this Easement in the City Official Records.

11. **Suspension Rights.** City may, if necessary, suspend or limit Grantee's use of, and access to, the Easement Area or require the alteration of the Easement Area or relocation of the Utility Facilities to a different area within the Parking Garage (such period during which Grantee will not have use of and access to the Easement Area referred to as the "**Suspension**") to the extent reasonably necessary to allow for any repair, reconstruction and/or rebuild of the Parking Garage by City ("**Garage Project**"). City will give Grantee at least sixty (60) days' prior written notice of any Suspension including, without limitation, the proposed Suspension schedule, a description of the Garage Project, a detailed description of the work affecting Grantee's use of and access to the Easement Area and any requirement to alter the Easement Area or relocate the Utility Facilities (the "**Garage Project Notice**"). City will use commercially reasonable efforts to minimize the impact to Grantee's rights under this Agreement and to limit the length of any Suspension. Grantee shall have thirty (30) days after receipt of the Garage Project Notice to review and provide input with respect to the Garage Project insofar as it pertains to Grantee's use of, and access to, the Easement Area, including, without limitation, with respect to the Suspension schedule. Provided constructability concerns are not present, City will utilize construction alternatives that avoid the need to alter the Easement Area or relocate the Utility Facilities and minimize any Suspension. Notwithstanding the foregoing, City shall have sole authority of, and responsibility and liability for, the means and methods of construction for any Garage Project. Any Suspension will be at no cost to City, except as to City's obligation to pay for any steam provided. For avoidance of doubt, any alteration or relocation described above shall be limited to an area within the Parking Garage. This Section 11 and the rights of City herein are personal to, and exercisable only by, City.

12. **Insurance.**

(a) Grantee will procure at its expense and keep in effect at all times, in form and from an insurer reasonably acceptable to City, as follows:

(i) Commercial general liability insurance with limits not less than \$2,000,000 each occurrence, combined single limit for bodily injury and property damage, including coverage for contractual liability, personal injury, broad form property damage, products, and completed operations. Any deductible under such policy will not exceed \$25,000 for each occurrence.

(ii) Business automobile liability insurance with limits not less than \$2,000,000 for each occurrence combined single limit for bodily injury and property damage, including coverage for owned, non-owned, and hired automobiles, as applicable.

(iii) Workers' Compensation Insurance, including Employers' Liability, with limits not less than \$1,000,000 for each accident, covering all employees employed in or about the Easement Area to provide statutory benefits as required by the laws of the State of California.

(iv) Pollution legal liability and environmental remediation liability, including coverage for bodily injury, sickness, or disease, sustained by any person, including death; Environmental Damages; property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, clean-up

costs, defense costs, charges, and expenses incurred in the investigation, adjustment of defense claims for such compensatory damages; sudden and non-sudden pollution conditions including the discharge, dispersal, release, or escape of Hazardous Materials into or upon City's property, the atmosphere, or watercourse or body of water, which results in Environmental Damages; transportation coverage for the hauling of any Hazardous Materials by Grantee or its Agents, from the City's real property to the final disposal location; and first party environmental remediation that pays for the cost of cleanup and remediation of the City's real property required to comply with all applicable Laws. Such insurance must be endorsed to provide third-party disposal site coverage that covers third-party bodily injury, property damage, and cleanup coverage for pollution conditions emanating from a disposal site or landfill used by Grantee or its Agents. Grantee will maintain limits no less than: Two Million Dollars (\$2,000,000) per accident and Four Million Dollars (\$4,000,000) policy aggregate for bodily injury and property damage. City and its Agents must be included as additional insureds under the Pollution Legal Liability Insurance Policy.

(b) All policies required by this Agreement will provide for the following: (i) be issued by one or more companies of recognized responsibility authorized to do business in the State of California with financial rating of at least a Class A- VIII (or its equivalent successor) status, as rated in the most recent edition of A.M. Best's "Best's Insurance Reports;" (ii) name as additional insureds the City and County of San Francisco and its Agents; and (iii) specify that such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Agreement 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. Such policies will also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage will not reduce or void the coverage as to any insured and will afford coverage for all claims based on acts, omissions, injury, or damage that occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

(c) If generally commercially available in the insurance industry, Grantee will provide thirty (30) calendar days' advance written notice to City of cancellation, intended non-renewal, or reduction in coverages, except for non-payment for which no less than ten (10) calendar days' notice will be provided to City and take prompt action to prevent cancellation, material reduction, or depletion of coverage, reinstate or replenish the cancelled, reduced, or depleted coverage, or obtain the full coverage required by this Section 12 (Insurance) from a different insurer meeting the qualifications of this Section. Notice to City will be mailed to the address(es) for City set forth in Section 23 (Notices).

