

ORIGINAL

SAN FRANCISCO PUBLIC UTILITIES COMMISSION

GAVIN NEWSOM, MAYOR

QUARRY LEASE

between

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

and

**OLIVER DE SILVA, INC., a California corporation,
as Tenant**

For the lease of
The Sunol Valley Aggregate Quarry Site

Located at 6527 Calaveras Road, Sunol, California
Consisting of approximately 308.5 acres of primary premises and
approximately 58 acres of proposed expansion premises

Dated as of March 29, 2010

PUBLIC UTILITIES COMMISSION

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Francesca Vietor - Commissioner
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QUARRY LEASE

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PUBLIC UTILITIES COMMISSION

QUARRY LEASE

THIS QUARRY LEASE (this "Lease"), dated for reference purposes only as of March 29, 2010, 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, and OLIVER DE SILVA, INC., a California corporation ("Tenant"), and is made with reference to the facts and circumstances described in the Recitals set forth below.

RECITALS

A. The City owns land in Alameda County, California, which is held under the jurisdiction of the San Francisco Public Utilities Commission (the "SFPUC") and is comprised of watershed land that is part of the water supply system operated by the SFPUC. That portion of such land described in Exhibit A-1 attached hereto and depicted on Exhibit A-3 attached hereto (the "Initial Premises"), consisting of approximately 308.5 acres adjacent to Calaveras Road, and that portion of such land described in Exhibit A-2 attached hereto and depicted on Exhibit A-3 attached hereto (the "Expansion Premises"), consisting of approximately 58 acres to the north of the Initial Premises, are the subjects of this Lease. Both the Initial Premises and the Expansion Premises have significant subsurface aggregate deposits.

B. Surface mining of aggregate within California is regulated by the Surface Mining and Reclamation Act of 1975, as amended (California Public Resources Code, Section 2710 et seq.) and California State Mining and Geology Board regulations (CCR Section 3500 et seq.). Surface mining within the unincorporated areas of Alameda County is further regulated by the Alameda County Surface Mining Ordinance (Alameda County General Code Chapter 6.80). Mining of the Initial Premises is presently subject to the terms and conditions of the existing Surface Mining Permit 30 ("SMP 30"), issued to Santa Clara Sand and Gravel Co., a California corporation ("Existing Operator"), by Alameda County Community Development Agency ("Alameda County") pursuant to the Alameda County Surface Mining Ordinance. SMP 30 authorizes mining to a depth of 140 feet until the earlier of June 1, 2021 or completion of reclamation of the mining site in accordance with the requirements of SMP 30.

C. The Initial Premises is presently leased by City to Existing Operator under (i) that certain Gravel Quarry Lease, dated December 31, 1980, as amended by that certain Supplemental Agreement in Modification of Lease, dated June 20, 1986, and that certain Amendment to Lease, dated January 11, 1994 (as so amended, the "Existing Main Quarry Lease"), and (ii) that certain 7.3 Acre Stockpile Lease, dated January 26, 1988 (the "Existing Stockpile Lease"). The Existing Main Quarry Lease and the Existing Stockpile Lease are sometimes referred to collectively as the "Existing Quarry Leases." The respective terms of the Existing Quarry Leases have expired, and Existing Operator continues to occupy the Initial Premises and harvest gravel on a hold over

basis. Sand and gravel have not yet been fully harvested to the 140-foot depth permitted under SMP 30.

D. The SFPUC desires to maximize water storage on and revenue generation from the Initial Premises and the Expansion Premises in an environmentally sensitive manner. To that end, the SFPUC hopes to obtain an amendment to SMP 30 to include the Expansion Premises in the SMP 30 quarry site, to permit mining operations of the expanded site to a depth of at least 225 feet, to extend the expiration date of the mining permit to a date that is approximately 30 years after the date of approval by the County of Alameda of the modification to SMP 30, and to permit mining and reclamation of the expanded site generally in accordance with Alternative F of the Sunol Valley Resources Management Element of the Alameda Watershed Management Plan adopted by the SFPUC in September 2000 (the "Alternative F Plan").

E. On December 13, 2005, the SFPUC issued a request for proposals (the "RFP") to select a firm to enter into exclusive negotiations with the SFPUC for a mining lease of the Premises and Expansion Premises. Three proposals were received in response to the RFP, including a proposal from Tenant. The Selection Committee formed to evaluate the proposals ranked Tenant as the highest ranked respondent.

F. Tenant presently leases from a third party certain land located in the San Antonio Reservoir watershed known as "Apperson Ridge," and holds Surface Mining Permit 17 ("SMP 17"), issued by Alameda County, for mining on such property. In addition to the mining area under SMP 17, SMP 17 allows the construction and operation of aggregate processing facilities, including primary and secondary crushing plants, an asphalt plant, a concrete batch plant and associated industrial facilities, which are to occupy a portion of the Apperson Ridge quarry site and an access road to the Apperson Ridge site to be used by trucks bringing materials to and from such Apperson Ridge quarry site, subject to and in accordance with the Conditions of Approval of SMP 17. In 1986, Tenant, Alameda County, the owner of the Apperson Ridge site and the SFPUC entered into agreements providing for the exchange of easements required for road access across SFPUC property to Apperson Ridge as permitted under SMP 17, as well as for the reimbursement of certain costs incurred by the SFPUC for the protection of water quality in the San Antonio Reservoir watershed. Tenant has not yet commenced mining operations under SMP 17. SMP 17 expires in 2064.

G. Tenant desires to enter into a mining lease for the Initial Premises and Expansion Premises. Tenant also has a goal of reducing the environmental effects of mining operations on Apperson Ridge in two major ways: (i) by eliminating all but the mining activity and primary processing plant at Apperson Ridge, thus reducing the size of the processing plant site at Apperson Ridge by approximately 25 acres, which would be possible if Tenant operates a secondary processing plant and asphalt and concrete batch plants for the Apperson Ridge mining operations on the Initial Premises and/or Expansion Premises on the valley floor, instead of processing aggregates into finished quarry products at the Apperson Ridge mining site, and (ii) by bringing sized aggregates from Apperson Ridge to the Initial Premises and/or Expansion Premises on a conveyor system, instead of hauling quarry products on the fifty foot (50') wide

road across SFPUC property. Tenant's response to the RFP included a proposal to seek a modification of SMP 17 and SMP 30 to achieve these environmental goals.

H. At its May 8, 2007 commission meeting the SFPUC Commission (the "Commission"), by Resolution No. 07-0082, authorized the General Manager of the SFPUC (the "General Manager") to direct staff to negotiate with Tenant, as the highest ranked respondent to the RFP, for an Exclusive Negotiating Agreement to govern negotiations for the lease of the Premises and Expansion Premises. The parties entered into an Exclusive Negotiating Agreement on September 19, 2007 (the "Exclusive Negotiating Agreement") and have engaged in negotiations regarding this Lease in accordance with the terms of such agreement. Pursuant to the First Amendment to Exclusive Negotiating Agreement, dated August 1, 2008, the Exclusive Negotiating Agreement was amended to confirm the expiration date and to provide for two additional options to extend the term of the Exclusive Negotiating Agreement for six (6) months each, which options were exercised by Tenant. Pursuant to the Second Amendment to Exclusive Negotiating Agreement, dated September 14, 2009, the term of the Exclusive Negotiating Agreement was further extended through March 17, 2010. The Exclusive Negotiating Agreement, as so amended, is referred to herein as the "ENA."

L. City and Tenant desire to enter into a multiphase lease, with Tenant applying for revisions to SMP 30 and SMP 17, and performing environmental review in connection with such applications, as partially summarized in Recitals J, K and L below, and as more particularly set forth in the terms and conditions of this Lease.

J. In the initial phase of this Lease, Tenant is required to apply for and diligently pursue with Alameda County a transfer or assignment of SMP 30 from the Existing Operator to Tenant and to post such bond and assume any existing financial assurances as may be required by Alameda County in connection with the permit transfer. Following the permit transfer Tenant will be allowed to mine the Initial Premises in accordance with the current SMP 30. City and Tenant reserve in this Lease certain termination rights in connection with a failure to obtain the transfer of SMP 30 to Tenant, including City's right set forth in Section 3.2(d) below to terminate this Lease if any CEQA document prepared in connection with the proposed SMP 30 transfer finds the project will cause significant environmental impacts that cannot be mitigated to a less than significant level and City determines not to consent to the permit transfer.

K. After approval by the City of the transfer of SMP 30, this Lease requires Tenant to seek approval from Alameda County for the proposed revisions to SMP 30 described in Recital D above and apply for, fund and diligently pursue all required environmental review for such modification under the California Environmental Quality Act ("CEQA"). It is anticipated that Alameda County will be the lead agency for such CEQA review and that City will be a responsible agency. The consent of SFPUC, as owner of the Initial Premises and Expansion Premises, would be required for such modification of SMP 30, and the City retains certain discretion in connection with the environmental review, including, but not limited to, the right to require certain modifications to the Lease, all as more particularly described in Article 3 of this Lease. If SMP 30 is so amended and if SFPUC and Tenant reach agreement on any amendments

to this Lease required in connection therewith, the Lease would allow Tenant to mine the Initial Premises and the Expansion Premises in accordance with such amended SMP 30. If SMP 30 is not so amended or if SFPUC and Tenant do not reach agreement on any amendments to this Lease required in connection therewith, Tenant shall continue to mine the Initial Premises in accordance with the unrevised SMP 30. If SMP 30 is so amended, and the parties reach agreement on any Lease amendments required in connection with such amendment of SMP 30, Tenant would not commence any active quarrying activities on the Apperson Site until the later of January 1, 2030, or the date on which Tenant completes mining of the Premises in accordance with the provisions of revised SMP 30.

L. After approval of the proposed SMP 30 modification and the related modification of the Lease, if any, Tenant would perform the required studies to seek the modifications to SMP 17 described in Recital G above. Such modifications to SMP 17 would be processed with a companion further modification of revised SMP 30 to permit the operation on a portion of the Initial Premises or Expansion Premises of the conveyor system, stockpile areas and the asphalt, concrete, ready mix concrete and processing plants for receiving, stockpiling and processing sized aggregates from Apperson Ridge mining operations, subject to approval of the modifications, and would include a provision postponing the commencement of mining under SMP 17 until completion of mining of the Initial Premises or Expansion Premises. The approval of such revisions to SMP 17 and SMP 30 would require a modification of this Lease to designate that portion of the Initial Premises or Expansion Premises on which the processing plants and material stockpiles would be located for the term of the mining operations on the Apperson Ridge site under SMP 17 (following completion of mining the Initial Premises and Expansion Premises under the existing or revised SMP 30), and would also require the grant of one or more easements, licenses or permits on SFPUC property adjoining the Initial Premises or Expansion Premises for the installation and operation of the conveyor belt and associated access roads. It is anticipated that Alameda County will be the lead agency for such CEQA review and that City will be a responsible agency with respect to components of the project to be located on City property. The consent of SFPUC, as owner of the Initial Premises, Expansion Premises and sites for the conveyor and access roads, will be required for such further modification of SMP 30, and the City retains discretion in connection with the environmental review, including, but not limited to, the right to require certain modifications to the Lease, all as more particularly described in Article 3 of this Lease. If SMP 17 and SMP 30 are so amended and if SFPUC and Tenant reach agreement on any required amendments to this Lease and any other agreements required in connection therewith, this Lease would allow Tenant to process sized materials from the Apperson Ridge mining operations on the designated portion of the Initial Premises and/or Expansion Premises through the expiration date of SMP 17, all subject to the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the foregoing and of the covenants and agreements contained herein, City and Tenant hereby agree as follows:

1. DEFINITIONS

For purposes of this Lease, initially capitalized terms not otherwise defined in this Lease shall have the meanings ascribed to them in this Article. In the event of any conflict between a definition given in this Article and any more specific provision of this Lease, the more specific provision shall control.

1.1 "Additional Charges" means any and all real and personal property taxes and assessments, possessory interest taxes and other costs, impositions and expenses described in Article 10 hereof or otherwise payable by Tenant under this Lease.

1.2 "Additional Retained Premises" has the meaning set forth in Section 8.6.

1.3 "Advance Improvement Costs" has the meaning set forth in Section 3.3(h)(ii).

1.4 "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.

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

1.6 "Alameda County" means the Alameda County Community Development Agency or such other board, agency or commission as is from time to time authorized to issue surface mining permits in accordance with the Alameda County Surface Mining Ordinance (Alameda County General Code Chapter 6.80) and the Surface Mining and Reclamation Act of 1975, as amended (California Public Resources Code, Section 2710 et seq.).

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

1.8 "Alternative F Plan" has the meaning set forth in Recital D.

1.9 "Apperson Site" means the 680 acre parcel defined as the Property in the Apperson Lease, along with all easements and other interests granted the Lessee in the Apperson Lease and all amendments thereto.

1.10 "Apperson Lease" means that certain Mineral Lease Agreement, dated August 30, 1983, between William W. Apperson, as lessor, and Tenant, as lessee (the "Original

Agreement"), as amended by (i) that certain Agreement, dated July 31, 1984 (the "First Amendment"), (ii) that certain Amendment to Mineral Lease Agreement, dated July 29, 1985, (iii) that certain Amendment to Mineral Lease Agreement, dated August 7, 1986, and (iv) that certain Lease Amendment/Ratification, dated October 17, 1989 (the "1989 Amendment"), and as supplemented by the terms of that certain Confirmation of Lease/Roadway agreement, dated December 9, 1986.

1.11 "Apperson Product" has the meaning set forth in Section 9.3.

1.12 "Application" shall refer to each of the Application for Permit Transfer, Application for Revised SMP 30, Application for Revised SMP 17, Application for Further Revised SMP 30, and the applications described in Section 3.3(h).

1.13 "Application for Further Revised SMP 30" has the meaning set forth in Section 3.5(a).

1.14 "Application for Permit Transfer" has the meaning set forth in Section 3.2(a).

1.15 "Application for Revised SMP 17" has the meaning set forth in Section 3.4(a).

1.16 "Application for Revised SMP 30" has the meaning set forth in Section 3.3(a).

1.17 "Approved Plans and Permits" means all permits, plans, materials and maps relating to the Premises and submitted to, or required by, Alameda County, the City, and any other governmental or regulatory entity with jurisdiction, and approved or to be approved by such entity, including without limitation the following: Surface Mining Permit 30, as revised from time to time, the CEQA Document(s) for SMP 30 and the mitigation requirements set forth therein. Any permits, plans, materials, and maps relating to the Premises which are prepared or issued after the date of this Lease, and any modifications to any existing Approved Plans and Permits, shall be subject to the City's prior and reasonable written approval (subject to the exercise of the City's Retained Discretion, to the extent applicable).

1.18 "Assignment" has the meaning set forth in Section 21.1.

1.19 [Intentionally omitted.]

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

1.21 "Base Rent" means the annual Base Rent specified in Section 9.1.

1.22 "Base Rent Suspension Period" has the meaning set forth in Section 9.1(d).

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

1.24 "**CEQA Document**" means a negative declaration, mitigated negative declaration, or environmental impact report or any addendum or subsequent or supplemental environmental impact report thereto, prepared by the lead agency under the California Environmental Quality Act.

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

1.26 "**Closure Plan**" has the meaning set forth in Section 11.10.

1.27 "**Commencement Date**" means the later of (i) the Effective Date, or (ii) the date on which the Existing Operator surrenders the Initial Premises free and clear of its equipment and personal property (except to the extent Tenant has agreed to purchase or otherwise take title to such equipment).

1.28 "**Commission**" means the commission of the San Francisco Public Utilities Commission.

1.29 "**Conveyor and Access Agreements**" has the meaning set forth in Section 3.5(f).

1.30 "**Creek Restoration Contribution**" has the meaning set forth in Section 33.3.

1.31 "**Creek Restoration Study**" has the meaning set forth in Section 33.1.

1.32 "**Creek Restoration Study Contribution**" has the meaning set forth in Section 33.1.

1.33 "**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.

1.34 [Intentionally omitted.]

1.35 "**Early Partial Termination Date**" has the meaning set forth in Section 11.5(e).

1.36 "**Early Surrender Premises**" has the meaning set forth in Section 8.6.

1.37 "**Early Surrender Premises Deletion Date**" has the meaning set forth in Section 8.6.

1.38 "**Early Termination Premises**" has the meaning set forth in Section 11.5(e).

1.39 "**Early Work**" has the meaning set forth in Section 3.3(h)(i).

1.40 "**Effective Date**" means the later of (i) the date on which the Parties have executed and delivered this Lease or (ii) the date on which each of the following have occurred:

(a) thirty (30) days after Commission approval, and (b) the effective date of a resolution by the City's Board of Supervisors approving this Lease and authorizing the City's execution.

1.41 "**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 on or relating to the Premises; "**Encumbrancer**" means a mortgagee, beneficiary of a deed of trust or other holder of an Encumbrance.

1.42 "**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 adjacent property, including, without limitation, soil, air and groundwater conditions.

1.43 "**Event of Default**" means any one of the events of default described in Section 22.1 hereof.

1.44 "**Existing Agreement**" means any one of the agreements listed on attached Exhibit D.

1.45 "**Expansion Premises**" has the meaning set forth in Section 2.3.

1.46 "**Expansion Premises Haul Road**" has the meaning set forth in Section 12.3(a).

1.47 "**Extended Processing Plant Term**" has the meaning set forth in Section 8.5.

1.48 "**Extension Term**" has the meaning set forth in Section 8.4.

1.49 "**Finished Product**" has the meaning set forth in Section 9.2(e).

1.50 "**Force Majeure**" means the occurrence of an event beyond a Party's reasonable control, such as a war or riot, labor strike or civil disturbance, flood, earthquake, explosion, or other act of God, that causes such Party's performance of an obligation hereunder to be impossible, commercially impracticable or substantially delayed; provided that such Party takes immediate and diligent steps to comply with the obligation as soon as possible under the circumstances. Force Majeure shall not include (i) failure to obtain financing or have adequate funds, or (ii) work shortages when qualified workers are available. To be deemed a Force Majeure event, a Party shall have first notified the other Party in writing of the cause or causes thereof within thirty (30) days after the event which may constitute a Force Majeure event hereunder, and the Party seeking to have performance excused due to Force Majeure or claiming Force Majeure delay cannot, through commercially reasonable and diligent efforts, perform the impacted obligation or make up for the delay within the time period remaining prior to the applicable performance obligation.

1.51 "Further Mitigation Amendments" has the meaning set forth in Section 3.5(g)(i).

1.52 "Further Revised SMP 30" has the meaning set forth in Section 3.5(a).

1.53 "Further Revised SMP 30 Effective Date" has the meaning set forth in Section 3.5(g)(iii).

1.54 "Further Revised SMP 30 Permits and Approvals" has the meaning set forth in Section 3.5(g)(iii).

1.55 "General Manager" means the General Manager of the San Francisco Public Utilities Commission or his or her designee.

1.56 "Gross Revenues" means the gross selling price, after discount, whether for cash or on credit (whether collected or not), of all gravel, rocks, overburden, and other Products (as defined in Section 9.2(d)) excavated from the Premises or derived from materials deposited on the Premises pursuant to the provisions of Section 32.1(a), by Tenant, its permitted subtenants, licensees, or concessionaires, and (i) sold by or used by such party, or (ii) used by such party as a component of asphalt concrete, ready mix concrete or another Finished Product sold by such party or used by such party (except as provided in Section 9.2(g)). In the event Tenant sells a Product from the Premises to an Affiliate of Tenant or uses the Product, "Gross Revenues" shall mean the selling price of such Product that Tenant would have received had Tenant sold such Product to an entity that was not Affiliate of Tenant (based upon comparable sales to non-Affiliates of Tenant). Gross Revenues shall not include sales tax paid by the purchaser.

1.57 "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, or is otherwise defined by any such governmental entity as a hazardous or toxic material. 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.

1.58 "Hazardous Material Claims" means any and all enforcement, investigation, Remediation or other governmental, regulatory or private 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 SFPUC, 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, any Improvements, and/or any adjoining property, the loss or restriction of the use or any amenity of the Premises, any Improvements, and/or any adjoining property, and attorneys', consultants', and experts' fees and costs.

1.59 "Improvement Interest Rate" for any given date means (a) the London Interbank Offered Rate (rounded to the next nearest one-one hundredth of a percent (0.01%)) on such date for deposits in US dollars for a one month period, plus (b) one percent (1%). For purposes of this Lease the London Interbank Offered Rate shall be determined with reference to the rates published by the British Bankers' Association on its website (historical data currently located at <http://www.bba.org.uk/bba/jsp/polopoly.jsp?d=141&a=627>) or such successor publication as reasonably agreed to by the Parties.

1.60 "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.

1.61 "Indemnify" means indemnify, protect, reimburse, defend and hold harmless.

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

1.63 "Initial Premises" has the meaning set forth in Section 2.2.

1.64 "Initial Term" has the meaning set forth in Section 8.3.

1.65 "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 adjoining property 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, any Improvements or any adjoining property.

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

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

1.68 "**Landlord**" means the City and County of San Francisco, acting by and through the SFPUC.