13. **Liens.** Grantee will keep the Easement Area and all of City's property free from any liens or claims arising out of any work performed, material furnished, or obligations incurred by or for Grantee. If Grantee does not, within five (5) calendar days following the imposition of any such lien or the making of such claim, cause the lien to be released of record by payment or posting of a proper bond or causing the claim to be withdrawn, City will 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 City deems 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) will be payable to City by Grantee on demand. City will have the right at all times to post and keep posted on the Easement Area any notices permitted or required by law or that City deems proper for its protection and protection of the Easement Area and City's property, from mechanics' and materialmen's liens. Notwithstanding the foregoing, Grantee will have the right, on posting of an adequate bond or other security acceptable to City, to contest any such lien, and in such case, City will not seek to satisfy or discharge such lien unless Grantee has failed to do so within ten (10) calendar days after final determination of the validity thereof. Grantee will indemnify City and its Agents against any and all Claims arising out of any such contest.

14. **Repair of Damage.** If any portion of the Easement Area or any property of City located on or about the Easement Area is damaged by any of the activities conducted by or for Grantee, Grantee will immediately, at no cost to City, repair any and all such damage and restore the Easement Area or property to a reasonable proximity of the previous condition.

15. **City's Right to Cure Defaults by Grantee.** If Grantee fails to perform any of its obligations under this Agreement, then City may, at its sole option, remedy such failure for Grantee's account and at Grantee's expense by providing Grantee with three (3) calendar days' prior written or verbal notice of City's intention to cure such default (except that no such prior notice will be required in the event of an emergency as determined by City). Such action by City will not be construed as a waiver of any rights or remedies of City under this Agreement, and nothing in this Agreement implies any duty of City to do any act that Grantee is obligated to perform. Grantee will pay to City on demand, all costs, damages, expenses or liabilities incurred by City, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such default. Grantee's obligations under this Section will survive the termination of this Agreement.

16. **No Costs to City.** Except as may be expressly set forth herein or to the extent such arise from the negligence or willful misconduct of City or City's Agents, Grantee will bear all costs or expenses of any kind or nature in connection with its use of the Easement Area.

17. **Grantee's Indemnity.** Grantee will indemnify, defend, and hold harmless ("Indemnify") City, including all of its boards, commissions, departments, agencies, and other subdivisions, and all of its and their Agents, and their respective heirs, legal representatives, successors, and assigns (individually and collectively, the "**Indemnified Parties**"), and each of them, from and against all liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties, and expenses, including direct and vicarious liability of every kind (collectively, "**Claims**"), to the extent incurred in connection with or arising from: (a) any accident, injury to or death of a person (including Grantee's employees), or loss of or damage to property occurring in or about the Easement Area arising out of the negligence or willful misconduct of Grantee, its Agents or its clients, customers, invitees, guests, licensees, assignees, or tenants ("**Invitees**"); and (b) any failure or default by Grantee in the observation or performance of any of the terms, covenants, or conditions of this Agreement to be observed or performed on Grantee's part; except only those Claims as are to the extent caused by the willful misconduct or negligence of the Indemnified Parties. The foregoing indemnity includes reasonable fees of attorneys, consultants, and experts and related costs and City's costs of investigating any Claim. Grantee expressly acknowledges that Grantee has an immediate and independent obligation to defend City from any Claim that actually or potentially falls within this indemnity provision even if the allegation is or may be groundless,

fraudulent, or false, which obligation arises at the time the Claim is tendered to Grantee by City and continues at all times thereafter. Grantee's obligations under this Section will survive the termination of this Agreement and shall be and remain binding on Grantee's successors and assigns.

18. **Hazardous Material Acknowledgement and Indemnification.**

a. Hazardous Material Acknowledgement. Grantee recognizes that, in entering upon the Easement Area and performing the uses permitted under the Easement, its Agents and Invitees may be working with or be exposed to substances or conditions that are toxic or otherwise hazardous. Grantee acknowledges that the City is relying on the Grantee to identify and evaluate the potential risks involved and to take all appropriate precautions to avoid risks to its Agents and Invitees, contractors, and subcontractors. Grantee agrees that it is assuming full responsibility for ascertaining the existence of all risks, evaluating their significance, implementing appropriate safety precautions for its Agents and Invitees, and making the decision on how (and whether) to enter upon the Easement Area and carry out the uses permitted under the Easement, with due regard to the risks and appropriate safety precautions.

b. Proper Disposal of Hazardous Materials. Grantee assumes sole responsibility for managing, removing, and properly disposing of any waste produced during or in connection with Grantee's entry and/or use of the Easement Area including, without limitation, preparing and executing any manifest or other documentation required for or associated with the removal, transportation, and disposal of Hazardous Substances to the extent required in connection with the Grantee's activities.

c. Toxics Indemnification. Grantee will defend, hold harmless, and indemnify the City and its Agents from and against any and all claims, demands, actions, causes of action or suits (actual or threatened), losses, costs, expenses, obligations, liabilities, or damages, including interest, penalties, engineering consultant and attorneys' fees resulting from any Release or threatened Release of a hazardous substance, pollutant, or contaminant, or any condition of pollution or contamination, or nuisance in the Easement Area or in ground or surface waters associated with and in the vicinity of the Easement Area to the extent that the Release or threatened Release, or condition is directly created or knowingly aggravated by the use undertaken by Grantee under this Agreement or by any breach of or failure to duly perform or observe any term, covenant, or agreement in this Agreement to be performed or observed by the Grantee, including but not limited to any violation of any Environmental Law (as defined in Section 18(e) below); provided, however, that Grantee will have no liability, nor any obligation to defend, hold harmless, or indemnify any person or entity for any claim, action, loss, cost, liability, expense, or damage resulting from (i) the willful misconduct or negligence of the person or entity seeking to be defended, indemnified, or held harmless, or (ii) the mere discovery, presence or disclosure of any pre-existing condition on or in the vicinity of the Easement Area.

d. Hazardous Substances. For purposes of this Agreement, the term "**Hazardous Substance**" has the meaning set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U. S. C. Section 9601(14), and also includes, without limitation, petroleum, (including crude oil or any fraction thereof), asbestos,

asbestos-containing materials, polychlorinated biphenyls (“PCBs” or “PCB”), PCB-containing materials, all hazardous substances identified at California Health & Safety Code Sections 25316 and 25281(h), all chemicals listed under California Health & Safety Code Section 25249.8, and any substance deemed a hazardous substance, hazardous material, hazardous waste, pollutant, or contaminant under applicable state or local law.

e. Environmental Laws. For purposes of this Agreement, the term “**Environmental Laws**” includes but is not limited to all laws dealing with or pertaining to solid or hazardous waste, wastewater discharges, drinking water, air emissions, Hazardous Substance Releases or reporting requirements, Hazardous Substance use or storage, and employee and community right-to-know requirements, related to Grantee’s use of the Easement Area under the Agreement.

f. Release. For purposes of this Agreement, the term “**Release**” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Substance or pollutant or contaminant).

19. Other Utilities. The City has no responsibility or liability of any kind or character with respect to any utilities that may be located in or on the Easement Area. Grantee has the sole responsibility to locate the same and to protect them from damage. Grantee will be solely responsible for any damage to utilities or damage resulting from any damaged utilities.

20. Survival of Indemnities. Termination of this Agreement will 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 Agreement, nor will it affect any provision of this Agreement that expressly states it will survive termination hereof. Unless otherwise expressly set forth herein, all such obligations shall survive the expiration or earlier termination of this Agreement for a period of three (3) years.