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

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

1.71 "**Lease Year**" shall have the following meaning: the first "Lease Year" shall be the period commencing on the Commencement Date and ending on the last day of the twelfth (12th) full calendar month thereafter. Each twelve (12) calendar month period thereafter shall constitute a "Lease Year".

1.72 "**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', consultants' and experts' fees and costs.

1.73 "**Material Improvement Alterations**" means any Alteration to any Material Improvement.

1.74 "**Material Improvements**" means any and all buildings, structures, fixtures and other improvements constructed, installed or placed on the Premises within 100 feet of, or that would otherwise materially affect the use or operation of, any utility facilities owned and/or operated by SFPUC (including but not limited to the Alameda Siphons, the San Antonio Backup Pipeline and the Town Waterline) 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. Material Improvements shall also include the Minimum Required Improvements, fuel storage tanks and any structures that enable Tenant to discharge water from the Premises pursuant to the terms of this Lease or the Approved Plans and Permits, as well as any other Improvements that the General Manager reasonably determines has material significance to any utility facilities owned and/or operated by SFPUC or SFPUC water system operations in general pursuant to the provisions of Section 13.1(b) below.

1.75 "**Mitigation Amendments**" has the meaning set forth in Section 3.3(f)(i).

1.76 [Intentionally omitted.]

1.77 "**Negotiation Trigger Notice**" has the meaning set forth in Section 11.5(b).

1.78 "**Official Records**" means the official records of the county in which the Premises are located.

1.78. "Official Records" means the official records of the county in which the Premises are located.

1.79. "Other Alterations" means any Alteration that is not a Material Improvement Alteration.

1.80. "Other Improvements" means any Improvement that is not a Material Improvement.

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

1.82. "Percentage Rent" means rent payable by Tenant from the extraction of material from the Premises as described in Section 9.2.

1.83. "Percentage Rent Period" means each calendar month during the Term in which Tenant receives Gross Revenues.

1.84. "Permit Transfer" has the meaning set forth in Section 3.2(a).

1.85. "Permitted Sublease" has the meaning set forth in Section 21.9.

1.86. "Permitted Transferee" has the meaning set forth in Section 21.3.

1.87. "Plant Elimination Notice" has the meaning set forth in Section 3.3(i).

1.88. "Pre-Existing Pollution Conditions" shall mean pollution conditions at, on, under or emanating from the Premises caused by operations or conditions existing prior to the Commencement Date, including the effects of continuing pollution conditions in connection with Releases occurring prior to the Commencement Date. Such pollution conditions include the discharge, dispersal, release, presence, or escape of any Hazardous Material or other pollutants, directly or indirectly, into or upon land, the atmosphere, or any watercourse or body of water, including groundwater, at on, under, or emanating from the Premises.

1.89. "Premises" shall mean the real property from time to time leased to Tenant pursuant to the terms of this Lease. The "Premises" shall initially mean the Initial Premises. The Premises leased hereunder may be modified by the addition of the Expansion Premises in accordance with the terms of this Lease, or to reflect the expiration of the Lease term with respect to and the surrender of portions of the Premises other than the Stockpile and Plant Sites in accordance with the terms of this Lease, or by boundary adjustments or other modifications as may otherwise be agreed to by the Parties from time to time in one or more written Lease amendments to this Lease. The Premises shall include any permitted 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 rights, riparian rights, water stock, mineral rights unrelated to normal sand, gravel and rock quarrying operations or timber rights relating to the Premises.

- 1.90 **"Processing Amendment"** has the meaning set forth in Section 3.7.
- 1.91 **"Processing Royalty Rent"** means that rent payable by Tenant in accordance with Section 9.3.
- 1.92 **"Product"** has the meaning set forth in Section 9.2(d).
- 1.93 **"Regulatory Approval"** means any authorization, approval or permits from governmental regulatory agencies with jurisdiction over the Premises, including, without limitation, the County of Alameda, California Department of Fish & Game, California Division of Mines & Geology, California Regional Water Quality Control Board, U.S. Army Corps of Engineers.
- 1.94 **"Reimbursement Conditions"** has the meaning set forth in Section 3.3(h)(ii).
- 1.95 **"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 which have escaped from the Premises onto adjoining property or SFPUC Facilities, or any portion thereof, or which have escaped from adjoining property onto the Premises.
- 1.96 **"Remediation"** when used with reference to Hazardous Material means any activities undertaken to clean up, remove, contain, treat, stabilize, monitor or otherwise control Hazardous Materials located in, on, under or about the Premises, or which have escaped from the Premises onto adjoining property 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.
- 1.97 **"Rent"** means the Base Rent, together with Percentage Rent, Processing Royalty Rent and any and all Additional Charges.
- 1.98 **"Required Lease Modification"** has the meaning set forth in Section 3.3(f)(ii).
- 1.99 **"Required Mining Depth"** has the meaning set forth in Section 11.3.
- 1.100 **"Reserved Expansion Premises"** has the meaning set forth in Section 2.3.
- 1.101 **"Retained Discretion"** has the meaning set forth in Section 3.3(e).
- 1.102 **"Revised Permit Deadline"** has the meaning set forth in Section 3.3(a).
- 1.103 **"Revised SMP 17"** has the meaning set forth in Section 3.4(a).

1.104 "Revised SMP 30" has the meaning set forth in Section 3.3(a).

1.105 "Revised SMP 30 Effective Date" has the meaning set forth in Section 3.3(c).

1.106 "Revised SMP 30 Permits and Approvals" has the meaning set forth in Section 3.3(g).

1.107 "Road Agreements" has the meaning set forth in Exhibit D.

1.108 "Sales Price" has the meaning set forth in Section 9.2(c).

1.109 "SFPUC" means the San Francisco Public Utilities Commission.

1.110 "SFPUC Facilities" means any and all electric power transmission lines, pump stations, water pipelines, drainage pipelines, hatch covers, wells, ranney collectors, and other surface and subsurface utility facilities owned by the SFPUC and now or later located in, under, on or about the Premises for the collection, storage, transportation or distribution of energy or water for municipal purposes, together with all appurtenances thereto and all monuments thereof.

1.111 "SMP 17" means Surface Mining Permit No. 17, as adopted and approved by the Alameda County.

1.112 "SMP 30" means Surface Mining Permit No. 30, as adopted and approved by Alameda County.

1.113 "Special Adjustment Date(s)" has the meaning given in Section 9.1(b).

1.114 "Stockpile and Plant Sites" means those portions of the Premises designated for stockpiling and processing material from the SMP 17 mining site pursuant to Section 3.5(g) or Section 3.6 below, including the designated location of stockpile areas, an aggregate processing plant, an asphalt plant and a ready mix concrete plant.

1.115 "Sublease" has the meaning given in Section 21.1(a).

1.116 "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. To the extent permitted by Law, Landlord waives any right it may have to initiate or conduct a Taking of the Premises in order to terminate this Lease.

1.117 "Tenant" means the Party identified as Tenant in the introductory paragraph 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.

1.118 "**Tenant's Personal Property**" means the personal property of Tenant described in Section 13.3.

1.119 "**Term**" has the meaning set forth in Section 8.2.

1.120 "**Termination/Closure Work**" shall mean the work required pursuant to any reclamation plan and the work required under Section 27.1(b).

1.121 "**Third Parties**" has the meaning set forth in Section 9.2(c).

1.122 [Intentionally omitted.]

1.123 "**Town Waterline**" has the meaning set forth in Section 12.3.

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

1.125 "**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 Article 21 hereof.

1.126 "**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.

1.127 "**Updated Reclamation Plan**" has the meaning set forth in Section 5.3(a).

2. PREMISES; DELIVERY; RESERVED RIGHTS

2.1 **General Limits on Definition of Premises.** "Premises" has the meaning set forth in Article 1 above. Any acreage stated in this Lease with respect to the Premises or any part thereof is an estimate only, and City does not warrant it 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. Notwithstanding anything to the contrary in this Lease, the City reserves and retains all of the rights relating to the Premises set forth in Section 7.1 below.

2.2 **Initial Premises; Existing Quarry Leases.** The "Initial Premises" refers to approximately 308.5 acres of real property located in the County of Alameda, State of California, known as the Sunol Valley Aggregate Quarry, more particularly described in the attached Exhibit A-1 and shown on Exhibit A-3. Tenant acknowledges that the Initial Premises are presently occupied by Existing Operator pursuant to the Existing Quarry Leases, that under the terms of the Existing Main Quarry Lease the Existing Operator has a period of up to ninety (90) days following termination of the Existing Quarry Leases to remove Existing Operator's

equipment from the Initial Premises, and that the time actually required for removal may exceed ninety (90) days. City shall have no obligation to terminate the holdover tenancy under the Existing Quarry Leases until Tenant has obtained the Permit Transfer, as defined in Section 3.2 below. Within ten (10) days after City's receipt of notice of the Permit Transfer, City shall provide notice to Existing Operator terminating the holdover tenancy under the Existing Quarry Leases. City shall deliver the Initial Premises to Tenant on the date (the "Commencement Date") which is the later of (i) the Effective Date, or (ii) the date on which the Existing Operator surrenders the Initial Premises free and clear of its equipment and personal property (except to the extent Tenant has agreed to purchase or otherwise take title to such equipment, as provided below), or, if Tenant has entered into a Sublease with the Existing Operator pursuant to the provisions of Section 21.9 below, the date on which the Existing Quarry Leases terminate, whether or not Existing Operator has removed its equipment. If Tenant agrees to purchase or otherwise take title to or possession of some or all of Existing Operator's equipment on the Initial Premises, Tenant shall so notify City in writing, and City may thereupon deliver possession of the Initial Premises to Tenant prior to the removal of the equipment which is the subject of such agreement. In no event shall City be responsible for the delivery of Existing Operator's equipment to Tenant, for the condition of such equipment, or for the condition of title to such equipment. In no event shall City be liable to Tenant for Existing Operator's delay in removing equipment from the Initial Premises or in surrendering the Initial Premises, or for delays in City's delivery of the Initial Premises to Tenant.

2.3 Expansion Premises; Interim Use of Expansion Premises; Reserved Expansion Premises. The "Expansion Premises" refers to approximately 58 acres of real property located in the County of Alameda, State of California, to the north of the Initial Premises, described in Exhibit A-2 attached hereto and depicted on Exhibit A-3 attached hereto. Prior to the date the Expansion Premises are added to the Lease, SFPUC may use the Expansion Premises for any use that does not adversely impact Tenant's operations under SMP 30 and is not inconsistent with the ultimate use of the Expansion Premises under Revised SMP 30 (as defined in Section 3.3(a) below), as reasonably determined by SFPUC, including, without limitation, for construction staging, stockpiling materials, and short term leases to third parties. Notwithstanding the foregoing, in no event shall SFPUC lease the Expansion Premises to a third party for a term expiring later than June 30, 2010, subject to the provisions of the final sentence of this Section 2.3. Tenant acknowledges that SFPUC proposes to use part or all of that portion of the Expansion Premises as a staging area for SFPUC's contractors in connection with certain proposed water system improvement projects in Sunol Valley and the vicinity, and that SFPUC anticipates that the initial configuration of the staging area shall be generally as depicted on Exhibit A-4 (the "Reserved Expansion Premises"). The Expansion Premises will be added to the Premises on the Revised SMP 30 Effective Date, or, if later, the date on which City delivers the Expansion Premises to Tenant free of equipment and personal property and of any third party tenancies. If SFPUC elects to use the Reserved Expansion Premises for construction staging after the Revised SMP 30 Effective Date, then City may elect to deliver the Expansion Premises to Tenant in multiple increments as described below. The initial delivery of the Expansion Premises shall include the Expansion Premises other than the Reserved Expansion Premises. If SFPUC elects to continue its use of a portion of the Expansion Premises for construction staging

after December 31, 2013, Tenant and the General Manager shall negotiate in good faith to establish a new allocation of Expansion Premises space between Tenant and SFPUC (and/or its contractors), subject to the following considerations: (a) SFPUC and its contractors shall vacate the westernmost 200 feet of the initial configuration of the Reserved Expansion Premises to allow Tenant to expand its excavation of the quarry pit in such location; (b) SFPUC shall seek to minimize use of the Expansion Premises by the SFPUC and its contractors as much as reasonably possible, including the possible relocation of a portion of such staging to other areas controlled by City, provided that such areas may be used by SFPUC and its contractors without additional required environmental review under CEQA and without delaying or materially increasing the cost of SFPUC's work; and (c) Tenant shall provide additional space north of the Reserved Expansion Premises as reasonably needed by SFPUC to conduct any ongoing staging operations on account of the reduction in the staging area described in clause (a), after taking into account reduced SFPUC use requirements resulting from the activities described in clause (b), free of overburden or other obstacles to the staging activities to take place on such area. In no event shall City be liable to Tenant for delays in delivery of the Expansion Premises to Tenant. Tenant and the General Manager shall memorialize any such agreement in writing. If Tenant and the General Manager agree to any such reconfiguration of the staging area, Tenant shall surrender to City those portions of the Expansion Premises required for the reconfigured staging area and City shall deliver to Tenant those portions of the original Reserved Expansion Premises not required for the reconfigured staging area, and thereupon the "Reserved Expansion Premises" shall be the reconfigured staging area. Notwithstanding the foregoing, if Revised SMP 30 is not approved by the date which five (5) years after the Commencement Date, and Tenant is no longer seeking approval of Revised SMP 30, the foregoing restrictions on the use by SFPUC and leasing of the Expansion Premises by City shall no longer apply.

2.4 "Stockpile and Plant Sites." If Further Revised SMP 30 is approved to provide for processing material from the Apperson Site as provided below, the Parties contemplate that a portion of the Premises will be designated by the Parties as the Stockpile and Plant Sites, in accordance with the provisions of Section 3.5(g) or Section 3.6 below.

2.5 Early Surrender Premises and Additional Retained Premises. "Early Surrender Premises" and "Additional Retained Premises" shall have the respective meanings set forth in Section 8.6 below.

2.6 Reserved Rights. In addition to the rights reserved by City under this Article 2, City shall have the additional rights set forth in Article 7 below.

3. APPLICATIONS FOR MINING PERMIT TRANSFER AND REVISIONS; COMMENCEMENT AND EXTENSION OF LEASE TERM; TERMINATION RIGHTS

3.1 Rights and Obligations Applicable to All Permit Applications and Revisions.

(a) **Reserved Rights With Respect to Proposed Mitigation Measures.**
Notwithstanding anything to the contrary in this Lease, with respect to any exemption or CEQA

Document in connection with the Permit Transfer, Revised SMP 30, Revised SMP 17 or Further Revised SMP 30, as defined below in this Article 3, the SFPUC shall have (i) the right to determine not to allow the implementation of mitigation measures by others and to determine not to consent to any conditions to Alameda County approval, if, in the estimation of the General Manager of SFPUC, the implementation of such measures or imposition of such conditions would reasonably be expected to adversely affect SFPUC's water system operations, and (ii) the right to determine not to undertake mitigation measures identified in any CEQA Document as the responsibility of SFPUC or the City, to the extent allowed by CEQA.

(b) **Diligence and Good Faith.** In furtherance, and not in limitation, of Tenant's obligations under the terms of this Lease, in connection with all applications and submissions required under this Article 3, Tenant shall pursue all actions, obligations, undertakings and agreements for which it is responsible with diligence and good faith. Tenant's agreement to seek the revisions to SMP 30 and SMP 17 described in this Article 3 is a material inducement to Landlord's willingness to enter into this Lease, and Tenant understands that Landlord would not be willing to enter into this Lease without such agreement by Tenant. In furtherance of the Parties' shared intention to obtain Revised SMP 30 at the earliest possible date, within six (6) months after the Effective Date Tenant shall contract with a consultant or consultants to survey the Premises for presence of special status species, and Tenant shall cause such survey to be performed on an annual basis during the Initial Term. Tenant shall comply with all Laws and the Approved Plans and Permits with respect to any findings of such surveys. Notwithstanding the foregoing, as of the Revised SMP 30 Effective Date, Tenant shall only be required to perform those special status species surveys that are required under the then-current Approved Plans and Permits.

(c) **Environmental Studies and Reviews.** Tenant, at Tenant's sole cost and expense (subject to any specific provision of this Lease to the contrary regarding credit or reimbursement for such expense), will apply for and diligently pursue all required environmental review under CEQA for the Application for Revised SMP 30 (as defined in Section 3.3(a) below), the Application for Revised SMP 17 (as defined in Section 3.4(a) below), the Application for Further Revised SMP 30 (as defined in Section 3.5(a) below), and, if applicable, the Application for Permit Transfer (as defined in Section 3.2(a) below), the Early Work (as defined in Section 3.3(h)(i) below) and for the Conveyor and Access Agreements (as defined in Section 3.5(f) below). It is anticipated that Alameda County will be the lead agency for such CEQA review. Tenant shall fund any negotiation fees and transaction costs incurred by City Planning in its role as a responsible agency on behalf of the City, SFPUC, and City Attorney staff as required to participate in the CEQA process as described herein during the Initial Term, the proposed Extension Term and the proposed Extended Processing Plant Term (the "City CEQA Costs"); provided that Tenant shall not be required to fund any efforts to oppose or challenge any of the Applications, including, without limitation, any legal challenges. At SFPUC's election, prior to submittal of each Application, SFPUC may require Tenant to pay SFPUC a deposit in the amount reasonably estimated by SFPUC to cover the City CEQA Costs associated with such Application (each, a "CEQA Cost Deposit"). SFPUC shall from time to time deliver to Tenant an invoice for the City CEQA Costs actually incurred, and Tenant shall pay SFPUC such City

CEQA Costs (less any payment or deposit previously made by Tenant under this Section 3.1(c) within fifteen (15) business days after receipt of such invoice. Invoices documenting City Planning staff time, SFPUC staff time and fees of the City Attorney's Office shall be in a format reasonably submitted by SFPUC. Operator's obligations under this Section 3.1(c) shall survive the termination or expiration of this Lease.

(d) **Mitigation and Improvement Measures.** Tenant shall make and pay for all mitigation, monitoring and improvement measures recommended in any CEQA Document that are imposed by Alameda County or the City in connection with Revised SMP 30, Further Revised SMP 30 and, if applicable, the Permit Transfer, and all mitigation, monitoring and improvement measures (1) imposed by Alameda County for Revised SMP 17 or the Conveyer and Access Agreements or (2) agreed to by Tenant in the Environmental Agreements (as defined in Article 31).

(e) **Approval.** Tenant understands that, notwithstanding the approval or agreement of Alameda County or SFPUC staff, (i) the approval actions with respect to SMP 30 described in Sections 3.2, 3.3, 3.5 and 3.6 below and the exercise of City's Retained Discretion will require approval or authorization by the Commission and the City's Board of Supervisors, which approval shall be subject to City's Retained Discretion, and (ii) amendments to this Lease, new Conveyer and Access Agreements, and amendments to Existing Agreements described in Sections 3.2, 3.3, 3.4, 3.5, 3.6 and 11.5 below may require approval or authorization by the Commission and the City's Board of Supervisors and Mayor. If the General Manager determines that Commission or Board of Supervisors action is necessary with respect to any such matter, the General Manager shall use diligent efforts to introduce such matter at the Commission within sixty (60) days of such determination and to introduce such matter at the Board of Supervisors within thirty (30) days of Commission action on such matter, subject in each instance to notice requirements and reasonable staff preparation time.

3.2 Application for Permit Transfer; Lease of Initial Premises; Initial Term.

(a) **Application for Permit Transfer.** Commencing on the Effective Date, Tenant shall promptly apply for and diligently pursue with Alameda County the approval of a transfer or assignment of SMP 30 from the Existing Operator to Tenant (the "Permit Transfer") and shall post such bond and assume any existing financial assurances as may be required by Alameda County in connection with the Permit Transfer. The application of the Permit Transfer (the "Application for Permit Transfer") shall include only a change of operator and a direct replacement of equipment, unless otherwise approved by the General Manager. Tenant shall furnish to City a copy of all documents filed, submitted or received by Tenant in connection with such Application for Permit Transfer at the time such application is submitted to Alameda County or, as applicable, promptly following receipt of such documents. The provisions of this Section 3.2 and Section 3.1 above shall apply with respect to the Application for Permit Transfer.

(b) **Environmental Review for Permit Transfer; Reserved Rights of City and SFPUC.** The Parties acknowledge that by letter dated November 9, 2007, Alameda County

confirmed that neither a change of owner/operator of a permitted surface mining operation in the County of Alameda nor a direct replacement of equipment would normally result in the requirement for an environmental analysis, rather than an exemption determination, pursuant to CEQA. Notwithstanding the foregoing, in the event Alameda County determines that further environmental review is required for Tenant to assume operations under SMP 30, the City, as responsible agency, and SFPUC, as landlord, will retain the absolute discretion, prior to any approval action with respect to SMP 30, to (i) consult with Alameda County throughout the environmental review process, (ii) comment on the adequacy of any draft CEQA Document, (iii) comment on the adequacy of response to written comments and public hearing testimony, (iv) propose additional or different mitigation measures, (v) challenge Alameda County's decision regarding the adequacy of its environmental review and approval of the project, (vi) require further environmental review, if necessary to comply with the provisions of CEQA, (vii) determine not to consent to the Permit Transfer if the project will cause significant environmental impacts that cannot be mitigated to a less than significant level, including but not limited to where the SFPUC has determined not to perform or permit the performance of certain proposed mitigation measures as described in the final sentence of this paragraph, and (viii) determine to consent to the Permit Transfer, despite significant and unavoidable environmental impacts, upon making the findings required by CEQA Guidelines Sections 15091 and 15093, including a statement of overriding considerations, based on substantial evidence in the record. Further, the SFPUC shall have (1) the right to require modifications to the terms of this Lease in order to adopt mitigation measures recommended in the final CEQA Document for the Permit Transfer that are proposed to reduce or avoid significant environmental impacts, provided such additional Lease requirements do not cause new or increased significant adverse environmental impact and subject to the provisions of Section 3.2(c) below, (2) the right to determine not to undertake mitigation measures identified as the responsibility of the SFPUC or the City, and (3) the right to determine not to permit the implementation of mitigation measures by others and to determine not to consent to any conditions to Alameda County approval, if the implementation of such measures or imposition of such conditions could adversely affect the SFPUC's water system operations.

(c) **Lease Revisions Triggered by Environmental Review; Option to Terminate Lease After Failure to Agree.** If the SFPUC requires any modifications to the Lease as a result of the environmental review process for the Permit Transfer as provided in the final sentence of Section 3.2(b) above, the SFPUC shall notify Tenant and the Parties shall negotiate in good faith regarding any such Lease modifications. Such negotiations shall continue for so long as the Parties agree to continue negotiating, but not less than sixty (60) days. If the Parties reach agreement with respect to such Lease modifications, SFPUC and Tenant shall promptly prepare an amendment to this Lease memorializing such agreement, and following receipt of required approval described in Section 3.1(e), shall promptly execute such amendment. If the Parties have not reached agreement and prepared the proposed form of amendment memorializing any such changes within the sixty (60) day period, or if the amendment is not approved as required by Section 3.1(e) within one hundred twenty (120) days after the proposed amendment is submitted to the Commission for action, either Party may thereupon give the other Party written notice that such Party is not willing to continue further negotiations, and in such

event this Lease shall terminate ten (10) business days after the date of delivery of such notice unless the termination notice is rescinded in writing within such ten (10) business day period.

(d) **City's Additional Termination Rights.** If Tenant fails to obtain the Permit Transfer by the date that is thirty (30) days after the Effective Date (or, if later, thirty (30) days after the completion of any environmental review required in connection with the Permit Transfer), City shall have the right to terminate this Lease by written notice to Tenant at any time thereafter prior to receipt of notice from Tenant that the Permit Transfer has been obtained. Further, if a CEQA Document is prepared in connection with the proposed Permit Transfer, and the CEQA Document finds the project will cause significant environmental impacts that cannot be mitigated to a less than significant level or the CEQA Document imposes mitigation measures that the City declines to undertake or permit pursuant to Section 3.2(b) and City determines not to consent to the Permit Transfer, City may terminate this Lease by written notice to Tenant given within thirty (30) days after making such determination.

3.3 Application for Revised SMP 30; Lease of Expansion Premises; Extension Term; Delay in Revised SMP 30 Approval.

(a) **Application for Revised SMP 30; Deadline for Revised Permit.** Within six (6) months after the Commencement Date, Tenant will submit, and thereafter will diligently pursue, an application to Alameda County for the revision of SMP 30 (the "Application for Revised SMP 30"). The Application for Revised SMP 30 will include: the expansion of the mining area to include the Expansion Premises, the Minimum Required Improvements (as defined in Section 12.1), the Updated Reclamation Plan (as defined in Section 5.3), an extension through the date that is thirty (30) years following approval by the County of Alameda of the Application for Revised SMP 30, an increase in the mining depth to a minimum of 225 feet, and, at Tenant's option, the installation and operation of an asphalt plant and a ready mix concrete plant. Except as otherwise provided in Section 3.3(i) below, "Revised SMP 30", as used in this Lease, refers to SMP 30, as revised to include the components of the Application for Revised SMP 30. At the time Tenant submits the Application for Revised SMP 30, Tenant shall make the Creek Restoration Study Contribution, as provided in Section 33.1 below. Tenant shall furnish copies to SFPUC of all documents filed or submitted by Tenant with Alameda County or any federal, state or local agency in connection with the Application for Revised SMP 30 prior to such filing, and Tenant shall furnish copies to SFPUC of all documents received by Tenant from Alameda County or any federal, state or local agency in connection with the Application for Revised SMP 30 within five (5) business days following receipt thereof. Tenant shall use best efforts to obtain approval from the County of Alameda for Revised SMP 30 by the date that is three (3) years from the Commencement Date, as extended by Force Majeure (as defined in Article 1) (the "Revised Permit Deadline"). The provisions of this Section 3.3 and Section 3.1 above shall apply with respect to the Application for Revised SMP 30.

(b) **SFPUC Input in Preparing Application.** Tenant shall confer with SFPUC staff and incorporate SFPUC staff's comments into the language of the project description to be used for the Application for Revised SMP 30 and for the required

environmental review by Alameda County. If the General Manager is not satisfied with the language of such project description, the City shall not sign the Application for Revised SMP 30, and Tenant shall not submit the Application to Alameda County.

(c) **City Consent Required for Application and Permit Modification: No Impact on SMP 30 if SMP 30 Is Not Revised.** Prior to submitting the Application for Revised SMP 30 to Alameda County, Tenant shall secure Alameda County's written confirmation that: (i) Alameda County will not take any action on the Application for Revised SMP 30 unless the City, as owner of the Premises which are the subject of Revised SMP 30, shall have signed such Application for Revised SMP 30, and (ii) notwithstanding SFPUC's approval of or signature on the Application for Revised SMP 30; (A) Revised SMP 30 shall not become effective until the date (the "Revised SMP 30 Effective Date") which is thirty (30) days after the date City, as owner of the Premises which are the subject of Revised SMP 30, confirms in writing City's consent to and approval of the final terms of Revised SMP 30; and City and Tenant's execution of any Mitigation Amendment and Required Lease Modification required in connection with Revised SMP 30, and (B) if such City approval, consent and confirmation are not obtained, unrevised SMP 30 shall remain in effect. The form and content of such written confirmation shall be subject to the reasonable approval of SFPUC. Tenant acknowledges that if Tenant and City do not reach agreement on any Lease modifications required in connection with Revised SMP 30, as provided in Sections 3.3(f) and 3.3(g) below, City shall have no obligation to consent to or approve the final terms of Revised SMP 30.

(d) **SFPUC Right to Approve Consultants.** SFPUC shall have the right to reasonably approve or disapprove consultants selected by Tenant to survey and assess the Initial Premises and the Expansion Premises to determine if special status species and their habitats are present and whether potential impacts to these species will occur from the project.

(e) **Environmental Review for Revised SMP 30, Further Revised SMP 30, and Conveyer and Access Agreements: City's Retained Discretion.** The provisions of this Section 3.3(e) apply to Revised SMP 30, Further Revised SMP 30 (as defined in Section 3.5(a) below), and the Conveyer and Access Agreements (as defined in Section 3.5(f) below), as well as revisions to the reclamation plan pursuant to Section 5.3 or Section 11.10 below and Minimum Required Improvements pursuant to Article 12 below. The provisions of this Section 3.3(e) are sometimes referred to as City's "Retained Discretion". As responsible agency, City will retain the absolute discretion, prior to any approval action with respect to the proposed modification of SMP 30 or Revised SMP 30 or the proposed Conveyer and Access Agreements, modified reclamation plan or Minimum Required Improvements, as applicable, to (i) consult with Alameda County throughout the environmental review process, (ii) comment on the adequacy of any Alameda County draft CEQA Document, (iii) comment on the adequacy of response to written comments and public hearing testimony, (iv) propose additional or different mitigation measures, (v) challenge Alameda County's decision regarding the adequacy of its environmental review and approval of the project, (vi) require further environmental review, if necessary to comply with the provisions of CEQA, (vii) determine not to consent to the proposed modification of SMP 30 or Revised SMP 30, or to one or more of the Conveyer and Access

Agreements or revisions to the reclamation plan or elements of the Minimum Required Improvements, as applicable, and associated proposed modifications to the Lease, if the CEQA Document finds that the project will cause significant environmental impacts that cannot be mitigated to a less than significant level, including but not limited to where the SFPUC has determined not to perform or permit the performance of certain proposed mitigation measures as described in the final sentence of this paragraph, and (viii) consent to the proposed modification of SMP 30 or Revised SMP 30 or to the Conveyor and Access Agreement or the revised reclamation plan or Minimum Required Improvements, as applicable, and related modifications to the Lease (if any), despite findings in any CEQA Document of significant and unavoidable environmental impacts upon making the findings required by CEQA Guidelines Sections 15091 and 15093, including a statement of overriding considerations, based on substantial evidence in the record (and subject to the provisions of Section 3.3(f) and Section 3.3(g) below, as applicable). Further, SFPUC shall have (1) the right to require modifications to the terms of this Lease as described in, respectively, Section 3.3(f) and Section 3.5(g) below, (2) the right to determine not to undertake mitigation measures identified as the responsibility of SFPUC or City, and (3) the right to determine not to permit the implementation of mitigation measures by others and to determine not to consent to any conditions to Alameda County approval, if the implementation of such measures or imposition of such conditions could adversely affect the SFPUC's water system operations.

(f) Lease Revisions Including Those Triggered by Environmental Review; Effect of Failure to Agree.

(i) SFPUC shall have the right to require modifications to the terms of this Lease in order to adopt mitigation measures recommended in the CEQA Document for Revised SMP 30 that are proposed to reduce or avoid significant environmental impacts ("Mitigation Amendments") (subject to the provisions of Section 3.3(g) below). If SFPUC requires any modifications to this Lease as a result of the environmental review process for Revised SMP 30, SFPUC shall promptly notify Tenant in writing and the Parties shall negotiate in good faith regarding any such Mitigation Amendments. Such negotiations shall continue for so long as the Parties agree to continue negotiating, but not less than sixty (60) days.

(ii) In addition to the Mitigation Amendments, it shall be a condition to SFPUC's approval of Revised SMP 30 that Tenant and SFPUC shall have agreed on an amendment to this Lease (A) establishing the amount of, payment schedule for, and other terms and conditions regarding the Creek Restoration Contribution, as described in Section 3.3.3 below, and (B) establishing a schedule for the performance of each of the Minimum Required Improvements (collectively, the "Required Lease Modification"), and a Processing Amendment (as defined in Section 3.7) if Revised SMP 30 includes an asphalt or ready mix plant.

(iii) The subject matter of any Mitigation Amendment, Required Lease Modification and Processing Amendment shall not include an increase in Base Rent, Percentage Rent, or Processing Royalty Rent, but may include terms regarding the payment of mitigation measures and the Creek Restoration Contribution, as applicable.

(iv) If Tenant and SFPUC staff reach agreement with respect to the Mitigation Amendments, the Required Lease Modification, and, if applicable, the Processing Amendment, SFPUC and Tenant shall promptly prepare an amendment to this Lease memorializing such agreement.

(v) If the Parties have not reached agreement on Mitigation Amendments and the Required Lease Modification by the end of the sixty (60) day period specified in Section 3.3(f)(i) above, or if the proposed amendment is rejected by the Commission or the Board of Supervisors, or if required approval is not received as provided by Section 3.1(e) within one hundred eighty (180) days after the proposed amendment is submitted to the Commission for action, either Party may thereupon give the other Party written notice that such Party is not willing to continue further negotiations, and in such event (A) SFPUC shall not agree to Revised SMP 30; (B) the Expansion Premises shall not be added to the Premises under this Lease; (C) unrevised SMP 30 shall continue to apply, (D) the Term of this Lease shall expire at the end of the Initial Term, and (E) the provisions of Section 3.3(h) below shall apply.

(g) **Approval; Execution.** If the Tenant and SFPUC staff reach agreement on the Mitigation Amendments and the Required Lease Modification and, if applicable, the Processing Amendment, the provisions of Section 3.1(e) above regarding Commission and Board of Supervisors approval shall apply. Following receipt of such approvals, City and Tenant shall execute the Mitigation Amendments and Required Lease Modification, and, if applicable, Processing Amendment. At the time the Mitigation Amendment(s), the Processing Amendment (if applicable) and the Required Lease Modification are executed by the Parties, Tenant shall deliver to City a list of any additional plans, permits or Regulatory Approvals required for the construction, use and/or operation of Revised SMP 30 (as so listed, the "Revised SMP 30 Permits and Approvals") and a projected schedule for obtaining the same. Such agreements shall each include provisions allowing Tenant to elect to terminate such agreement (in whole or in part) if Tenant, despite its best efforts, is unable to obtain the additional Revised SMP 30 Permits and Approvals required for the construction, use and/or operation of Revised SMP 30 in accordance with the projected schedule, which termination right shall be subject to procedural provisions agreed by the Parties, such as advance notice and limited additional periods for City or Tenant to try to obtain the additional Revised SMP 30 Permits and Approvals.

(h) **Delay in Revised SMP 30 Approval; Performance Under Existing Permit; Certain Minimum Required Improvements.** If the Revised SMP 30 is not obtained by the date that is five (5) years after the Commencement Date for any reason, the following provisions of this Section 3.3(h) shall apply. Nothing herein shall limit Tenant's right to seek approval of Revised SMP 30 until the expiration of the Initial Term, subject to City's rights set forth in Section 3.3(i) below.

(i) Tenant shall (1) proceed to mine the Initial Premises with the goal of extracting all Products no later than June 1, 2021 and completing reclamation and restoration activities no later than June 1, 2023; (2) promptly submit an application to Alameda County for the revision of the Existing Reclamation Plan, as provided in Section 5.3 below, (3) immediately

seek approval from Alameda County to construct the proposed slurry cutoff wall (if not previously installed pursuant to the provisions of Section 12.2), perimeter plantings, and creek bank restoration elements of the Minimum Required Improvements; and (4) following any required environmental review and such approval by Alameda County, and subject to the City's Retained Discretion as set forth in Section 3.3(e), promptly install the slurry cutoff wall (to the extent not already implemented under Section 12.2), perimeter plantings, and creek bank restoration elements of the Minimum Required Improvements. Such work is sometimes referred to as the "Early Work."

(ii) The cost of obtaining the approvals for and constructing the Early Work under the circumstances described in this paragraph (h) (the "Approved Early Work Costs") shall be a credit against future Base Rent and Percentage Rent. Each such expenditure shall bear interest at the Improvement Interest Rate from the date of expenditure to the date the credit is received in repayment of such cost (together with Approved Early Work Costs, the "Advance Improvement Costs"). The following conditions (the "Reimbursement Conditions") shall govern the performance of the Early Work, and the credit against future Base Rent and Percentage Rent shall be applicable only in the event that the Reimbursement Conditions are satisfied and only to the extent provided hereunder:

- (1) prior to commencing the Early Work Tenant shall provide SFPUC with a written description of the proposed Early Work and a proposed budget for the proposed work, and shall obtain written confirmation from SFPUC that (a) the proposed Early Work would qualify as work for which Tenant would be entitled to receive rent credits and (b) SFPUC approves the proposed Early Work and the budget for the proposed Early Work, including the amounts in each budget category (as approved, the "Budget");
- (2) if Tenant anticipates that the cost of the Early Work will exceed the approved Budget by more than ten percent (10%), Tenant shall provide SFPUC with written notice of the anticipated increase and shall cooperate with SFPUC to minimize such increase in a manner approved by SFPUC;
- (3) Tenant shall promptly seek and diligently pursue all permits required for the performance of the Early Work;
- (4) Tenant shall keep accurate books and records of all costs incurred in accordance with accounting principles generally accepted in the construction industry; and
- (5) not later than sixty (60) days after completion of the Early Work, Tenant shall deliver to SFPUC an itemized statement of the actual costs expended by Tenant on the Early Work, accompanied by documentation substantiating such expenditures and the applicable dates such

expenditures were made. SFPUC shall have the right on written notice to Tenant to audit Tenant's books and records with respect to the Early Work.

(iii) SFPUC shall have twenty (20) business days after receipt of the proposed budget for the Early Work to approve or reasonably disapprove the proposed budget by written notice to Tenant. If SFPUC disapproves the proposed budget, SFPUC and Tenant shall cooperate to reduce the amount of the proposed budget. If Tenant and SFPUC do not reach agreement on the Budget within twenty (20) business days after the date of SFPUC's disapproval notice, then at the request of either Party, the Budget shall be established as follows. Tenant shall solicit bids from not less than three (3) subcontractors for each major trade working on the Early Work. When Tenant has received responses to its bid request, Tenant will analyze the same and provide SFPUC with a copy of Tenant's bid analysis (including copies of the actual subcontractor responses), recommended winning bidders and estimated budget for the Early Work, based upon the selected subcontractors' bids (which may include a contractor's charge of not more than ten percent (10%) of the total cost of the work), the estimated cost of General Conditions, and a reasonable contingency not to exceed ten percent (10%). Upon SFPUC's disapproval of any subcontractor bid or the proposed budget, Tenant shall promptly prepare and submit to SFPUC a revised estimated budget. SFPUC shall respond to the revised estimated budget in the manner described above.

(iv) The Approved Early Work Costs shall not exceed the approved Budget, as modified, if applicable, by more than ten percent (10%).

(v) If SFPUC does not receive the statement of Advance Improvement Costs and the additional materials described in item (5) above by the deadline set forth therein, and does not thereafter deliver the materials within thirty (30) days of written notice from SFPUC that such materials were not received when due, the Advance Improvement Costs shall not be credited against Rent due under this Lease. SFPUC shall have the right on written notice to Tenant to audit Tenant's books and records with respect to the Early Work and the Advance Improvement Costs.

(vi) If Revised SMP 30 is ultimately approved and the Extension Term commences after Tenant has received rent credit for part or all of the Advance Improvement Costs pursuant to the foregoing provisions of this Section 3.3(h), Tenant will repay SFPUC for any sum so credited (such sum, the "Rent Credit Amount"), together with interest at the Improvement Interest Rate on the balance of Rent Credit Amount from time to time outstanding, commencing on the Revised SMP 30 Effective Date. Such repayment shall be made over a two-year period commencing on the Revised SMP 30 Effective Date, in monthly installments equal to 1/24th of the total Rent Credit Amount plus interest accruing on the unpaid Rent Credit Amount during such month.

(i) Permit Delay Due to Asphalt or Ready Mix Plant. If SFPUC reasonably determines that the inability to receive approval from Alameda County for Revised

SMP 30 by the Revised Permit Deadline or the inability to receive any additional Plans and Permits or Regulatory Approvals required for the construction, use and/or operation of Revised SMP 30 in accordance with the projected schedule described in Section 3.5(g) above, is due to the proposed inclusion of the asphalt and/or ready mix plants, SFPUC shall have the right, by written notice to Tenant, to require Tenant to eliminate one or both of the plants from the Application for Revised SMP 30 (the "Plant Elimination Notice"). Within thirty (30) days of its receipt of such Plant Elimination Notice, Tenant, at its sole option, may terminate this Lease by written notice to City, which notice shall include an effective date for termination not earlier than one (1) year nor later than two (2) years after the date of the notice. If Tenant gives the notice of termination, Tenant shall have no further obligation to process the Application for Revised SMP 30, and the provisions of Section 11.4 regarding early termination shall apply. Upon receipt of any such termination notice, City shall have the right, at its sole option, to rescind City's Plant Elimination Notice by written notice to Tenant given within thirty (30) days of City's receipt of Tenant's termination notice, and Tenant's termination notice shall thereupon be of no further force and effect. If Tenant does not give the notice of termination, Tenant shall promptly submit a revised or updated Application for Revised SMP 30 (or otherwise properly notify Alameda County of the elimination of the plant or plants from the Application for Revised SMP 30) and "Revised SMP 30", as used in this Lease, shall refer to SMP 30, as revised to include the components of the Application for Revised SMP 30 (as modified to eliminate the plant or plants). Upon receipt and approval from Alameda County of Revised SMP 30 without one or both of the plants, Tenant may continue to seek approval from Alameda County for such plant or plants in a subsequent or separate application, and such application shall be considered an "Application" for the purposes of this Lease. The provisions of this Article 3 regarding SFPUC input in preparing the Application, SFPUC consent to the Application, City consent to permit modification, and City's Retained Discretion shall apply to such Application. If Revised SMP 30 is revised to include the plant or plants sought in the subsequent Application, from and after the date of such revision the term "Revised SMP 30" shall refer to the permit as so revised, but in no event shall the Revised SMP 30 Effective Date be modified on account of such revision.

(j) **Extension of Revised Permit Deadline.** If Revised SMP 30 is not received by the Revised Permit Deadline, then SFPUC, in its sole discretion, may extend the Revised Permit Deadline for such additional amount of time as determined appropriate by SFPUC to allow Tenant to obtain approval from Alameda County of Revised SMP 30, but in no event shall such extension extend beyond June 1, 2021.