21. Waiver of Claims.

a. Neither City nor any of its Agents will be liable for any damage to the property of Grantee or its Agents, or for any bodily injury or death to such persons, resulting or arising from the condition of the Easement Area or its use by Grantee.

b. Except for the Excluded Claims (as defined below), Grantee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, the Indemnified Parties under any present or future laws, statutes, or regulations, with respect to Claims arising out of: (i) the physical or environmental condition of the Easement Area or any law or regulation applicable thereto or the suitability of the Easement Area for Grantee’s intended use; (ii) any and all Claims for relocation benefits or assistance from City under federal and state relocation assistance laws, (iii) any and all Claims for consequential and incidental damages (including without limitation, lost profits), and covenants not to sue for such damages, and (iv) any and all Claims for any interference with the uses conducted by Grantee pursuant

to this Agreement, regardless of the cause, except to the extent caused by the willful misconduct or negligence of City, or caused solely and directly by City's breach of this Agreement.

c. In connection with the foregoing releases, Grantee acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

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

Grantee acknowledges that the releases contained herein includes all known and unknown, direct and indirect, disclosed and undisclosed, and anticipated and unanticipated claims. Grantee realizes and acknowledges that it has entered into this Agreement 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 in this Agreement will survive any termination of this Agreement. Notwithstanding anything to the contrary set forth in this Section, the foregoing waivers and releases are not intended to and do not cover (i) any claims arising from a breach any City representations or warranties set forth in this Agreement or (ii) any other breach by City of an express covenant, indemnity or warranty of City under this Agreement, or (iii) any fraud, criminal activity, or intentional misrepresentation by City, or (iv) any claims for personal injury or property damage arising from the negligence or willful misconduct of City and/or City's Agents and/or Invitees.

22. **As Is Condition of Easement Area; Disclaimer of Representations.** Grantee accepts the Easement Area in its "AS IS" condition, without representation or warranty of any kind by City or its Agents and subject to all applicable laws, rules and ordinances governing the use of the Easement Area. Without limiting the foregoing, this Agreement is made subject to all covenants, conditions, restrictions, easements, encumbrances and other title matters affecting the Easement Area, whether foreseen or unforeseen, and whether such matters are of record or would be disclosed by an accurate inspection or survey.

23. **Notices, Demands and Communications.** Whenever any notice or any other communication is required or permitted to be given under any provision of this Agreement (as, for example, where a party is permitted or required to "notify" the other party), such notice or other communication will be in writing, signed by or on behalf of the party giving the notice or other communication, and will be deemed to have been given on the earliest to occur of (i) the date of the actual delivery, or (ii) if mailed, on the delivery date shown on the return receipt, in each case to the respective address(es) of the party to whom such notice is to be given as set forth below, or at such other address of which such party will have given notice to the other party as provided in this Section. Legal counsel for any party may give notice on behalf of the represented party.

If to City, to:

San Francisco Municipal Transportation Agency

with copies to: 1 South Van Ness Avenue, 7th floor
San Francisco, CA 94103
Attn: Senior Manager
Parking & Curb Management

Recreation and Park Department
City and County of San Francisco
Attn: Director of Real Estate
Re: Civic Center Garage Easement
501 Stanyan Street
San Francisco, CA 94117

with copies to: Office of the City Attorney
Attn: Real Estate/Finance Team
City Hall, Room 234
1 Dr. Carlton R. Goodlett Place
San Francisco, California 94102

If to Grantee, to: ENERGY CENTER SAN FRANCISCO LLC
c/o Cordia Energy
One East Washington Street, Suite 440
Phoenix, AZ 85004
Attn: Regional General Manager – West

with a copy to: Cox Castle & Nicholson LLP
50 California Street, Suite 3200
San Francisco, CA 94111
Attn: Jake W. Storms, Esq.

24. **No Joint Venture or Partnership; No Authorization.** This Agreement does not create a partnership or joint venture between City and Grantee as to any activity conducted by Grantee on, in or relating to the Easement Area. Grantee is not a State actor with respect to any activity conducted by Grantee on, in, or under the Easement Area. The giving of this Easement by City does not constitute authorization or approval by City of any activity conducted by Grantee on, in or relating to the Easement Area.