(k) **Extension Term; Expansion Premises.** Effective as of the Revised SMP 30 Effective Date, the term of the Lease shall be extended through the expiration date of Revised SMP 30 (which is projected to be thirty (30) years from the issuance date) (the "Extension Term Expiration Date"), the Expansion Premises shall be added to the Premises under this Lease in accordance with the provisions of Section 2.3, and Tenant shall perform the Minimum Required Improvements, as provided in Article 12 below.

3.4 Application for Revised SMP 17.

- (a) Application for Revised SMP 17. Within one year after the Revised SMP 30 Effective Date, Tenant will submit, and thereafter will diligently pursue, an application to Alameda County for the revision of SMP 17 (the "Application for Revised SMP 17"). The Application for Revised SMP 17 will include:
- (i) a conditional limitation on the construction and use of secondary processing plants and asphalt and ready mix plants at the Apperson Site, which does not allow the construction and use of such plants during the period(s) in which Tenant has the right to process sized aggregates into finished quarry products on the Premises (following primary crushing on the Apperson Site, which, for the purposes hereof shall mean such primary crushing as required to deliver aggregates sized for transport on the conveyor system); and
 - (ii) a conveyor system to deliver sized aggregates from the Apperson Site to the Premises, including the installation and operation of an access road, a conveyor system, stockpile areas, secondary processing plant(s), an asphalt plant and a ready mix plant on the Premises (if not previously included in Revised SMP 30); and
 - (iii) a commitment to not begin export of material from the Apperson Site prior to January 1, 2030, which commitment shall be subject to the terms and conditions described in Section 4.1 below.

SMP 17, as revised to include the components of the Application for Revised SMP 17, is referred to as "Revised SMP 17." Tenant shall furnish copies to SFPUC of all documents filed or submitted by Tenant with Alameda County or any federal, state or local agency in connection with the Application for Revised SMP 17 prior to such filing, and Tenant shall furnish copies to SFPUC of all documents received by Tenant from Alameda County or any federal, state or local agency in connection with the Application for Revised SMP 17 within five (5) business days after receipt thereof. The provisions of this Section 3.4 and Section 3.6 below shall apply with respect to the Application for Revised SMP 17.

(b) Habitat Conservation Plan and Regulatory Approvals. Pursuant to the Environmental Agreements (as defined in Article 31 below), Tenant intends to seek approval of a Habitat Conservation Plan and other Regulatory Approval(s). As of the Effective Date, SFPUC cannot commit to implement any proposed projects identified in the Environmental Agreements, or to permit the implementation of Regulatory Approval(s) that require the use of the Initial Premises, the Expansion Premises or any other SFPUC property, but SFPUC will reasonably cooperate in exploring the feasibility of such programs, at Tenant's cost and expense. Without limiting the generality of the foregoing, SFPUC cannot commit to implement programs that require discretionary action on the part of the SFPUC or the City in advance of environmental review that may be required under CEQA.

(c) **City Property Not Included in Revised SMP 17.** Notwithstanding the provisions of Section 3.4(a) above, changes in permitted uses of the Premises and any permit conditions relating to the use of City property other than the Premises in connection with Revised SMP 17 are referred to herein as "Further Revised SMP 30", even if Alameda County includes, describes or reviews such changes in a revision to SMP 17 rather than in a revision to SMP 30. Provisions regarding the application for further revisions to Revised SMP 30 are set forth in Section 3.5 below.

3.5 Application for Further Revised SMP 30; Stockpile and Plant Sites; Conveyor and Access Agreements; Extended Processing Plant Term.

(a) **Application for Further Revised SMP 30.** Within one year after the Revised SMP 30 Effective Date, Tenant will submit, and thereafter will diligently pursue, an application for the further revision of Revised SMP 30 (the "Application for Further Revised SMP 30"), as more fully described herein. The Application for Further Revised SMP 30 shall: (i) incorporate mining and reclamation plans for the SMP 30 site and adjoining real property that (A) include the proposed location of the Stockpile and Plant Sites as well as any other areas on SFPUC property required for the Conveyor and Access Agreements (as defined in Section 3.5(f) below) or otherwise required for processing Product from the Apperson Site on SFPUC property, and (B) are generally consistent with water storage volumes and other planning concepts incorporated in the Alternative F Plan, (ii) include a conveyor system from the Apperson Site, stockpile areas, processing plant(s), an asphalt plant and ready mix plant on the Premises (to the extent the asphalt plant and ready mix plant were not previously included in Revised SMP 30) and the right to process sized aggregates into finished quarry products on the Premises (if not already included in Revised SMP 30) and a corresponding conditional limitation on the construction and use of secondary processing plants and asphalt and ready mix plants at the Apperson Site, which does not allow the construction and use of such plants during the period(s) in which Tenant has the right to process sized aggregates into finished quarry products on the Premises (if not previously so limited in Revised SMP 17), and (iii) include an extension through December 31, 2064 with respect to processing materials from the Apperson Site at the Stockpile and Plant Sites. Revised SMP 30, as revised to reflect the components of the Application for Further Revised SMP 30, is referred to as "Further Revised SMP 30." Tenant shall furnish copies to SFPUC of all documents filed or submitted by Tenant with Alameda County or any federal, state or local agency in connection with the Application for Further Revised SMP 30 prior to such filing, and Tenant shall furnish copies to SFPUC of all documents received by Tenant from Alameda County or any federal, state or local agency in connection with the Application for Further Revised SMP 30 within five (5) business days after receipt thereof. The provisions of this Section 3.5 and Section 3.1 above shall apply with respect to the Application for Further Revised SMP 30.

(b) **City Consent Required for Application and Permit Modification; No Impact on Revised SMP 30 if Further Revised SMP 30 Is Not Approved.** Prior to submitting the Application for Further Revised SMP 30 to Alameda County, Tenant shall secure Alameda County's written confirmation that the City, as owner of the premises which are the subject of

Further Revised SMP 30, shall be required to confirm in writing its consent to and approval of the final terms of Further Revised SMP 30 prior to the Further Revised SMP 30 Effective Date (as defined below) (notwithstanding SFPUC's approval of or signature on the Application for Further Revised SMP 30), and further written confirmation that if such approval and consent is not obtained, Revised SMP 30, without the revisions proposed in the Application for Further Revised SMP 30, shall remain in effect. The form and content of such written confirmation shall be subject to the reasonable approval of SFPUC. Tenant acknowledges that if Tenant and SFPUC do not reach agreement on any Lease modifications required in connection with Revised SMP 30 or do not reach agreement on any required Conveyor and Access Agreements, as provided in Section 3.5(f) and Section 3.5(g) below, City shall have no obligation to consent to or approve the final terms of Further Revised SMP 30.

(c) **SFPUC Input in Preparing Application.** Tenant shall confer with SFPUC staff and incorporate SFPUC staff's comments into the language of the project description to be used for the Application for Further Revised SMP 30 and for the required environmental review by Alameda County for Further Revised SMP 30 and for the Conveyor and Access Agreements. If SFPUC is not satisfied with the language of such project description, as determined by the General Manager or his or her designee, the City shall not be obligated to sign the Application for Further Revised SMP 30, and Tenant shall not submit the Application to Alameda County.

(d) **SFPUC Right to Approve Biological Consultants.** SFPUC shall have the right to reasonably approve or disapprove biological consultants selected by Tenant to survey and assess the Premises and adjacent areas which are subject to environmental review in connection with the Application for Further Revised SMP 30 to determine if special status species and their habitats are present and whether potential impacts to these species will occur from the project.

(e) **Environmental Review for Further Revised SMP 30.** The provisions of Section 3.3(e) above shall apply with respect to the proposed Further Revised SMP 30.

(f) **Conveyor and Access Agreements.** The Parties anticipate that Revised SMP 17 and Further Revised SMP 30 will necessitate the grant of one or more easements, licenses or permits on SFPUC property adjoining the Stockpile and Plant Sites for the installation and operation of the conveyor belt and associated access roads (each, a "Conveyor and Access Agreement" and collectively, the "Conveyor and Access Agreements"). Tenant and SFPUC shall negotiate in good faith regarding the required Conveyor and Access Agreements and any companion amendments to the Existing Agreements or to this Lease. The subject matter of any Conveyor and Access Agreements and any companion amendments to the Existing Agreements or to this Lease shall not include an increase in Base Rent, Percentage Rent, or Processing Royalty Rent, but may include terms regarding the payment of mitigation measures and cost of improvement, maintenance and restoration of the affected areas, as applicable. Such negotiations shall continue for so long as the Parties agree to continue negotiating, but not less than sixty (60) days. In no event shall SFPUC's obligation to negotiate in good faith be construed to obligate

SFPUC to agree to any terms or conditions in any Conveyor and Access Agreement, the Existing Agreements or amendments to this Lease that could adversely affect the SFPUC's water system operations.

(g) Lease Revisions Triggered by Environmental Review: Stockpile and Plant Sites, Conveyor and Access Agreements: Effect of Failure to Agree.

(i) SFPUC shall have the right to require modifications to the terms of this Lease in order to adopt mitigation measures recommended in the final CEQA Document for Further Revised SMP 30 or for the Conveyor and Access Agreements that are proposed to reduce or avoid significant environmental impacts ("Further Mitigation Amendments") (subject to the provisions of Section 3.5(g)(iii) below). If SFPUC requires any modifications to this Lease as a result of the environmental review process for Further Revised SMP 30 or for the Conveyor and Access Agreements, SFPUC shall promptly notify Tenant in writing and the Parties shall negotiate in good faith regarding any such Further Mitigation Amendments as well as the terms and conditions applicable thereto. Such negotiations shall continue for so long as the Parties agree to continue negotiating, but not less than sixty (60) days.

(ii) Tenant and SFPUC shall negotiate in good faith regarding the sites for stockpiling materials from the Apperson Site and for installing and operating the secondary processing plant, asphalt plant and ready mix plant for the processing materials from the Apperson Site (as finally approved and described in the Processing Amendment pursuant to Section 3.7 below), taking into account the water storage goals under the Alternative F Plan and the Updated Reclamation Plan.

(iii) If the Parties reach agreement with respect to the Further Mitigation Amendments, the Processing Amendment and the Conveyor and Access Agreements, SFPUC and Tenant shall promptly prepare an amendment to this Lease memorializing such agreement. Such Further Mitigation Amendments, Processing Amendment and Conveyor and Access Agreements and companion Lease amendment shall be subject to the provisions of Section 3.1(e) regarding Commission and Board of Supervisors approval. Upon approval of the Further Mitigation Amendments and the Conveyor and Access Agreements and the companion Lease amendment in accordance with Section 3.1(e) above, the Parties shall enter into such Further Mitigation Amendments, Processing Amendment and Conveyor and Access Agreements and companion Lease amendment, and the date of execution thereof by Tenant and City shall be the "Further Revised SMP 30 Effective Date." At the time the Further Mitigation Amendment(s), the Processing Amendment (if applicable) and Conveyor and Access Agreements and companion Lease amendment are executed by the Parties, Tenant shall deliver to City a list of any additional plans, permits or Regulatory Approvals required for the construction, use and/or operation of Further Revised SMP 30 and Revised SMP 17 (as so listed, the "Further Revised SMP 30 Permits and Approvals") and a projected schedule for obtaining the same. Such agreements shall include provisions allowing Tenant to elect to terminate such agreement (in whole or in part) if Tenant, despite its best efforts, is unable to obtain the additional Further Revised SMP 30 Permits and Approvals required for the construction, use and/or operation of Further Revised

SMP 30 and Revised SMP 17 in accordance with the projected schedule, which termination right shall be subject to procedural provisions agreed by the Parties, such as advance notice and limited additional periods for City or Tenant to try to obtain the additional Further Revised SMP 30 Permits and Approvals. The Parties anticipate that such agreement shall provide that if Tenant is ultimately unable to obtain Regulatory Approvals required for the Conveyor and Access Agreements, Tenant would pursue an application to revise Revised SMP 30 in the manner contemplated by Section 3.6 below.

(iv) If the Parties have not reached agreement on Further Mitigation Amendments, Processing Amendment and the Conveyor and Access Agreements by the end of the sixty (60) day period specified above, or if the proposed amendment is rejected by the Commission or the Board of Supervisors, or if approval is not received in accordance with the provisions of Section 3.1(e) within one hundred eighty (180) days after the proposed amendment is submitted to the Commission for action, either Party may thereupon give the other Party written notice that such Party is not willing to continue further negotiations, and in such event (A) SFPUC shall not agree to Further Revised SMP 30, (B) Revised SMP 30 shall continue to apply without the proposed revisions, (C) the Term of this Lease shall expire at the end of the Extension Term.

(h) **Extended Processing Plant Term; Use of Stockpile and Plant Sites.** Effective as of the Further Revised SMP 30 Effective Date, this Lease shall be amended as provided in Section 3.5(g)(iii) above to memorialize the Further Mitigation Amendments, identify the Stockpile and Plant Sites and memorialize the Processing Amendment, and extend the Lease term through December 31, 2064 (the "Extended Processing Plant Expiration Date") with respect to the Stockpile and Plant Sites (subject to any right to void such amendment as shall be negotiated in connection therewith, as provided in Section 3.5(g)(iii) above).

3.6 Application for More Limited Further Revision to Revised SMP 30 to Allow Apperson Material Processing Without Conveyor After Failure to Obtain Revised SMP 17 Within 13 Years. If Revised SMP 30 is approved but the Application for Revised SMP 17 is not approved by Alameda County and the City by the date that is thirteen (13) years after the Commencement Date, then commencing on such date Tenant shall promptly seek and diligently pursue an application to modify Revised SMP 30 as required to permit Tenant to deliver sized aggregates from the Apperson Site to the Stockpile and Plant Sites by means other than a conveyor system, and to operate the secondary processing plant(s), an asphalt plant and a ready mix plant on the Stockpile and Plant Sites to process materials from the Apperson Site throughout the term of SMP 17. The provisions of Section 3.5 above shall apply to such application (other than references to the conveyor system and the Conveyor and Access Agreements) as shall City's Retained Discretion set forth in Section 3.3(e), and references in this Lease to "Further Revised SMP 30" shall apply to Revised SMP 30 as so revised, including, without limitation, the extension of the Term through the Extended Processing Plant Expiration Date if Further Revised SMP 30 is approved, as provided in Section 3.5(h).

3.7 Processing Amendment. If SMP 30 is revised to include a secondary processing plant for Apperson Product, an asphalt plant, a ready mix plant, a conveyor system, or stockpile or other storage area for materials or processed products, this Lease shall be amended in accordance with the provisions of Section 3.3 or Section 3.5 above (or both) to identify the location for plants and the stockpile or storage areas, and to incorporate into this Lease any other terms and conditions relevant to such plants and areas as determined by the Parties (each such amendment, a "Processing Amendment"), subject to the City's Retained Discretion set forth in Section 3.3(e). If the installation, operation or use of any plant or stockpile or storage area would result in a permanent reduction in the total amount of the aggregate to be mined from the Premises, then without limiting the generality of the foregoing, the Processing Amendment shall provide for payment to City at the end of the Term of Rent in an amount estimated to equal to the Percentage Rent which would have been payable under Section 9.2 had such aggregate been extracted.

4. COVENANTS REGARDING APPERSON RIDGE LEASE AND OPERATIONS:

4.1 Agreement to Postpone Mining of Apperson Ridge. Tenant agrees that as a material consideration for City entering into this Lease, Tenant covenants that neither Tenant nor any Affiliate of Tenant nor any transferee of Tenant's interest in the Apperson Lease shall (A) commence any active quarrying activities on the Apperson Site or (B) commence construction of improvements or installations on the Apperson Site in connection with such mining or improvements to the road under the Road Agreements (collectively, the "Apperson Installations") until the earlier of the Revised Permit Deadline or the date on which negotiations are suspended under Section 3.3(f)(v). Further, Tenant agrees that as a material consideration for City entering into this Lease, upon (i) approval of Revised SMP 30 by Alameda County, SFPUC and City, and (ii) approval by SFPUC and City and execution by City of the Mitigation Amendments (if any), Processing Amendments (if any) and Required Lease Modification as provided in Section 3.3(g), then provided that this Lease has not been terminated for any reason, and that Alameda County has not rejected the Application for Further Revised SMP 30 as revised according to Section 3.6, Tenant covenants that neither Tenant nor any Affiliate of Tenant nor any transferee of Tenant's interest in the Apperson Lease shall (A) commence any active quarrying activities on the Apperson Site until the date (the "Apperson Mining Commencement Date") which is the later of January 1, 2030, or the date on which Tenant completes mining of the Premises in accordance with the provisions of Revised SMP 30 and this Lease, or (B) commence construction of the Apperson Installations until the date which is twenty-four (24) months prior to completion of mining of the Premises (the "Apperson Installations Commencement Date"). If Revised SMP 30 is approved by Alameda County, SFPUC and City, (i) Tenant shall give SFPUC not less than sixty (60) days advance written notice of the date on which Tenant intends to commence the Apperson Installations, which notice shall specify the date on which Tenant reasonably and good faith anticipates that Tenant will complete mining of the Premises in accordance with the provisions of Revised SMP 30 and this Lease, and (ii) Tenant shall give SFPUC not less than sixty (60) days prior written notice of the date on which Tenant intends to commence mining activities at the Apperson Site. The notices required pursuant to the immediately preceding sentence shall be accompanied by reasonable evidence supporting

Tenant's projection of the date on which mining of the Premises will be completed, such as engineering calculations of quantities of materials available. If SFPUC notifies Tenant in writing that SFPUC does not agree with Tenant's projected date of completion of mining of the Premises, Tenant shall promptly use good faith efforts to provide SFPUC with additional supporting evidence of such date as may be reasonably required to demonstrate that Tenant's projection is reasonable.

4.2 Apperson Lease. On or before the Effective Date, Tenant shall provide the lessor under the Apperson Lease with notice under Section 15 of the Apperson Lease that a copy of all notices of default and demands under the Apperson Lease be sent to City at the address provided hereunder for notices to City. Tenant will promptly perform and observe all of the terms, covenants and conditions required to be performed and observed by Tenant as lessee under the Apperson Lease, within the period (exclusive of grace periods) provided in the Apperson Lease, and will do all things necessary to preserve and to keep unimpaired its rights under the Apperson Lease. Tenant will promptly notify SFPUC in writing of any default by Tenant in the performance or observance of any of the terms, covenants or conditions on the part of Tenant to be performed or observed under the Apperson Lease. Tenant will (i) promptly notify SFPUC in writing of the receipt by Tenant of any notice from the lessor under the Apperson Lease of any notice noting or claiming any default by Tenant in the performance or observance of any of the terms, covenants or conditions on the part of Tenant to be performed or observed under the Apperson Lease; (ii) promptly notify SFPUC in writing of the receipt by Tenant of any notice from the lessor under the Apperson Lease to Tenant of termination of the Apperson Lease; (iii) promptly cause a copy of each such notice received by Tenant from the lessor under the Apperson Lease to be delivered to SFPUC; and (iv) promptly notify SFPUC in writing of any default by the lessor under the Apperson Lease in the performance or observance of any of the terms, covenants or conditions on the part of the such lessor to be performed or observed. Tenant will not, without the prior written consent of the SFPUC, acting through its General Manager, terminate, materially modify or surrender or suffer or permit any termination, material modification or surrender of the Apperson Lease. The granting or denial of such consent shall not be unreasonably withheld, delayed or conditioned, provided that the SFPUC, acting through its General Manager, determines that City's interests are adequately protected. For the purposes of this Section 4.2 a "material modification" is a modification which materially decreases the term of the Apperson Lease, materially and adversely affects Tenant's ability to access or mine aggregate in accordance with SMP 17 or Revised SMP 17, as then applicable, materially and adversely affects Tenant's ability to export material in accordance with SMP 17 or Revised SMP 17, as then applicable, from the Apperson Site or otherwise materially and adversely affects City's ability to receive royalties from the aggregate from the mining area designated in SMP 17 in the manner contemplated by this Lease. Tenant shall not subordinate the Apperson Lease or any of its leasehold estate thereunder to any deed of trust or other encumbrance of, or lien on, any interest in the real property subject to the Apperson Lease without the prior written consent of SFPUC, acting through its General Manager, which consent shall not be unreasonably withheld, delayed or conditioned, provided that the SFPUC, acting through its General Manager, determines that City's interests are adequately protected.

5. MINING PLAN; RECLAMATION PLAN; UPDATED RECLAMATION PLAN

5.1 **Generally.** Although City has not identified the source of water to be stored upon the Premises, or any associated water supply infrastructure, the Alternative F Plan was intended to guide future planning for proposed water storage in the Sunol Valley upon completion of mining, subject to further project specific environmental review. City proposes, following completion of the mining and reclamation required under Approved Plans and Permits and the terms of this Lease, to use a significant portion of the Premises for water storage, and City would not lease the Premises to Tenant if Tenant's use of the Premises conflicted with this proposed goal.