25. **MacBride Principles - Northern Ireland.** The provisions of San Francisco Administrative Code Section 12F are incorporated by this reference and made part of this Agreement. By signing this Agreement, Grantee confirms that Grantee has read and understood that City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

26. **Non-Discrimination.** Grantee will not, in the operation and use of the Easement Area, discriminate against any employee of, any City employee working with Grantee, or applicant for employment with Grantee, 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 those protected classes, or in retaliation for opposition to discrimination against those classes. Grantee does not as of the date of this Agreement and will not, 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 the employees, where the domestic partnership has been registered with a governmental entity under state or local law authorizing the registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

27. **Public Records.** Grantee understands and agrees that under City's Sunshine Ordinance (San Francisco Administrative Code Chapter 67) and the California Public Records Act (Gov. Code Section 7920.000 *et seq.*), apply to this Agreement and any and all records, information, and materials submitted to City in connection with this Agreement. Accordingly, all such records, information, and materials may be subject to public disclosure in accordance with City's Sunshine Ordinance and the State Public Records Law. Grantee authorizes City to disclose any records, information, and materials submitted to City in connection with this Agreement except confidential records protected from disclosure under applicable law.

28. **Tropical Hardwood and Virgin Redwood Ban; Preservative-Treated Wood Containing Arsenic.** City urges companies not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Grantee will not provide any items to the construction of any improvements, or otherwise in the performance of this Agreement, which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. Grantee may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment.

29. **Taxes.**

a. Grantee recognizes and understands that the Easement may create a possessory interest subject to property taxation and that Grantee may be subject to the payment of property taxes levied on such interest under applicable law. Grantee further recognizes and understands that any transfer or assignment permitted under this Agreement may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder.

b. Grantee agrees to pay taxes of any kind, including possessory interest taxes, if any, that may be lawfully assessed on the interest created by the Easement and to pay any other taxes (including transfer taxes), excises, licenses, permit charges or assessments based on Grantee's usage

of the Easement Area that may be imposed on Grantee by applicable law. Grantee will pay all of such charges when they become due and payable and before delinquency.

c. Grantee agrees not to allow or suffer a lien for any such taxes to be imposed on the Easement Area or on any equipment or property located thereon for activity by or on behalf of Grantee without promptly discharging the same, provided that Grantee, if so desiring, may have reasonable opportunity to contest the validity of the same.

30. **No Tobacco or Alcoholic Beverage Advertising.** Grantee acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on the Easement Area. This advertising prohibition includes the placement of the name of a company producing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. In addition, Grantee acknowledges and agrees that no Sales, Manufacture, or Distribution of Tobacco Products (as such capitalized terms are defined in San Francisco Health Code Section 19K.1) is allowed on the Easement Area and such prohibition must be included in all subleases or other agreements allowing use of the Easement Area. The prohibition against Sales, Manufacture, or Distribution of Tobacco Products does not apply to persons who are affiliated with an accredited academic institution where the Sale, Manufacture, and/or Distribution of Tobacco Products is conducted as part of academic research. Grantee acknowledges and agrees that no advertising of alcoholic beverages is allowed on the Easement Area.

31. **Restrictions on the Use of Pesticides.**

a. Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or “**IPM Ordinance**”) describes an integrated pest management (“**IPM**”) policy to be implemented by all City departments. Grantee may not use or apply or allow the use or application of any pesticides on the Easement Area or contract with any party to provide pest abatement or control services to the Easement Area without first receiving City’s written approval of an IPM plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Grantee may need to apply to the Easement Area during the Term, (ii) describes the steps Grantee will take to meet City’s IPM Policy described in Section 300 of the IPM Ordinance, and (iii) identifies, by name, title, address, and telephone number, an individual to act as the Grantee’s primary IPM contact person with City. Grantee will comply, and will require all of Grantee’s contractors to comply, with the IPM plan approved by City and will comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Grantee were a City department. Among other matters, the provisions of the IPM Ordinance: (i) provide for the use of pesticides only as a last resort, (ii) prohibit the use or application of pesticides on City property, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City’s Department of the Environment), (iii) impose certain notice requirements, and (iv) require Grantee to keep certain records and to report to City all pesticide use at the Easement Area by Grantee’s staff or contractors.

b. If Grantee or Grantee’s contractor would apply pesticides to the Easement Area, Grantee will first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation (“**CDPR**”) and the pesticide application will be made only by or under the supervision

of a person holding a valid, CDPR-issued Qualified Applicator certificate or Qualified Applicator license. City's current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website, <http://sfenvironment.org/ipm>.