5.2 **Existing Reclamation Plan.** SMP 30 presently includes a reclamation plan, as described in General Condition 1 of SMP 30 (the "Existing Reclamation Plan"). The Existing Reclamation Plan was prepared prior to the adoption by SFPUC of the Sunol Valley Resources Management Element of the Alameda Watershed Management Plan, and the water storage and revegetation plans depicted in the Existing Reclamation Plan are not consistent with the water storage volumes and other planning concepts incorporated in the Alternative F Plan of the Sunol Valley Resources Management Element of the Alameda Watershed Management Plan.

5.3 Mining Plan; Updated Reclamation Plan.

(a) **Updated Reclamation Plan.** Tenant shall develop a mining plan and a reclamation plan for submittal with the Application for Revised SMP 30 (the "Updated Reclamation Plan"). The Updated Reclamation Plan shall govern reclamation of the entire site to be mined under Revised SMP 30, and the mining plan and Updated Reclamation Plan shall be generally consistent with water storage volumes and other planning concepts incorporated in the Alternative F Plan after corrections to the quantities to reflect the reduction of the area of the Expansion Premises from the area shown in the Alternative F Plan, and a reduction to allow for required side slopes. The Updated Reclamation Plan shall include all details required by the Alameda County Surface Mining Ordinance and the Surface Mining and Reclamation Act of 1975, as amended, and shall include all finish grading and construction of engineered levees to create a storage lake or lakes for the volume of water described in the Alternative F Plan (except as otherwise directed by SFPUC) and to allow the development of recreational amenities, exclusive of water transmission lines, pumping plants, and other water utility infrastructure that will be constructed by the SFPUC. Without limiting the foregoing, the Updated Reclamation Plan shall include the location of topsoil stockpiles for eventual reclamation use, the location of catch-basins or similar drainage and erosion control features employed for the duration of use of the Premises, and the location of storage, processing and equipment areas employed for the duration of the use of the Premises. The Updated Reclamation Plan will balance the disposition of excess spoils with the SFPUC's objective of maximizing water storage in the completed pits. The Updated Reclamation Plan must provide for completion and restoration of segments of the quarry reservoirs in accordance with a phased schedule, as opposed to leaving the entire excavation(s) open for the entire duration of all mining, and must provide a landscaping plan, indicating the species, number, size, and location of plantings for the final reclaimed grade, as

well as a description of irrigation provisions or other measures necessary to ensure the survival of plantings.

(b) **SFPUC Approval Required.** The Updated Reclamation Plan shall be subject to the review and approval of the General Manager prior to submittal to Alameda County, City's Retained Discretion set forth in Section 3.3(e) shall apply with respect thereto, and any revisions to the Updated Reclamation Plan proposed by Alameda County shall be subject to City's written approval.

5.4 Financial Assurances. The amount of any financial assurances required by Alameda County to ensure reclamation of the SMP 30 site under the Updated Reclamation Plan shall equal the sum determined by Alameda County to be required to accomplish all work contemplated in the Updated Reclamation Plan (not merely the amount required to provide slope stabilization for current mining), and the SFPUC shall be named as co-obligee of any financial assurances required by Alameda County. If at any time during the Term of this Lease Alameda County cannot or will not hold financial assurances in the amount required hereunder, then within thirty (30) days of written notice from City, Tenant will provide City with a security deposit or a performance bond or unconditional, irrevocable standby letter of credit in a form approved by the City Attorney in an amount equal to the difference between the sum required by the preceding sentence and the amount actually held by Alameda County.

5.5 Ongoing Right to Propose Updates to Reclamation Plan. SFPUC reserves the right to propose revisions to the Updated Reclamation Plan from time to time in connection with Alameda County's periodic review of SMP 30, Revised SMP 30, or Further Revised SMP 30. Such proposed revisions shall be limited to issues of the condition of the Premises upon completion of mining and associated reclamation and restoration activities in accordance with the SFPUC's future water supply planning activities. City shall reimburse Tenant for costs of revisions proposed by SFPUC and accepted by Alameda County, except for any costs incurred in connection with revisions to address site stability and good engineering practices.

6. **CONDITION OF PREMISES**

6.1 **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 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, the SFPUC, 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 and/or the areas to be used by Tenant pursuant to the Conveyer and Access Agreements, (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.

7. RESERVED RIGHTS

7.1 Rights Reserved to City. Notwithstanding anything to the contrary in this Lease, during the Term 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, riparian rights and appropriative water rights to surface streams and the underflow of streams, and (ii) any and all groundwater and subterranean water rights, and the right to export percolating groundwater for use by City or its water customers; provided, however, the foregoing shall not impact Tenant's right to conduct dewatering and water disposal operations on the Premises as set forth in Section 11.7 below.

(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 unrelated to normal sand, gravel and rock quarrying operations, now known to exist or hereafter discovered in the Premises, including, but not limited to, oil and gas and 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 conducted 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, replace, modify, expand, and reconstruct the SFPUC Facilities so long as City uses its reasonable efforts not to interfere with Tenant's use of the Premises, and the right to install a water discharge pipe as contemplated by Section 32.2;

(e) The right to grant future rights and easements over, across, under, in and upon the Premises as City shall determine in its sole discretion, provided that any such right or easement shall not interfere with Tenant's use of the Premises; and

(f) All rights of access provided for in Article 22 below.

7.2 Subject to City's Operation of Water Utility. Tenant acknowledges that the property of which the Premises are a part constitutes a portion of City's watershed property, which City holds for the purposes of collecting, storing, transporting and distributing water for domestic and municipal use, and Tenant agrees that it shall not engage in, and City has the right to prohibit, any activity not contemplated by the Approved Plans and Permits and that City determines would endanger or threaten the quality or availability of the water being collected, stored, transported and distributed by City. City may adopt from time to time such reasonable rules and regulations with regard to City's watershed property as City may determine are necessary or appropriate to protect City's interests and Tenant acknowledges that such rules and regulations may apply to Tenant's facilities and operations hereunder to the extent City in its good faith judgment determines is reasonably required to protect City's interests and to ensure that City's intended future use of the Premises as a water storage facility will be achieved. City shall not adopt or enforce such rules and regulations in a discriminatory manner. Upon receipt thereof, Tenant shall comply with all such reasonable rules and regulations.

8. TERM

8.1 Effective Date. This Lease shall become effective on the Effective Date.

8.2 Term of Lease. Subject to this Lease becoming effective pursuant to Section 8.1 above, the Initial Premises, Expansion Premises, and Stockpile and Plant Sites are leased for the respective terms specified in Article 3 above and in this Article 8, subject to the terms and conditions set forth therein and elsewhere in this Lease, and unless sooner terminated pursuant to the provisions of this Lease. The date on which this Lease expires or is terminated is referred to herein as the "Expiration Date". The period commencing on the Commencement Date and ending on the Expiration Date is referred to herein as the "Term."

8.3 Initial Term. The term of this Lease shall commence with respect to the Initial Premises on the Commencement Date, as defined in Article 1, and, unless otherwise terminated or extended as provided herein, shall expire on June 1, 2021 (such date, the "Initial Term Expiration Date," and such period, the "Initial Term"), provided that the Initial Term shall be extended by an additional period of not more than two (2) years to complete reclamation and restoration activities required pursuant to Article 27 below, in accordance with the terms thereof.

8.4 Extension Term; Expansion Premises. Effective as of the Revised SMP 30 Effective Date, the term of the Lease shall be extended through the expiration date of Revised SMP 30 (which is anticipated to be thirty (30) years from the issuance date) (the "Extension Term Expiration Date"). The period commencing on the Revised SMP 30 Effective Date and ending on the Extension Term Expiration Date is sometimes referred to herein as the "Extension Term."

8.5 Extended Processing Plant Term. Effective as of the Further Revised SMP 30 Effective Date, the Lease Term shall be extended through December 31, 2064 (the "Extended

Processing Plant Expiration Date") with respect to the Stockpile and Plant Sites, but not with respect to the Early Surrender Premises, as provided in Section 8.6 below. The period commencing on the approval of Further Revised SMP 30 and ending on the Extended Processing Plant Expiration Date is sometimes referred to herein as the "Extended Processing Plant Term."

8.6 Expiration of Lease with Respect to Early Surrender Premises. If the Term of this Lease is extended through the Extended Processing Plant Term, then on the Initial Term Expiration Date or the Extension Term Expiration Date, as applicable, or, if earlier, upon completion of mining and reclamation activities on the Premises, Tenant shall surrender to City in the condition specified in Article 27 below the Premises other than the Stockpile and Plant Sites and, if applicable, any areas designated for retention by Tenant beyond the Early Surrender Premises Deletion Date (as defined below) in any amendment to this Lease entered into as a companion to the Conveyor and Access Agreements (the "Additional Retained Premises"). The portion of the Premises to be surrendered pursuant to the foregoing is referred to as the "Early Surrender Premises." Effective as of 12:00 midnight on the date Tenant surrenders the Early Surrender Premises in the condition required hereunder (the "Early Surrender Premises Deletion Date"), the Early Surrender Premises shall be deleted from the Premises under this Lease, and the "Premises" will thereafter be comprised of the Stockpile and Plant Sites (and, if applicable, the Additional Retained Premises); provided, however, that Tenant shall remain liable for all of Tenant's obligations which arose with regard to the Early Surrender Premises prior to the Early Surrender Premises Deletion Date and Tenant's indemnification obligations set forth in this Lease with regard to the Early Surrender Premises which survive the expiration or termination of this Lease, shall survive the Early Surrender Premises Deletion Date. The Early Surrender Premises Deletion Date shall be confirmed by the Parties in writing following the occurrence thereof.

9. RENT

9.1 Base Rent.

(a) Tenant shall pay to City during the Term of this Lease, beginning on the Commencement Date, the sums set forth in this Section 9.1 (the "Base Rent"). Base Rent shall be payable in monthly installments throughout the Term of the Lease commencing on the Commencement Date. All payments of Base Rent and other sums due and owing hereunder shall be made to the San Francisco Public Utilities Commission, c/o Finance Bureau, 1155 Market Street, 5th Floor, San Francisco, California 94103 (Reference SFPUC lease number), or such other place as City may designate in writing. Monthly installments of Base Rent shall be excused during the pendency of an event of Force Majeure which makes it impossible or commercially impracticable for Tenant to operate on the Premises or the Apperson Site, as applicable, provided that such monthly payments shall resume on the date Tenant can resume operations on the Premises or the Apperson Site (or could have resumed operations had Tenant taken immediate and diligent steps to resume operations) in the amounts that would have been payable at such times had there been no event of Force Majeure in the interim.

(b) The Base Rent for each Lease Year shall be payable in equal monthly installments. Subject to Section 9.1(d) below, for each of the first eleven Lease Years, Base Rent shall be no less than the amount corresponding to such Lease Year in the table below:

<u>Lease Year</u>	<u>Base Rent Amount</u>
1	\$500,000
2	\$500,000
3	\$500,000
4	\$515,000
5	\$530,450
6	\$1,000,000
7	\$1,175,509
8	\$1,259,274
9	\$1,344,052
10	\$1,479,874
11	\$1,616,770

Beginning with the first day of the twelfth Lease Year and continuing through subsequent Lease Years, subject to the terms of Section 9.1(d) below, Base Rent shall be the greater of 103% of the prior year's Base Rent amount or the Base Rent that is established by the Special Adjustment described in the following sentences. Further, commencing on the first day of the seventh Lease Year and every three (3) years thereafter (each, a "Special Adjustment Date"), Base Rent shall be adjusted as set forth in the following provisions of this Section 9.1(b) (such adjustments, a "Special Adjustment"). On each Special Adjustment Date the Percentage Rent and Processing Royalty Rent paid by Tenant for the prior three (3) years shall be averaged (such average, the "Average Percentage and Royalty Rent Amount"). Sales to SFPUC projects shall be excluded from this calculation. If the Average Percentage and Royalty Rent Amount exceeds the annual Base Rent then in effect for such upcoming Lease Year pursuant to the preceding provisions of this Section, then effective as of the Special Adjustment Date the annual Base Rent shall be increased (but not decreased) to equal the Average Percentage and Royalty Rent Amount. In no event shall a Special Adjustment cause the annual Base Rent to exceed Three Million Dollars (\$3,000,000); provided that once the adjusted annual Base Rent reaches Three Million Dollars (\$3,000,000), only the regular annual three percent (3%) increases in annual Base Rent shall continue. Notwithstanding the foregoing, if the total Rent (exclusive of Additional Charges) paid by Tenant to City by the end of the tenth Lease Year is less than Ten Million One Hundred Forty-Two Thousand Three Hundred Thirty-Six Dollars (\$10,142,336.00), the amount of Three Million Dollars (\$3,000,000.00) set forth in the preceding sentence shall be increased to Three Million Two Hundred Fifty Thousand Dollars (\$3,250,000.00) for the remainder of the Lease term.

(c) Notwithstanding the provisions of Section 9.1(b) above to the contrary, commencing on the later of (A) the date that Tenant completes its mining and Product processing activities under this Lease and (B) the date Tenant commences performance of the Termination/Closure Work, annual Base Rent shall be reduced to Two Hundred Fifty Thousand

Dollars (\$250,000), payable in equally monthly installments, provided that the period during which such reduction is applicable shall in no event exceed three (3) years.

(d) **Temporary Reduction of Base Rent.**

(i) **Applicability.** If, after the sixth (6th) Lease Year, for two consecutive Lease Years (not including the Closure Work Period described in Section 9.1(c) above), the Percentage Rent payable by Tenant for the Lease Year is less than the Base Rent payable by Tenant for the subject Lease Year, then notwithstanding the provisions of Section 9.1(b), the provisions of this Section 9.1(d) shall apply.

(ii) **Base Rent Reduction Period.** The period commencing on the date immediately following the end of the second consecutive Lease Year in which the Percentage Rent payable by Tenant for such Lease Year is less than the Base Rent payable by Tenant for the subject Lease Year (as calculated pursuant to Section 9.1(b)) and ending on the first day of the Lease Year immediately after the second consecutive Lease Year in which the Percentage Rent paid by Tenant exceeds the Base Rent that would have been payable by Tenant for the subject Lease Year (as calculated pursuant to Section 9.1(b)) is referred to as the "Base Rent Reduction Period."

(iii) **Reduction of Base Rent; Calculation of Percentage Rent for Base Rent Reduction Period.** During the Base Rent Reduction Period, the Base Rent shall be \$1,000,000. Upon the conclusion of the Base Rent Reduction Period, Base Rent shall be calculated pursuant to Section 9.1(b) as if the Base Rent Reduction Period had not occurred.

9.2 Percentage Rent.

(a) **Percentage Rent.** In addition to the Base Rent, Tenant shall pay to City Percentage Rent in accordance with the following terms and conditions.

(b) **Percentage Rent; Royalty Rate.** During each Lease Year, Tenant shall pay to City, as "Percentage Rent," a sum equal to fifteen percent (15%) (the "Royalty Rate") of the Gross Revenues (as defined below) for such Lease Year, provided there shall be credited against Percentage Rent in each Lease Year the Base Rent paid by Tenant for such Lease Year. Percentage Rent shall be payable monthly in arrears, as provided in Section 9.2(f) below.

(c) **Gross Revenues; Sales Price.**

(i) "Gross Revenues" is defined in Section 1.56 above. To calculate Gross Revenues, the Sales Price (as defined below) of all Products (as defined below) during a Percentage Rent Period, shall be multiplied by the number of tons of such Product sold or used by Tenant or any Transferee (including, without limitation, any subtenant under a Permitted Sublease) during such Percentage Rent Period.

(ii) The "Sales Price" with respect to each Product shall be determined as follows: (A) From the Commencement Date until the last day of the first month in which sales of

such Product to Third Parties exceed the Minimum Comparison Percentage (for each such product, the "Sale Price Determination Date"), the Sales Price shall be amount set forth below, escalated at 0.75% every three months from the Commencement Date; and (B) from each such Product's Sale Price Determination Date until the expiration of this Lease, the Sales Price shall be the average price per ton charged by Tenant or the Transferee as applicable to Third Parties for such Product during the applicable Percentage Rent Period, subject to the provisions of Section 9.2(e) below. The initial Sales Price for each Product shall be as follows:

Initial Sales Prices	
Concrete Aggregate	\$12.50 per Ton
Asphalt Aggregates	\$13.00 per Ton
Sand	\$14.00 per Ton
Base Rock	\$ 9.00 per Ton
Drain Rock	\$12.50 per Ton
Other Aggregates	\$14.00 per Ton
Fill, Silt or Dirt	\$ -0- per Ton

(iii) For the purposes of this Article 9, "Third Parties" are parties other than Tenant, Transferees, Affiliates of Tenant, or affiliates of any Transferee, and any reference to a sale or use by Tenant shall include a sale or use by any Transferee (including, without limitation, any subtenant under a Permitted Sublease), even if no specific reference is made to Transferees.

(d) **Product.** As used herein, "Product" means each raw material extracted from the Premises or derived from materials deposited on the Premises pursuant to the provisions of Section 32.1(a) (or, for the purpose of determining Processing Royalty Rent, extracted from the Apperson Site) and (i) sold or used by Tenant or any Transferee as raw material or (ii) sold or used by Tenant or any Transferee as a component of asphalt, concrete or another product, including, without limitation, the following raw materials:

- Concrete aggregates
- Asphalt aggregates
- Sand
- Base rock
- Drain rock
- Other aggregates
- Fill, silt or dirt

(e) **Determination of Sales Price.**

(i) The Parties acknowledge that some of the Products sold or used by Tenant will be combined with other materials, such as asphalt oil, cement and other additives, to form a finished product, such as asphalt concrete or ready mix. Such finished products are sometimes referred to herein as "Finished Products." Furthermore, there may be periods in which Tenant

has very few sales of particular Products, other than as a component of a Finished Product, and/or has very few sales of particular Products to Third Parties. Tenant will provide with the monthly report described in Section 9.4 a calculation of the tons of Product used in Finished Products sold or used by Tenant in the month and the tons of Product sold to parties other than Third Parties.

(ii) **Low Sales Data.** If less than five percent (5%) of the sales and use of a particular Product during a particular Percentage Rent Period is as a direct sale (as opposed to sale of such Product as a component in a Finished Product) to one or more Third Parties, then (A) Tenant shall specifically indicate on the monthly report for such Percentage Rent Period that Tenant has low Third Party direct sales data for such Product, and (B) at SFPUC's written direction, the Sales Price for such Product for such Percentage Rent Period shall be determined using the average sales price for such Product, weighted according to tonnage sold in each such month, for the three (3) most recent months in which direct sales of such Product (as opposed to sales or use of such Product as a component in a Finished Product) to Third Parties equaled or exceeded five percent (5%) of total sales and use of such Product, including uses or sales as a component of a Finished Product (the "Minimum Comparison Percentage"). If direct sales of such Product to Third Parties did not equal or exceed the Minimum Comparison Percentage for three (3) months during the last preceding six month period, at the SFPUC's written direction the Sales Price for such Product shall equal the average sales price for such Product, weighted according to tonnage sold in each such month, for all months in which direct sales of such Product to Third Parties equaled or exceeded the Minimum Comparison Percentage during the preceding twenty-four (24) month period, with such Sales Price to escalate at a rate of 0.75% every three months until the next succeeding month in which sales of such Product to Third Parties exceeds the Minimum Comparison Percentage.

(f) **Monthly Statements and Payments.** On or before the fifteenth (15th) day of the calendar month immediately following the close of each Percentage Rent Period, Tenant shall deliver to SFPUC the monthly report described in Section 9.4 below and Tenant shall pay City an amount equal to (A) the Royalty Rate multiplied by (B) the Gross Revenues for such Percentage Rent Period, less (C) the Base Rent paid by Tenant for such Lease Year, to the extent not previously credited against Percentage Rent or Processing Royalty Rent (as defined below) during such Lease Year, and less (D) any Advance Improvement Cost under Section 3.3(g)(ii) to be credited against the current payment of Percentage Rent, to the extent such Advance Improvement Cost has not yet been credited against Base Rent or Percentage Rent, provided that if any such credit is claimed Tenant will provide a detailed breakdown of the original expenditure(s) and related interest that are being credited in the current year and a statement of the Advance Improvement Cost remaining uncredited as of such date.

(g) **General; Deemed Sales.** Any transaction on an installment basis, including without limitation any transaction involving the extension of credit, shall be treated as a sale at the time of the delivery of the Product, irrespective of the time of payment or when title passes. Any sale to an Affiliate of Tenant shall be included in the calculation of total tonnage of Product sold by Tenant. For the purposes of this Section 9.2, use of any Product(s) by Tenant or an Affiliate of shall be deemed a sale, other than (i) use of Product from the Premises for

construction and maintenance of roads and other facilities on the Premises in accordance with the Approved Plans and Permits, (ii) use of Product from the Premises for construction and maintenance of facilities on the Premises, Apperson Site, or areas which are subject to the Conveyor and Access Agreements, required to process or transport Products mined from the Apperson Site, subject to the limitation set forth in Section 9.2(h) below.