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

33. **Notification of Prohibition on Contributions.** Through its execution of this Agreement, Grantee acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with City for the selling or leasing of any land or building to or from any department of City from making any campaign contribution whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, to (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or twelve (12) months after the date the contract is approved, 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 \$100,000 or more. Grantee acknowledges that (i) the prohibition on contributions applies to Grantee; each member of Grantee's board of directors, and Grantee's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Grantee; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Grantee; and (ii) within thirty (30) days of the submission of a proposal for the contract, the City department with whom Grantee is contracting is obligated to submit to the Ethics Commission the names of the parties to the contract and any subcontractor. Additionally, Grantee certifies that it has informed each of the persons described in Section 1.126 of the limitation on contributions imposed by Section 1.126 and has provided the names of the persons required to be informed to the City department with whom it is contracting.

34. **Force Majeure.** Notwithstanding any other provision of this Agreement, each party's performance of obligations under this Agreement (other than monetary obligations) shall be excused, and the term, and any other time periods set forth herein shall continue and be extended for a like period of time, while such party is hindered or prevented, in whole or in part, from complying with any term, covenant, condition or provision of this Agreement, by any event of Force Majeure. For purposes of this Agreement, "***Force Majeure***" means inclement weather, fire, earthquake, flood, tornado or other acts of God and natural disasters; strikes or labor disputes; war, civil strife or other violence; any law, order, proclamation, regulation, ordinance, action, demand or requirement of any government agency, or any other act or condition beyond the reasonable control of a party.

35. **General Provisions.** (a) This Agreement may be amended or modified only by a writing signed by City and Grantee. (b) No waiver by any party of any of the provisions of this Agreement will be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver. (c) Unless otherwise stated, all approvals and determinations of City requested, required, or permitted hereunder may be made in the sole discretion of the general manager of the San Francisco Recreation and Park Department or other authorized City official. (d) This instrument (including the exhibit(s) hereto) contains the entire agreement between the parties and all prior written or oral negotiations, discussions, understandings and agreements are merged herein. The words “**include**” or “**including**”, or similar words will not be construed to limit any general term, statement, or other matter in this Agreement or any of its attached exhibits, whether or not language of non-limitation, such as “without limitation” or similar words, are used. (e) The section and other headings of this Agreement are for convenience of reference only and will be disregarded in the interpretation of this Agreement. (f) Time is of the essence in each and every provision hereof. (g) This Agreement will be governed by California law and City’s Charter. (h) If Grantee consists of more than one person then the obligations of each person will be joint and several. (i) If any provision of this Agreement is invalid or unenforceable, the remainder of this Agreement will not be affected and will be valid and be enforceable to the fullest extent permitted by law, except to the extent that enforcement of this Agreement without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this Agreement. (j) All exhibits attached to this Agreement are incorporated by reference.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, GRANTEE ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS AGREEMENT UNLESS AND UNTIL RESOLUTIONS OF CITY’S RECREATION AND PARK COMMISSION AND CITY’S BOARD OF SUPERVISORS WILL HAVE BEEN DULY ADOPTED APPROVING THIS AGREEMENT AND AUTHORIZING THE TRANSACTION CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON ENACTMENT OF SUCH RESOLUTIONS, AND THIS AGREEMENT WILL BE NULL AND VOID IF THE SAN FRANCISCO RECREATION AND PARK COMMISSION, BOARD OF SUPERVISORS AND MAYOR DO NOT APPROVE THIS AGREEMENT, EACH IN THEIR RESPECTIVE SOLE DISCRETION.

[SIGNATURES ON THE FOLLOWING PAGE]

Accepted and Agreed:

ECSF:

ENERGY CENTER SAN FRANCISCO LLC
a Delaware limited liability company

By: _____
Stephen Sorrentino
Regional General Manager

CITY:

CITY AND COUNTY OF SAN
FRANCISCO,
a municipal corporation

By: _____
Andrico Q. Penick
Director of Property

APPROVED AS TO FORM:

DAVID CHIU
City Attorney

By: _____
Nancy Taylor
Deputy City Attorney

NOTARY ACKNOWLEDGMENT

CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC

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

State of California)

County of San Francisco)

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____ (Seal)

CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC

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

State of California)

County of San Francisco)

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____ (Seal)

EXHIBIT A

EASEMENT AREA-PIPELINE AREA

[SEE ATTACHED]