(h) Percentage Rent Differential Payable on Certain Uses of Premises

Product. If Tenant uses Products from the Premises on the Apperson Site, or areas which are subject to the Conveyor and Access Agreements, then use of either of such Product in such locations shall be deemed a sale, provided that for the purpose of computing Percentage Rent payable in connection with such excess Product use, the Royalty Rate shall be 2.25% (which is half of the difference between the 15% Royalty Rate payable on Product excavated from the Premises and the 10.5% Processing Royalty rate payable on Product extracted from the Apperson Site).

9.3 Processing Royalty Rent. If Revised SMP 17 and Further Revised SMP 30 are approved by Alameda County (and Further Revised SMP 30 is approved by the City, to the extent required), or if Further Revised SMP 30 is approved by Alameda County and the City pursuant to the provisions of Section 3.5 or Section 3.6 (whether or not Revised SMP 17 is approved by Alameda County); Tenant shall pay City Processing Royalty Rent for all Product exported from the Apperson Site, whether or not such Product is processed on the Premises. The Processing Royalty Rent shall be calculated and paid in the same manner as the Percentage Rent, provided that the Processing Royalty Rate shall be 10.5% and shall be calculated on Product exported from the Apperson Site, and provided that for purposes of this Section 9.3, use of any of the materials or products by Tenant or an Affiliate of Tenant in any location other than the Apperson Site, the Premises or areas which are subject to the Conveyor and Access Agreements shall be deemed a sale subject to Processing Royalty Rent, while use of such materials or products on the Apperson Site, the Premises or areas which are subject to the Conveyor and Access Agreements (for example, for haul road construction or maintenance) shall not be deemed a sale subject to Processing Royalty Rent.

9.4 Provisions Applicable to Percentage Rent and Processing Royalty Rent.

(a) **Reports and Records.** On or before the fifteenth (15th) day of each calendar month of the Term of this Lease, commencing on first calendar month immediately following the date Tenant first commences mining operations on the Premises, Tenant shall furnish to City a monthly statement of Tenant's Gross Revenues and tonnage of each Product sold for the previous calendar month (even if Gross Revenues and tonnage amounts are zero and even if no payment is then due from Tenant on account of credits against Base Rent or Advance Improvement Costs), and shall furnish to SFPUC an annual statement of Gross Revenues and tonnage of each Product sold within twenty (20) days after the end of each Lease Year. Such statements shall include a statement showing weights and values of the materials produced from the Premises or the Apperson Site, as applicable, during the applicable Percentage Rent Period, and shall separately indicate the weights and values of each Product sold without incorporation

into Finished Products and each Product included in a Finished Product, and shall be in a form acceptable to City. Each statement shall be signed and certified to be correct by Tenant or its authorized representative, and, if Tenant is a corporation, the statement shall be signed and certified to be correct by a duly authorized officer of Tenant. Tenant shall keep at the Premises or at its offices located within Alameda County complete and accurate books of account, records, receipts and other pertinent data, in accordance with good accounting practices and in a form approved by City, showing its Gross Revenues, tonnage of each Product sold, books and records of its mining, weighing, sampling, testing and shipping activities. Such books of account, records, cash receipts and other pertinent data shall be kept for a period six (6) years after the end of each Lease Year. The receipt by City of any statement, or any payment of Percentage Rent for any period, shall not bind City as to the correctness of the statement or payment. Tenant shall weigh all Product used by Tenant or a Transferee or sold and delivered from the Premises and the Apperson Site using accurate scales which are standard for the industry or otherwise approved by City. Product used in the production of ready mix concrete may be measured using batch scales. Tenant shall cause all scales to be tested for accuracy and corrected at Tenant's expense by an independent licensed weight master not less than once per year. Such weight master shall certify the results of such testing to City.

(b) **Inspection and Audit.** City shall be entitled at any time and from time to time during the Term and within three (3) years after the Expiration Date or other termination of this Lease, to inspect, examine, copy and audit all of Tenant's books of account, records, cash receipts, tax returns and underlying tax preparation documents, financial statements and other pertinent data with respect to the Premises and the Apperson Site. The primary purpose of such examination is to enable City to ascertain, clearly and accurately, Gross Revenues and tonnage of each Product sold and to verify that the form and method of Tenant's record keeping provide adequate and proper control and check of all such revenues. Tenant shall cooperate fully with City and City's Agents in making the examination. City shall also be entitled, at City's option, to cause an independent audit to be performed by a certified public accountant designated by City, and an independent audit of Tenant's operations to be performed by a consultant selected by City. The audit shall be limited to the determination of Gross Revenues and tonnage of each Product sold and shall be conducted during usual business hours at the Premises (or the Apperson Site, if appropriate). If the audit shows that there is a deficiency in the payment of any Percentage Rent or Processing Royalty Rent, then Tenant shall immediately upon notice pay the deficiency to City, together with interest thereon at the default interest rate, set forth in Section 9.7 below. City shall pay the costs of the audit unless the audit shows that Tenant understated Percentage Rent or Processing Royalty Rent, as applicable, by more than two percent (2%) for any Lease Year, in which case Tenant shall pay all costs of the audit for the period reasonably included by City in such audit.

(c) **Efforts to Maximize Revenue.** Subject to the express terms and conditions of this Lease, Tenant shall use commercially reasonable efforts to maximize the production of Gross Revenues from the Premises and the Apperson Site.

9.5 Late Charge. If Tenant fails to pay any Rent on or before the date the same is due and payable, such unpaid amount will be subject to a late payment charge in each instance equal to the greater of (i) Two Hundred Fifty Dollars (\$250), or (ii) six percent (6%) of the unpaid amount (provided that such charge shall be imposed with respect to the first two occurrences of such a delinquency in any twelve (12)-month period only if Tenant fails to cure such delinquency within ten (10) days of written notice from Landlord thereof). 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.

9.6 Default Interest. If any Rent is not paid within ten (10) 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 permitted 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 is lawfully permitted. Payment of interest shall not excuse or cure any default by Tenant.

9.7 Net Lease. This Lease is a "net lease." Accordingly, Tenant shall pay to City the Base Rent, Percentage 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, except as may otherwise be expressly set forth herein. 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 with respect to 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 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. Except as may otherwise be provided in Section 3.3(i) or Article 20 of this Lease, 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.

10. TAXES, ASSESSMENTS AND OTHER EXPENSES

10.1 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 prior to delinquency, subject to Tenant's right to contest the validity of such charge pursuant to subsection (c) below. 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 within thirty (30) days following City's demand therefor.

(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. Tenant further acknowledges that any Sublease or transfer permitted under this Lease may constitute a change in ownership within the meaning of the California Revenue and Taxation Code, and therefore may result in a reassessment of any possessory interest created hereunder in accordance with applicable Law.

(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 or any failure to pay any charges 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.

10.2 **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.

10.3 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.

11. USE; COVENANTS REGARDING USE

11.1 Tenant's Permitted Use. Tenant may use the Premises and any Improvements allowed hereunder only for the quarrying and removal of gravel and rock products, the construction, maintenance and use of related necessary structures and equipment, and processing materials from the Premises or the Apperson Site into any Product or into any Finished Product in accordance with the Processing Amendment, if applicable, and other uses contemplated by the Approved Plans and Permits or this Lease, and for ancillary related operations, and for no other purpose whatsoever. Any construction, alterations, and improvements to the Premises which are not contemplated by the Approved Plans and Permits or this Lease or which shall be permanent in nature shall, at all times, be subject to the approval of the City, acting through the General Manager. Plans for such work must be submitted to and approved by the General Manager in writing before commencing the work. As a material inducement to City to enter into this Lease, Tenant shall use the Premises and perform all excavation and other work permitted hereunder in keeping with City's future use of the Premises for water storage generally in accordance with concepts set forth in the Alternative F Plan, and shall use commercially reasonable efforts to perform such work in such a manner so as to realize water storage at the Premises at the earliest possible date in accordance with the Updated Reclamation Plan. Tenant shall reclaim all excess spoils to the maximum feasible economic extent to remove marketable sand and other saleable materials before reuse or disposal on Premises or elsewhere. The quarrying operations conducted by Tenant on the Premises shall be operated by Tenant in such a manner and to such extent as to meet all reasonable demands for the sale of quarry products.

11.2 Commencement of Mining Operations. Upon Alameda County's approval of the Permit Transfer following completion of any necessary environmental review by Alameda County for the Permit Transfer, Tenant will do the following: (i) begin installation of any replacement equipment on the Initial Premises within thirty (30) days after the Commencement Date; (ii) use commercially reasonable efforts to begin production of Product(s) within one hundred twenty (120) days after the Commencement Date (subject to Force Majeure); and (iii) in all events begin production of Product(s) within two hundred ten (210) days after the Commencement Date. Tenant's agreement to begin quarrying on the Initial Premises as provided above is a material inducement to City's agreement to enter into this Lease, and Tenant's failure to fulfill the above requirements on or before the stated date shall be an Event of Default hereunder.

11.3 Continuous Operations. After the commencement of mining, Tenant shall use commercially reasonable efforts to continue mining and processing materials without interruption for the remainder of the Term, subject only to Force Majeure delays, until the Product has been removed to the level providing the water storage volume generally in

accordance with concepts set forth in the Alternative F Plan (the "Required Mining Depth"). Tenant's agreement to perform such mining and processing is a material inducement to City's willingness to enter into this Lease, and Tenant understands that City would not be willing to enter into this Lease without such agreement by Tenant. Notwithstanding the foregoing, City recognizes that mining is a cyclical business and that mining will occasionally be temporarily suspended due to low market demand for Products. Tenant agrees that any such suspension of mining shall be accomplished in a manner which allows Tenant to promptly resume mining upon increased market demand for Products. At City's written request, Tenant shall promptly provide City with reasonable supporting evidence of conditions justifying a suspension of mining.

11.4 Right to Cease Operations When Materials Are Depleted. Notwithstanding the foregoing, if before reaching the Required Mining Depth in one or more areas of the Premises, Tenant determines to its reasonable satisfaction and Tenant demonstrates to SFPUC's reasonable satisfaction, as evidenced by written confirmation from SFPUC, that sand and gravel is not present in such area(s) in sufficient quantities to sustain commercial mining operations, Tenant may cease mining in such area(s) at the depth which last sustains commercial mining operations. Such determination shall take into account the potential value and difficulty in mining and processing all Product(s) believed to be available in that area of the Premises upon excavation to the Required Mining Depth, not simply the value of material at a particular interim depth that is not in and of itself economical to mine and process. Such determination shall take into account ongoing operating expenditures and required capital expenditures for such area. Tenant shall provide City with written notice of Tenant's election to cease mining of any portion of the Premises before reaching the Required Mining Depth. Upon cessation of mining under this Section 11.4, Tenant shall commence and diligently pursue Tenant's surrender, reclamation and restoration obligations with respect to the applicable area(s) under Article 27 and under SMP 30, Revised SMP 30 or Further Revised SMP 30, as applicable, subject to City's rights under Section 11.5(b) below.

11.5 SFPUC Partial Termination Right on Suspension or Cessation of Mining.

(a) **Long-Term Suspension of Mining: City Partial Termination Right.** If Tenant's mining operation on the Premises are suspended as permitted by Section 11.3 above for a period of two (2) consecutive years (and Tenant's mining operations on the Premises have not reached the Required Minimum Depth), then, provided that Tenant has not ceased mining the entire Premises pursuant to the provisions of Section 11.4 above, City shall have the rights under this Section 11.5(a). Within thirty (30) days of SFPUC's written request (the "Mining Resumption Plan Request"), Tenant shall provide SFPUC with a written projection of the date on which Tenant anticipates resumption of continuous mining at the Premises (the "Mining Resumption Plan"), which projection shall be accompanied by a summary and evaluation of the data used by Tenant to make such projection. If Tenant does not deliver a Mining Resumption Plan by the date specified above which demonstrates to the reasonable satisfaction of the General Manager that Tenant's mining operations at the Premises will be resumed by the date which is one (1) year after the date of the Mining Resumption Request and will thereafter be conducted without interruption for the foreseeable future, then City, at City's sole election, shall have the

right to terminate this Lease early with respect to the Early Surrender Premises (but not the Stockpile and Plant Sites or, if applicable, the Additional Retained Premises), by written notice to Tenant. Further, if Tenant's mining operations at the Premises are not actually resumed within four (4) months after the resumption date projected by Tenant in the Mining Resumption Plan, City, at City's sole election, shall have the right to terminate this Lease early with respect to the Early Surrender Premises by written notice to Tenant.

(b) **Cessation of Mining Prior to Required Depth: City Partial Termination Right.** If Tenant demonstrates to SFPUC's reasonable satisfaction that sand and gravel is not present in part or all of the Early Surrender Premises in sufficient quantities for Tenant to sustain commercial mining operations on the part or all of the Early Surrender Premises to the Required Mining Depth in accordance with the provisions of Section 11.4 above, but City nevertheless desires to cause such portions of the Premises to be mined to the Required Mining Depth, then City, at City's sole election, shall have the right to deliver to Tenant a written notice (the "Negotiation Trigger Notice") indicating City's desire to cause such portions of the Premises to be mined to the Required Mining Depth. If City delivers a Negotiation Trigger Notice, then City and Tenant shall negotiate in good faith regarding possible modifications to the financial terms of this Lease with the objectives of providing Tenant with sufficient financial incentive to continue mining the applicable portions of the Premises to the Required Mining Depth while taking into account City's interest in maximizing its financial returns and other benefits from this Lease. Such negotiations shall continue for so long as the Parties agree to continue negotiating, but not less than sixty (60) days. If the Parties reach an agreement with respect to such modifications, SFPUC and Tenant shall promptly prepare an amendment to this Lease memorializing such agreement, which Lease amendment shall be subject to the provisions of Section 3.1(e) regarding Commission and Board of Supervisors approval. Upon approval of the Lease amendment in accordance with Section 3.1(e) above, the Parties shall enter into such Lease amendment. If SFPUC and Tenant do not reach an agreement with the sixty (60) day period described above, or if approval of the proposed amendment is not received from the Commission and Board of Supervisors following submittal by the General Manager in accordance with Section 3.1(e), then City, at City's sole election, shall have the right to terminate this Lease early with respect to the applicable portion(s) of the Early Surrender Premises and to seek a replacement tenant for those portions of the Early Surrender Premises for which this Lease is so terminated. City shall exercise such partial termination right by written notice to Tenant given not later than one hundred eighty (180) days after the date negotiations are suspended or SFPUC reasonably determines that approval for a proposed amendment will not be timely granted.

(c) **Required Closure Plan, Reclamation and Restoration Obligations.** If City exercises City's partial termination option under Section 11.5(a) or Section 11.5(b) above, the provisions of Section 11.10 below shall apply. As soon as reasonably possible following City's exercise of City's partial termination option, City shall notify Tenant in writing whether City will require Tenant to prepare a Closure Plan in accordance with the provisions of Section 11.10 below.

(d) **Permit Transfer; Cooperation With New Operator.** If City exercises City's partial termination option under Section 11.5(a) or Section 11.5(b) above and seeks a replacement tenant for the applicable portion of the Premises, the Parties shall cooperate in good faith regarding any amendment of SMP 30 or this Lease required to permit transfer of the right to conduct mining operations on the applicable portion of the Premises to the new operator and retention by Tenant of the right to conduct mining operations on the balance of the Premises (if applicable) and the right to operate the processing plants for materials from the Apperson Site. Any lease or other agreement with any replacement tenant shall require the replacement tenant to conduct its operations in a manner which does not interfere with Tenant's activities under this Lease, as amended. Tenant will cooperate in the orderly transition of mining operations to the new operator.

(e) **Termination.** The applicable portion of the Early Surrender Premises for which this Lease is terminated under this Section 11.5 (the "Early Termination Premises") shall be deleted from the Premises under this Lease on the date on which Tenant's obligations under Section 11.10 below are satisfied with respect thereto (the "Early Partial Termination Date"); provided, however, that Tenant shall remain liable for all of Tenant's obligations which arose with regard to the Early Termination Premises prior to such date and Tenant's indemnification obligations set forth in this Lease with regard to the Early Termination Premises shall survive such deletion to the extent such obligations would have survived the termination or expiration of this Lease. The Early Partial Termination Date shall be confirmed by the Parties in writing following the occurrence thereof.

11.6 Dewatering Activities. Tenant shall have the right to conduct standard dewatering operations in accordance with industry custom and shall have the right to use and dispose of ground water obtained in connection therewith, subject to the provisions of Section 11.7(g) below. Tenant may not sell any water from the Premises to any third party without the prior written consent of the General Manager, and the proceeds of any such sale shall be included in Gross Revenues.

11.7 Covenants Regarding Use. All matters provided for in this Section shall be in accordance with the direction of, and to the satisfaction of, the General Manager. 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. Except as contemplated by or permitted by the Approved Plans and Permits, Tenant shall not permit to be carried on any offensive, immoral, excessively noisy or hazardous use of the Premises or any use in violation of the conditions of any certificate of occupancy, permit, recorded document, or other restriction relating to the Premises. 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.** Except as expressly contemplated by or permitted by the Approved Plans and Permits, Tenant shall not cause or permit any waste, damage or injury to the Premises.

(c) **Covenant Regarding Disposal of Silt.** Tenant shall reclaim all excess spoils to the maximum feasible economic extent to remove marketable sand and other saleable materials before reuse or disposal on Premises or elsewhere. To the extent Tenant cannot dispose of excess silt offsite, Tenant shall reuse or dispose of silt and other excess spoils on the Premises in the following order of priority, in a manner that maximizes future water storage capacity: (1) to create engineered levees separating the water storage reservoirs contemplated in the Alternative F Plan; (2) to create sloping benches, beaches and other amenities for public recreation activities in the future quarry reservoirs; (3) as a last resort, to use as fill in the bottom twenty-five (25) feet of the completed mining excavations.

(d) **Covenant to Comply with Permits and Approved Plans.** Tenant shall comply with, and strictly abide by all the terms and provisions of, all Approved Plans and Permits, Regulatory Approvals(s), approved specifications, recorded documents and instruments, and other approvals and governmental consents relating to the Premises. Tenant shall not apply for any permit or governmental approval relating to the Premises or Tenant's use thereof, or any amendment, modification, suspension or termination of any existing permit or governmental approval, without having first obtained SFPUC's prior written consent, which consent shall not be unreasonably withheld; provided, however, SFPUC may condition any such consent on requested reasonable modifications to any such permit or approval.

(e) **Right to Relocate and/or Remove SFPUC Facilities.** Tenant shall have the right to relocate and/or remove SFPUC Facilities which interfere with Tenant's quarrying operations provided that the cost of such removal and/or relocation shall be borne by Tenant and further provided the removal and/or relocation of domestic water supply lines and other facilities which do not exclusively serve the Premises shall be subject to the consent of the General Manager, which consent shall not be unreasonably withheld. Any such relocation shall be to a location and in accordance with plans and specifications approved in advance by the General Manager, and shall be performed at no cost to the City. The relocated SFPUC Facilities shall be at least equal to or better than the replaced SFPUC Facilities in every respect. In the event that City requests increases in the size of pipes or other enhancements, Tenant shall install such larger pipes or enhancements so long as City pays the increased costs to Tenant resulting from such increase in pipe size or enhancement.

(f) **Covenant to Protect SFPUC Facilities.** At all times during the Term of this Lease, Tenant shall take reasonable steps to protect the SFPUC Facilities located on the Premises 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), located on the Premises, Tenant shall immediately notify City of that occurrence. City may, without limiting any of its other rights hereunder, take all action it deems proper to repair such damage (including relocation of monuments) at Tenant's sole expense.

(g) **Covenant to Protect Water Courses.** Tenant shall not cause or permit any flooding on adjacent land, nor engage in any activity that causes any pollution or change, disturbance, fill, alteration or impairment to the bed, bank or channel of Alameda Creek, nor shall Tenant discharge any wash water into Alameda Creek, except as provided in the Approved Plans and Permits. Without limiting the foregoing, and except as further agreed by the Parties, Tenant shall manage drainage from the Premises in a manner which causes water to drain in a northwesterly direction, away from the Alameda Siphons and other SFPUC facilities to the south and east of the Premises. Tenant will not be permitted to pump water from Alameda Creek or San Antonio Creek for quarry operations.

(h) **Recycled Water and Water Supply.** To the extent of any deficiency in the supply of water for aggregate processing on the Premises that is obtained through Tenant's dewatering operations, Tenant shall purchase any water used for aggregate processing on the Premises, as well as any potable water supplies desired by Tenant, from City at City's standard rates for customers and uses such as Tenant's. Tenant shall, whenever possible and to the extent available, recycle water that it uses in its aggregate processing operations or use such water for landscaping or other nonpotable uses on the Premises. City reserves the right to substitute recycled water for water supplies used by Tenant for aggregate processing or landscaping to the extent required in Section 15.2. Notwithstanding anything to the contrary herein, City shall have the right to take any surplus water generated by Tenant's dewatering activities and to export and use such water for potable or nonpotable purposes, or to store such surplus water on the Premises in areas where mining has been completed, but only with the consent of Tenant which consent shall not be unreasonably withheld, conditioned or delayed.

(i) **Water Resource and Hydrological Studies.** City reserves the continuing right to conduct water resource and hydrological studies of the Premises in conjunction with its operation of a municipally-owned water utility. Tenant shall allow City, its Agents and employees to enter upon the Premises for the purposes of conducting such studies and Tenant shall cooperate with City's performance of such studies and any work that City may desire to perform upon the Premises in implementing the results thereof or recommendations thereunder; provided that any such entry or work by the City shall not unreasonably interfere with Tenant's use of the Premises and shall be scheduled so as to occur at a time mutually convenient to City and Tenant.

(j) **Covenant to Monitor Water Quality.** City shall have the right to monitor water quality in and about the Premises at its sole cost and expense (except as provided in the Existing Agreements) provided, however, that to the extent required by the Approved Plans and Permits, Tenant, at Tenant's sole cost and expense, shall monitor the water quality of any water that Tenant discharges into Alameda, Apperson or San Antonio Creeks. Tenant shall provide to Landlord copies of any reports or data generated by Tenant's testing of water quality, or any other test results or reports by Tenant relating to the Premises.

(k) **Covenant Against Dumping.** Apart from the authorized placement of silt under the Approved Plans and Permits, Tenant shall not cause or permit the dumping or other

disposal on, under or about the Premises of landfill, refuse, Hazardous Materials or other materials that could pose a hazard to the human health or safety, wildlife, or the environment.

(l) **Covenant to Protect Trees or Other Native Vegetation/Erosion.**

Tenant shall not engage in or permit the cutting, removal, or destruction of trees or any other native vegetation on the Premises in violation of the Approved Plans and Permits without the prior written approval of the General Manager, which shall not be unreasonably withheld. Tenant shall at its cost install culverts, drain ditches and control barriers promptly wherever and whenever, in the opinion of the General Manager, it becomes necessary to limit damage from erosion.

(m) **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 for in the Approved Plans and Permits or in plans and specifications or permits approved by the City.

(n) **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 General Manager and 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.

(o) **Chemical Herbicides and Pesticides.** 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.

(p) **Weed Control.** Tenant shall not introduce any noxious weeds on or about the Premises, and Tenant shall use reasonable efforts to control and manage noxious weeds located in or on the Premises.

(q) **Maintenance of Roads and Watercourses.** Except as contemplated by or permitted by the Approved Plans and Permits, Tenant shall keep all roads on the Premises open as same now exist and are used, except as approved by City in writing, and shall not interfere with travel on such roads by City's officers, employees and agents who shall have the

right to enter upon and pass through or across the Premises or any part thereof at any and all times. Tenant shall maintain and keep in good repair all roads and water courses located in or on the Premises, and shall at no time, in violation of the Approved Plans and Permits, cause excessive dust or other detrimental factors affecting the agricultural and pasture lands and livestock in the adjacent area. Tenant shall require that Tenant's vehicles, or vehicles of its customers or contractors hauling gravel or quarry products from Premises are serviced regularly to minimize oil leaks on the Premises. Tenant shall promptly and satisfactorily repair, or cause to be repaired, any damage to roads located on the Premises or other City property caused by operation thereon of its vehicles, or by vehicles of its customers hauling gravel or quarry products from Premises.

(r) **Covenant Against Burning.** Tenant shall not burn any weeds, debris or other substances on or about the Premises. Tenant shall prepare, and update as appropriate, a fire prevention program subject to City's review and approval, which shall not be unreasonably withheld.

(s) **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 except to the extent necessary and appropriate in accordance with Tenant's quarrying activities.

(t) **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 (which shall not be unreasonably withheld), 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 8-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, which shall not be unreasonably withheld.

(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 City for review and approval, which shall not be unreasonably withheld. In any case, the two feet of soil around the pipeline shall be removed manually or by other methods approved by City with due care as provided above.

(u) **Watershed Management Plan**. Provided that they do not materially interfere with Tenant's quarrying operations allowed by the Approved Plans and Permits, Tenant shall comply with any and all other regulations or requirements resulting from City's development of the Alameda Creek Watershed Management Plan, and any modifications or additions to such plan.

(v) **Lateral and Subjacent Support**. Tenant shall conduct mining operations so as to provide lateral and subjacent support to the owners of other estates. Any collapse shall be Tenant's responsibility, notwithstanding Landlord's approval of plans and specifications.

(w) **Water Protection and Emergency Response Plan**. For its operations under the Lease, Tenant shall develop, maintain and when necessary implement a written plan or plans for managing storm water, controlling waste water, storing and handling fuel and lubricants, and responding to and giving SFPUC notice of emergencies such as contamination episodes, fire, earthquake and other required evacuations from the Premises, which plan or plans shall be subject to the approval of the General Manager, which approval shall not be unreasonably withheld or delayed. Tenant shall provide SFPUC with a draft water protection and emergency response plan within thirty (30) days after the Effective Date. Prior to revising the water protection and emergency response plan, Tenant shall provide SFPUC with prior written notice of the proposed revisions, and such revisions shall be subject to the approval of the General Manager, which approval shall not be unreasonably withheld or delayed.

11.8 Material Provided to SFPUC.

(a) At SFPUC's request, Tenant shall provide filter and drain material for the SFPUC's Calaveras Dam Replacement Project in accordance with the gradation, quality and pricing tables set forth in Exhibit C attached hereto, in the following estimated amounts:

Zone 2 (Downstream filter) – 180,000 cubic yards
Zone 2A (Filter) – 70,000 cubic yards
Zone 3 (drain) – 127,000 cubic yards

(b) From time to time during the Term of this Lease, at City's request, Tenant shall make available to City construction contractors Products and Finished Products from Tenant's mining on the Premises to the extent such Product or Finished Product is available and Tenant has not previously committed such Product or Finished Product to another customer. Such materials shall be purchased by such contractors for cash at the rate then being charged by Tenant for such Product or Finished Product. If Tenant charges different rates to different

customers, City or City's construction contractors shall be charged the comparable rate that Tenant charges to other customers for sales of such Product and Finished Product in similar volumes within the last twelve (12) months. Upon City's request, Tenant shall notify City of the availability of the requested Product(s) or Finished Product(s) and the price of the Product(s). Upon City's written agreement as to the price, Tenant shall deliver the Product(s) F.O.B. at the Premises.

11.9 Maps and Mining Plan. Tenant shall maintain and update not less than annually detailed maps showing the extent of Tenant's operations on the Premises and the depth of mined excavation to date, and shall from time to time provide a copy of the latest such map to SFPUC in accordance with the provisions of Section 17.4 below. Tenant shall also prepare and submit to SFPUC an annual mining plan at the start of each Lease Year describing Tenant's contemplated activities for the coming Lease Year, including, without limitation, Other Improvements and Other Alterations for which Tenant is seeking approval in accordance with Section 13.1(b) below.

11.10 Early Termination; Removal of Plants and Equipment; SMARA Compliance and Site Restoration.

(a) **Requirement for Closure Plan; Waiver.** Notwithstanding any other terms and conditions of this Lease, if, for any reason other than a default by Tenant, this Lease is terminated with respect to part or all of the Premises prior to the expiration of the Term applicable to such portion of the Premises, Tenant shall submit to the lead agency an amended reclamation plan in connection with closure of the applicable portion of the SMP 30 site pursuant to SMARA (a "Closure Plan"), and the provisions of Section 11.10(b) below shall apply with respect thereto. City, at its sole discretion, may waive the requirement for a Closure Plan in written notice to Tenant, in which event the provisions of Section 11.10(c) below shall apply.

(b) **Closure Plan.** If City does not waive the requirement for submission of a Closure Plan, Tenant and City shall cooperate in the submission and processing of a Closure Plan, at Tenant's sole cost. City's Retained Discretion shall apply with respect to any revision to the reclamation plan or SMP 30 required in connection therewith. Upon approval by City and Alameda County of the Closure Plan, Tenant shall perform the reclamation work required pursuant to the Closure Plan and shall satisfy Tenant's obligations under Article 27 of this Lease with respect to the applicable portion of the Premises.

(c) **Limited Reclamation and Prorata Share of Costs.** If City waives the requirement for a Closure Plan, Tenant shall be required to (i) complete the reclamation activity under the then current reclamation plan which relates to the phase of mining completed prior to the termination date, (ii) post, with Alameda County, a bond or other security for Tenant's Prorata Share of costs of the remaining reclamation work under the current reclamation plan, as calculated in accordance with Section 22.2(a) and (iii) satisfy Tenant's obligations under Article 27 of this Lease with respect to the applicable portion of the Premises. Upon completion of the required reclamation work and posting of the security, City shall not object to Alameda

County's return to Tenant of any other security posted by Tenant then being held by Alameda County.

(d) **General Obligations.** If this Lease is terminated early with respect to part or all of the Premises, Tenant shall promptly commence and diligently and expeditiously pursue to completion Tenant's obligations under this Section 11.10, and shall in all events complete such obligations by the date which is two (2) years after the date of approval by Alameda County and City of the Closure Plan or, if applicable, the date which is two (2) years after the date City gives Tenant written notice of waiver of the Closure Plan. Tenant's obligations under this Lease shall continue other than with respect to that portion of the Premises for which this Lease was terminated early.

12. MINIMUM REQUIRED IMPROVEMENTS; UTILITY LINE RELOCATION

12.1 Minimum Required Improvements. Upon commencement of the Extension Term Tenant shall promptly seek and diligently pursue all permits required for the construction of the Minimum Required Improvements listed on the attached Exhibit B (the "Minimum Required Improvements") (excluding site reclamation), and upon receipt of such permits following any required environmental review and subject to the City's Retained Discretion set forth in Section 3.3(e) shall promptly commence and diligently prosecute such construction until completion at Tenant's sole cost and expense in accordance with the provisions of Article 13 below.

12.2 Early Installation of Slurry Cutoff Wall.

(a) **Generally.** If SFPUC elects to have the slurry cutoff wall installed prior to the Revised SMP 30 Effective Date and the start of the Extension Term and prior to the date Tenant is obligated to perform such work pursuant to Section 3.3(h) of this Lease, the provisions of this Section 12.2 shall apply. Except as provided in Section 12.2(b) below, SFPUC shall design the slurry cutoff wall and obtain all permits required for construction of the slurry cutoff wall. Following any required environmental review and subject to the City's Retained Discretion set forth in Section 3.3(e), upon receipt of such permits pursuant to this Section 12.2(a) or Section 12.2(b) below, SFPUC may direct Tenant to proceed with such construction, and Tenant shall thereupon promptly commence and diligently pursue construction of the slurry cutoff wall to completion. Provided that the Reimbursement Conditions described in Section 3.3(h)(ii) above are satisfied with respect to such work, there shall be credited against payments of Base Rent or Percentage Rent payments made by Tenant for the construction of the slurry wall (including financing costs at the Improvement Interest Rate) until such time as Tenant's cost of the slurry cutoff wall has been recovered by Tenant. If Tenant obtains approval by the City of Revised SMP 30 and the Extension Term commences, (i) Tenant will repay the SFPUC for any sum credited against Rent pursuant to the provisions of this Section 12.2(a), and (ii) Tenant will reimburse SFPUC for SFPUC's cost of obtaining permits for the cutoff wall. The repayment and reimbursement by Tenant will be made over a two-year period commencing on the Revised SMP 30 Effective Date, in equal monthly installments.

(b) Tenant to Obtain Permits. Notwithstanding the provisions of the second sentence of Section 12.2(a) to the contrary, prior to the date that is sixty (60) days after the Effective Date, SFPUC shall have the right to direct Tenant to design the slurry cutoff wall and obtain all permits required for construction of the slurry cutoff wall on SFPUC's behalf, and Tenant shall thereupon use reasonable and diligent efforts to design such cutoff wall and obtain such permits. If SFPUC issues such a direction SFPUC shall reimburse Tenant for reasonable costs actually incurred by Tenant to design such cutoff wall and obtain such permits within thirty (30) days after receipt of invoices for such costs accompanied by appropriate documentation of such costs, provided that no more than one invoice shall be processed in any calendar month. SFPUC shall have the right on written notice to Tenant to audit Tenant's books and records with respect to such reimbursable costs. If SFPUC directs Tenant to design the slurry cutoff wall and obtain permits pursuant to the provisions of this Section 12.2(b), then, in addition to the foregoing obligation of SFPUC to reimburse Tenant for the cost of designing the slurry cutoff wall and obtaining the required permits, provided that the Reimbursement Conditions described in Section 3.3(h)(ii) above are satisfied with respect to such work, there shall be credited against payments of Base Rent or Percentage Rent payments made by Tenant for the construction of the slurry wall (including financing costs at the Improvement Interest Rate) until such time as Tenant's cost of construction of the slurry cutoff wall has been recovered by Tenant through such Rent credits combined with any reimbursement payments made by SFPUC as described in the following sentence. In instances during the first two (2) Lease Years where Tenant is entitled to credit its construction costs against Base Rent or Percentage Rent, but the costs to be so credited exceed the Rent payable in the next succeeding monthly payment, SFPUC shall reimburse Tenant for such excess within thirty (30) days of the last day of the month in which the corresponding Rent credit is taken. If Tenant obtains approval by the City of Revised SMP 30 and the Extension Term commences, the design and permit cost reimbursements made by SFPUC pursuant to this Section 12.2(b) shall be added to the amounts to be repaid to SFPUC by Tenant over the two year period following the Revised SMP 30 Effective Date as described in the last two sentences of Section 12.2(a).

12.3 Utility Line Relocation.

(a) Relocation; Plans. Tenant shall relocate all utility lines on the Premises and, if applicable, Expansion Premises, as required to conduct mining operations, including but not limited to the existing 36-inch water line currently located in the Expansion Premises (the "Town Waterline"). Such relocation shall be designed and performed in a manner sufficient to restore utility operations without interruption. In connection with this relocation work and the ongoing use of portions of the Expansion Premises for SFPUC staging areas as set forth in Section 2.3 above, Tenant shall also establish a new haul road parallel to the eastern boundary of the Expansion Premises as generally depicted in Exhibit A-4 (the "Expansion Premises Haul Road"). Prior to commencement of any work described in this Section 12.3(a) Tenant shall submit to SFPUC for review and approval by the Assistant General Manager of SFPUC's Water Enterprise Department, or his or her designee, all proposed construction plans for such work. With respect to the Town Waterline, such proposed plans shall include, without limitation, items such as: fabrication and installation of the pipelines, pipeline laying plans and profiles, material

and equipment submittals, shop drawings, closure of the existing pipeline and appurtenances, and testing, transition and start up of the relocated pipeline and appurtenances. With respect to SFPUC's Hetch Hetchy power line, such plans shall include, without limitation, sufficient clearance, reasonable means for SFPUC access to the towers, and reasonable dust control measures during relocation. City's approval of plans for any proposed work shall not be unreasonably withheld, provided that, if legally required, such approval shall be subject to any required environmental review and City's Retained Discretion set forth in Section 3.3(e). Such work shall be coordinated between Tenant, SFPUC and SFPUC's contractors to ensure that each such party is able to achieve its objectives for activities within the Expansion Premises.

(b) **Delivery of Required Work Areas; Cooperation.** The Parties acknowledge that the use of the Expansion Premises for staging by SFPUC and its contractors as described in Section 2.3 above has been negotiated to provide Tenant with the access it anticipates will be needed to relocate the Town Waterline, construct the Expansion Premises Haul Road, and perform the other utility relocations as described above, without requiring further action from SFPUC or its contractors to accommodate such activities. City shall make good faith efforts to make available to Tenant those portions of the Expansion Premises other than the Reserved Expansion Premises required for relocation of the Town Waterline and the other utility lines on the Expansion Premises promptly after the Revised SMP 30 Effective Date and approval of the Assistant General Manager of SFPUC's Water Enterprise Department of the plans for the Town Waterline relocation and for the relocation of the other utility lines on the Expansion Premises, provided that such delivery does not interfere with the performance by SFPUC's contractors of SFPUC's water system improvement projects. Tenant acknowledges that SFPUC's contractors may be working on the proposed Alameda Siphons #4 pipeline or other elements of SFPUC's water system improvement projects in areas adjacent to the Expansion Premises during the period Tenant desires to relocate the Town Waterline and other utility lines. Tenant acknowledges that City may restrict, condition, or prohibit Tenant's access to areas outside the Premises which are necessary for City's contractors to work on SFPUC's water system improvement projects. If the areas in which the Town Waterline or other utility lines are to be relocated are outside of the Expansion Premises, Tenant and City shall enter into a license or permit for the area in which the work will be performed, the terms and conditions of which shall be in accordance with SFPUC's usual and customary practice, provided that such terms and conditions shall be subject to the approval of Tenant and the General Manager.

(c) **City's Right to Inspect; Acceptance.** City shall have access to Tenant's construction site and the right to inspect the work performed by Tenant and its contractors and agents in connection with relocating the utility lines contemplated herein. City's and Tenant's contractors and inspection personnel shall coordinate and cooperate during the fabrication and construction of the relocated utility lines and appurtenances to ensure that work is being performed in accordance with the plans. City will accept such work in a timely manner and in accordance with City's usual and customary practice for accepting such work if, after inspection by the by the Assistant General Manager of SFPUC's Water Enterprise Department, or his or her designee, it is determined that the work has been performed in accordance with the plans approved by SFPUC. If, after inspection by the SFPUC, it is determined that the work has not

been so performed; City shall notify Tenant of any claimed deficiency. Thereafter, Tenant will investigate and correct any deficient work prior to City acceptance. City's right to access, inspect, and approve changes and work shall not relieve Tenant or its contractors from any liability for negligence, errors or omissions associated with the design and construction of the utility lines and appurtenances. Upon completion of construction on the relocated utility lines and appurtenances, Tenant shall install above-ground markers identifying the location of the utility lines and appurtenances. The location, type, and installation of markers and identifying information on the markers shall be subject to the prior written approval of the SFPUC, which shall not be unreasonably withheld. Not later than ten (10) business days after completion of construction of the relocated utility lines and appurtenances, Tenant shall furnish the SFPUC with two (2) complete copies of final as-built drawings along with the auto-CAD digitized version of the design plans and as-built drawings on compact disc.

12.4 Retained Discretion. City's Retained Discretion shall apply to the work to be performed under this Article 12.

13. TENANT'S STRUCTURES, IMPROVEMENTS AND INSTALLATIONS

13.1 Approval and Construction of Improvements.

(a) **Material Improvements.** Except as contemplated by or permitted by the Approved Plans and Permits, Tenant shall not construct or install any Material Improvements nor make or permit any Material Improvement Alterations in, to or about the Premises, without SFPUC's prior written consent in each instance, which consent shall be through its General Manager or his or her designee, following any required environmental review and subject to City's Retained Discretion set forth in Section 3.3(e), and which shall not unreasonably be withheld. The reasonableness of the General Manager's actions shall be considered in light of SFPUC's operation of its facilities as well as the SFPUC's future use of the Premises and adjacent property for water storage and public recreational uses and City's Retained Discretion. Subject to the General Manager's consent as provided above, any permitted Material Improvements or Material Improvement Alterations shall be done at Tenant's sole expense (i) in strict accordance with plans and specifications approved in advance by City 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 approved permits, 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 Material Improvements or the making of any Material Improvement Alterations impair the use or operation of facilities owned and/or operated by SFPUC, or any portion thereof, or SFPUC access thereto. Prior to the commencement of any work on the Premises to construct any permitted Material Improvements or make any permitted Material Improvement 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, which shall not be unreasonably withheld. SFPUC and its Agents shall have the right to inspect the course of

such construction at all times. Upon completion of such Material Improvements or Material Improvement Alterations, Tenant shall furnish SFPUC with a complete set of final as-built plans and specifications. Tenant shall pay to SFPUC an administrative fee equal to SFPUC's actual costs in reviewing the plans and specifications and preparing any documentation relative to any consent hereunder.

(b) **Other Improvements**. Except as contemplated by or permitted by the Approved Plans and Permits, Tenant shall not construct or install any Other Improvements nor make or permit any Other Alterations in, to or about the Premises, without SFPUC's prior consent in each instance, as described below.

i. **Annual Mining Plan**.

1. As set forth in Section 11.9, Tenant shall prepare and submit to SFPUC an annual mining plan at the start of each Lease Year describing Tenant's contemplated activities on the Premises for the coming Lease Year, including Other Improvements and Other Alterations for which Tenant is seeking approval.
2. Within 45 days of its receipt of the annual mining plan, the SFPUC shall review the annual mining plan and the related activities and provide its written response. Such response shall include the following information:
 - a. The items in the plan that are approved (which may take the form of a statement that all items are approved except for the items referenced in clauses (b) and (c) below);
 - b. The items in the annual mining plan that are not approved, in the General Manager's reasonable discretion, and the reasons for such disapproval;
 - c. The items in the annual mining plan that the General Manager reasonably determines have material significance to any facility owned and/or operated by SFPUC or to SFPUC water system operations in general; which items shall be reviewed and, if approved, implemented according to the terms of Section 13.1(a) above as if such items were Material Improvements or Material Improvements Alterations.
3. Such response shall be made through the SFPUC's General Manager or his or her designee, following any required environmental review and subject to City's Retained Discretion set

forth in Section 3.3(e).

4. If SFPUC does not communicate its approval or disapproval of any item in the annual mining plan by the date that is 45 days from the SFPUC's receipt of the annual mining plan, such item shall be deemed approved.
5. Tenant shall not implement any item in an annual mining plan that has not been approved by the SFPUC or otherwise deemed approved.

ii. Midyear Updates to Mining Plan.

1. Tenant shall be entitled to petition the SFPUC for review of mining plan updates during the year in instances where Tenant believes that the activity or activities described in the update cannot wait for the next annual review process.
2. Approval of midyear updates to the annual mining plan shall proceed according to the same review and approval provisions as the annual mining plan.

iii. General Provisions.

1. Subject to SFPUC approval as described in this Section, all permitted Other Improvements or Other Alterations shall be done at Tenant's sole expense, in a good and professional manner and in strict compliance with all Laws and approved permits.
2. The reasonableness of the SFPUC's actions in approving or disapproving any item in the annual mining plan shall be considered in light of the SFPUC's operation of its facilities as well as the future use of the Premises and adjacent property for water storage and public recreational uses and City's Retained Discretion.
3. Any ongoing activities that were approved by SFPUC in a prior annual mining plan and that are proposed to be continued in a subsequent year in the same manner as previously described may be noted as such in the subsequent annual mining plan and shall not be subject to further review and approval except to the extent that (A) such activities diverge from the previously approved description or (B) the General Manager reasonably determines that the continuation of such activities has material significance to any facility owned and/or operated by SFPUC or to SFPUC water

system operations in general as described in Section 13.1(b)(i)(2)(c).

- iv. In no event shall the construction or installation of any Other Improvements or the making of any Other Alterations impair the use or operation of facilities owned and/or operated by SFPUC, or any portion thereof, or SFPUC access thereto. Prior to the commencement of any work on the Premises to construct any permitted Other Improvements or make any permitted Other 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. SFPUC and its Agents shall have the right to inspect the course of such construction at all times upon reasonable notice to Tenant.

13.2 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 13.1 above other than office facilities, sales facilities, scales, the asphalt, concrete and processing plants and the sand and gravel conveyance and processing equipment ("Tenant's Plants and Equipment") shall be and remain City's property. Upon the Expiration Date or any earlier termination hereof, Tenant shall surrender all such Improvements and Alterations without any further action by either party, without any obligation by City to pay any compensation therefor to Tenant and without the necessity of any deed from Tenant to City. However, in the event that SFPUC, at its sole option and without limiting any of the provisions of Section 13.1 above, requires as a condition to approval of any such Improvements or Alterations that Tenant remove such Alterations or Improvements from the Premises upon the expiration or termination of this Lease, Tenant shall do so in accordance with the provisions of Article 27 hereof.

13.3 Tenant's Personal Property. All furniture, furnishings and articles of movable personal property and equipment installed in or around 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 27.1(b) hereof. At least ten (10) days prior to delinquency, Tenant shall pay all taxes levied or assessed upon Tenant's Personal Property and, upon request, shall deliver to SFPUC satisfactory evidence of such payment.

14. REPAIRS AND MAINTENANCE

14.1 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 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, in compliance with the Approved Plans and Permits and with applicable Law. 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.

14.2 Maintenance of Fences. Tenant shall construct and maintain in good condition and repair throughout the Term a fence, subject to City's approval, along or about the property line of the Premises. Gates at all entrances to the Premises shall be kept locked and secured when Tenant's employees are not on site.

14.3 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.

15. UTILITIES

15.1 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, drinking water, sewage, telephone service and trash collection, and for all deposits, connection and installation charges; provided, Tenant agrees that it shall purchase all drinking water and electricity necessary for its operations from City unless and to the extent City is unwilling or unable to provide same to Tenant.

15.2 Non-Potable Water; Recycled Water. As of the date this Lease is executed, sufficient non-potable water supplies exist on Premises for aggregate processing operations. To the extent that onsite non-potable water supplies are unavailable for aggregate processing operations, and recycled water becomes available for such purposes, Tenant shall be required to use such recycled water supplies to the extent of any deficiency in naturally occurring water supplies on the Premises, provided that the quality of recycled water is suitable for use in sand

and gravel processing operations. If Tenant can use recycled water, Tenant shall pay for such recycled water supplies at rates established by the SFPUC for recycled water users generally. Any project to provide recycled water to the Premises will deliver such water to a turnout constructed to the boundary of the Premises.

15.3 Repair and Maintenance. The Parties agree that any and all utility improvements shall be subject to the provisions of Section 13.1 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 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.

16. LIENS

Tenant shall keep the Premises (including, without limitation, the SFPUC Facilities) free 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 materialmen'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.

17. COMPLIANCE WITH LAWS

17.1 Compliance with Laws. Tenant shall promptly, at its sole expense, maintain the Premises, any Improvements permitted hereunder 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, sanitation and safety (including, without limitation, applicable regulations of the Alameda County Health Department, the policies and directives of the SFPUC or its successor, and California Health and Safety Code §§ 4450 and 4458), disabled accessibility including,

without limitation, the Americans with Disabilities Act, 42 U.S.C.S. §§ 12101 et seq. and Title 24 of the California Code of Regulations, all present and future Environmental Laws, and the Surface Mining Control and Reclamation Act of 1977 and any state and local ordinances enacted pursuant thereto. 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 such repairs and alterations to the Rent under this Lease, the length of the then remaining Term hereof, the relative benefit of the repairs to Tenant or City, the degree to which such repairs and alterations 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 the other provisions hereof, 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, except as provided in Section 3.3(i) and Article 20, 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.

17.2 Regulatory Approvals.

(a) **Responsible Party.** Tenant understands and agrees that Tenant's use of the Premises will require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises, which may include, but shall not be limited to, the County of Alameda, California Department of Fish & Game, California Division of Mines & Geology, California Regional Water Quality Control Board, and the U.S. Army Corps of Engineers. Tenant shall be solely responsible for obtaining any and all such Regulatory Approvals except to the extent such Regulatory Approvals arise or result from Pre-Existing Pollution Conditions or from acts or omissions of the City, its Agents, or its Invitees relating to work for the City's utility installations or facilities other than the quarry. Tenant shall not seek any Regulatory Approval without first obtaining the written consent of the SFPUC. Throughout the permit process for any Regulatory Approval, Tenant shall consult and coordinate with SFPUC in its efforts to obtain such permits. However, Tenant shall not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a permit from any regulatory agency if City is required to be a co-permittee under such permit or the conditions or restrictions could create any obligations on the part of City whether on or off of the Premises, unless in each instance City has previously approved such conditions in writing in City's sole and absolute discretion. No approval by City shall limit Tenant's obligation to pay all the costs of complying with such conditions. Tenant shall bear all costs associated with applying for, obtaining and maintaining any necessary or appropriate Regulatory Approvals and shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a Regulatory Approval. Tenant shall comply with any and all conditions or restrictions imposed by regulatory

agencies as part of a Regulatory Approval, at no cost to SFPUC or City. 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. Without limiting any other indemnification provisions of this Lease, Tenant shall Indemnify City and the other Indemnified Parties against all Losses arising in connection with Tenant's failure to obtain any Regulatory Approval in violation of Law or failure to 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 the SFPUC, 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.

17.3 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.

17.4 Reports and Communications. (a) Within ninety (90) days following the expiration of each Lease Year, Tenant shall submit to City a report detailing progress of excavation work and compliance with Approved Plans and Permits, as well as any other information reasonably requested by City. Each annual report shall certify compliance with all Laws, and include a map showing current progress of mining and reclamation activities. (b) Tenant shall promptly provide to City copies of any and all environmental, physical, geotechnical or other similar technical reports in Tenant's possession relating to the Premises. Tenant represents and warrants that it has delivered to City all such existing reports in Tenant's possession or control. (c) Tenant shall copy City on all communications to any governmental or regulatory entity relating to quarrying activities on or about the Premises, and shall forward to City, within ten (10) days following receipt, a copy of all communications received from any governmental or regulatory entity relating to quarrying activities on or about the Premises.

18. FINANCING; ENCUMBRANCES; SUBORDINATION

18.1 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.

(c) **Leasehold Encumbrances.** Without limiting Article 21 hereof, 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.

19. DAMAGE OR DESTRUCTION.

19.1 **Damage or Destruction to the Improvements.** In the case of damage to or destruction of the Premises or the Improvements by fire or any other casualty including earthquake or land slides, whether insured or uninsured, Tenant shall, at its sole cost and with reasonable promptness and diligence, restore, repair, replace or rebuild the Premises and Improvements to a satisfactory condition as required by applicable Laws.

19.2 **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 hereof.

20. EMINENT DOMAIN

20.1 **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 hereunder shall be determined pursuant to this Article. 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.

20.2 **Total Taking; Automatic Termination.** If a total Taking of the Premises occurs, then this Lease shall terminate as of the Date of Taking.

20.3 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 if the partial Taking renders the remaining portion of the Premises untenable or unsuitable for continued use by Tenant and Tenant elects to terminate; otherwise this Lease shall continue in full force and effect.

(b) Either Party electing to terminate under the provisions of this Article 20 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.

(c) **Rent; Award.** Upon termination of this Lease pursuant to an election under Section 20.3(a) above, then: (i) Tenant's obligation to pay Rent shall continue up until the date of termination, and thereafter shall cease, except that Rent shall be reduced as hereinafter provided for any period during which this Lease continues in effect after the Date of Taking, and (ii) City shall be entitled to the Award in connection with the value of its interest in the Premises excluding any portion of the Award made for the value of Tenant's interest in 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 Tenant make a separate claim for compensation), and (iii) Tenant shall be entitled to pursue and obtain an Award from the condemning authority for the value of its interest in the leasehold estate. The value of City's and Tenant's respective interests in the Premises shall be established by the same court of law that establishes the amount of the Award. In addition, 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.

(d) **Partial Taking: Continuation of Lease.** If a partial Taking of the Premises occurs and this Lease is not terminated in its entirety under Section 20.3(a) above, 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) there shall be no reduction in Base Rent; (ii) City shall be entitled to the Award in connection with its interest in the Premises, excluding any portion of the Award made for the value of the Tenant's interest in the leasehold estate created by this Lease; and (iii) Tenant shall make any necessary changes to the Approved Plans and Permits to accommodate such Taking, subject to City's prior written approval which shall not be unreasonably withheld or delayed. Tenant shall be entitled to pursue and obtain an Award from the condemning authority for the value of its interest in the leasehold estate created by this Lease, provided, Tenant shall have no claim against City for the value of any unexpired Term of this Lease. The value of City's and Tenant's respective interests in the Premises shall be established by the same court of law that establishes the amount of the Award. In addition, 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.

20.4 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 three hundred sixty-five (365) 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 that portion of any Award attributable to the Percentage Rent City would have received but for the Taking. City shall be entitled to receive a portion of the Award related to its fee and leasehold interests in the Premises, including any loss of revenue.

21. ASSIGNMENT AND SUBLETTING

21.1 Restriction on Assignment and Subletting.

(a) **Transfers.** Tenant shall not directly or indirectly (including, without limitation, by merger, acquisition or other transfer of any controlling interest in Tenant), voluntarily or by operation of Law, (i) sell, assign, encumber, pledge or otherwise transfer any part of its leasehold estate hereunder (collectively, "Assignment"), or (ii) permit any portion of the Premises to be occupied by anyone other than itself, its Agents, employees or Invitees, or sublet any portion of the Premises (collectively, "Sublease" and collectively with Assignment, "Transfer"), without the prior written consent of City, acting by and through the General Manager or, to the extent required, acting through the Commission or Board of Supervisors, in each instance. City shall not unreasonably withhold, condition or delay its consent to any such Transfer, provided that in all events such Transfer shall be subject to the conditions of this Article 21. In determining whether to consent to a Transfer, City shall consider the proposed transferee's financial ability, mining experience, ability to comply with all of the contracting provisions set forth in this Lease, as well as any other matters permitted by applicable Law. Tenant understands and agrees that the City is relying on Tenant's financial ability, mining experience, and interest in the Apperson Lease and Existing Agreements in granting this Lease. For any Assignment, the proposed transferee must demonstrate to City's reasonable satisfaction that it (A) is as capable as Tenant, financially and otherwise, of performing each of Tenant's obligations under this Lease, the Apperson Lease, the Existing Agreements and any other documents to be assigned, and (B) is subject to the jurisdiction of the courts of the State of California. Any Transfer without City's prior written consent shall be voidable at the option of City in its sole discretion and the General Manager shall have the right to immediately terminate this Lease by sending written notice to Tenant.

(b) **Transfer Fee.** Tenant agrees and understands that the intent and purpose of this Lease is to allow for use of the Property as provided in Section 11.1, and not for the purpose of creating an investment in property. Except as provided in Section 21.9 and Section 21.10 below, any Transfer of this Lease, including but not limited to any Transfer to an Affiliate of Tenant, shall be subject to the payment of a transfer fee in the amount of One Million Five Hundred Thousand Dollars (\$1,500,000) (the "Transfer Fee"), and City may condition any

consent to such a Transfer on the receipt of the Transfer Fee. The Parties agree that the Transfer Fee is not a penalty, is a material part of the consideration for this Lease, and Landlord would not enter into this Lease without the Transfer Fee.

(c) **Significant Changes; Statement of Ownership.** If Tenant is a corporation, partnership, limited liability company, or other entity, any dissolution, merger, consolidation or other reorganization of Tenant, or the sale or other transfer of a controlling percentage of the stock or ownership interest of Tenant, or any issuance or transfer of beneficial interests in Tenant, directly or indirectly, in one or more transactions, that results in a change in the control of Tenant, or the sale of fifty percent (50%) or more of the value of the assets of Tenant, shall be deemed a Transfer for purposes of this Lease. The phrase "controlling percentage" shall mean the ownership of, and the right to vote; stock or ownership interests constituting at least fifty percent (50%) of the total combined voting power of all classes of stock or ownership interests that are outstanding and "control" shall mean direct or indirect ownership of fifty percent (50%) or more of all of the voting stock of such corporation or fifty percent (50%) or more of all the legal and equitable interest in any other type of business entity. Any such sale, transfer or other conveyance shall be considered on a cumulative basis, such that multiple transactions shall result in a "Transfer" if and when the fifty percent (50%) threshold is met when compared to the asset, stock or ownership interests of Tenant on the Commencement Date. Tenant shall notify City within thirty (30) days following the transfer of any stock in Tenant, or any reorganization or alteration in ownership interests in Tenant. At such time or times as SFPUC may request, Tenant shall furnish SFPUC with a statement, certified as true and correct by an officer of Tenant, setting forth all of the constituent shareholders, partners or members, as applicable, and holders of beneficial interests, of Tenant and the extent of their respective holdings. Tenant's furnishing of such information shall not relieve Tenant from liability for its failure to comply with the provisions of this Lease. This provision shall be read broadly in a manner so as to prevent Tenant's owners from attempting to transfer ownership or control of the corporation without the payment of the Transfer Fee.

21.2 Notice of Proposed Transfer; Delivery of Relevant Documentation. If Tenant desires to enter into an Assignment or a Sublease, including but not limited to any transfer for which Landlord's consent is not required hereunder, then Tenant shall give written notice (a "Notice of Proposed Transfer") to City of its intention to do so. Along with any Notice of Proposed Transfer, Tenant shall deliver to City a deposit of Two Thousand Dollars (\$2,000) toward City's processing costs, as described in Section 21.7 below. The Notice of Proposed Transfer shall identify the proposed 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 redacted to delete financial terms. Tenant shall provide City with financial statements for the proposed transferee, a statement of the proposed transferee's relevant experience, a description of the proposed use of the Premises by the proposed transferee, an exact copy of all instruments and other legal documents involved in effecting the proposed transfer including, as applicable, the agreement of sale, transfer, or equivalent (redacted to delete financial terms), and such additional information regarding the

proposed transfer as City may reasonably request. Without limiting the foregoing, for any proposed Assignment of the Lease Tenant shall provide the City with the following:

- (i) all instruments and other legal documents involved in effecting the proposed assignment of the Apperson Lease and the Existing Agreements including the agreement of sale, transfer, or equivalent (redacted to delete financial terms);
- (ii) all instruments and legal documents involved in effecting any proposed transfer or assignment of SMP 30 (as revised, if applicable) and SMP 17 (as revised, if applicable) including any agreements for assignment, assumption, or equivalent (redacted to delete financial terms); and
- (iv) all instruments and legal documents required to comply with the provisions of Section 21.7.

All of the foregoing shall be subject to the review and consent of the City, acting through the General Manager, which consent shall not be unreasonably withheld, delayed or conditioned.

21.3 City's Response. Within twenty (20) business days after City's receipt of the Notice of Proposed Transfer, the documents referred to in Section 21.2 and any additional information requested by City (the "Response Period"), City shall, by written notice, inform Tenant whether or not it is willing to consent to the proposed transfer. If City consents to the proposed transfer, then Tenant shall be entitled for a period of ninety (90) days to enter into such Assignment or Sublease with the party identified in the Notice of Proposed Transfer (sometimes referred to herein as the "Permitted Transferee") and on the terms and conditions set forth therein and, except as provided in Sections 21.9 and 21.10, upon payment of the Transfer Fee. 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 not to respond to Tenant's Notice and may pursue any rights or remedies it may have hereunder or at Law or in equity.

21.4 Conditions. Any Transfer of this Lease is further subject to the satisfaction of the following conditions precedent, each of which is hereby agreed to be reasonable as of the date hereof:

- (i) all instruments and other legal documents involved in effecting the Transfer (including the agreement of sale, transfer, or equivalent (redacted to delete financial terms) as applicable), the assignment of the Apperson Lease and the Existing Agreements (in the event of an Assignment of this Lease), the transfer or assignment of SMP 30 (as revised, if applicable), and/or SMP 17 (as revised, if applicable), and the compliance with Section 21.7, shall have been submitted to City for review, City shall have approved such documents, such documents shall have been shall be executed by Tenant, the Transferee and any required third parties, and copies or duplicate originals thereof shall have been delivered to the City;

(ii) for any Assignment, SMP 30 (as revised, if applicable) and SMP 17 (as revised, if applicable) shall have also been transferred, or will be transferred concurrently, to the Transferee and Tenant shall provide City with evidence thereof;

(iii) there shall be no Event of Default or Unmatured Event of Default on the part of Tenant under this Lease or any of the other documents or obligations to be assigned to the proposed transferee;

(iv) the proposed transferee (A) is subject to the jurisdiction of the courts of the State of California, and (B) in the event of an Assignment, has demonstrated to City's reasonable satisfaction that it is capable, financially and otherwise, of performing each of Tenant's obligations under this Lease, the Apperson Lease, the Existing Agreements and any other documents to be assigned.

Notwithstanding the foregoing or any other provision of this Article 21 to the contrary, in no event will the City be required to approve any Assignment if (i) the proposed Assignment is in connection with any transaction for the purposes of syndicating the Lease, such as a security, bond or certificates of participation financing (as determined by City in its sole discretion) but expressly excluding the trading of shares on the open market or (ii) the proposed assignee is forbidden by applicable Law from transacting business or entering into contracts with City.

21.5 Effect of Transfer. No Sublease or Assignment by Tenant nor any consent by City thereto shall relieve Tenant, of any obligation to be performed by Tenant under this Lease. Any Sublease or Assignment that is not in compliance with this Article shall, at City's option in its sole 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 to comply with this Article.

21.6 Assumption by Transferee. Each Transferee shall assume all obligations of Tenant under this Lease and shall be and remain liable jointly and severally with Tenant 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 (provided that, in the case of a Sublease, the subtenant shall only be responsible for such obligations which apply with respect to the sublet portions of the Premises and the term of the Sublease, or which arise as a result of the subtenant's use of the sublet premises or other areas of the Premises, including any provisions which are generally applicable to contracts for the use of City or SFPUC property). No Assignment shall be binding on City unless Tenant or Transferee shall deliver to City, within thirty (30) days after Tenant entered into such assignment, a counterpart of the assignment agreement and an instrument in recordable form that contains a covenant of assumption by such Transferee satisfactory in substance and form to City, and consistent with the requirements of this Article, and a copy of the assignment of the Apperson Lease and the obligations under the Existing Agreements. 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. The form of such instrument of

assignment shall be subject to City's approval, which approval shall not be unreasonably withheld, conditioned or delayed.

21.7 Processing Costs. Tenant shall reimburse City for legal expenses reasonably incurred by City in connection with City's review of the proposed Transfer and the documentation required in connection therewith and for any other reasonable costs that may be incurred by City in connection with any proposed Transfer, including, without limitation, the costs of SFPUC's administrative time and the costs of making investigations as to the acceptability of the proposed transferee. If City's actual costs incurred in connection with the review of the proposed transferee, the proposed Transfer and related documentation exceed the amount of the deposit previously paid by Tenant, Tenant shall pay City the amount of the excess within fifteen (15) days of City's written request therefor, accompanied by reasonable written evidence of such costs, and if City's costs are less than the amount of such deposit, City shall promptly refund to Tenant any overpayment.

21.8 Indemnity for Relocation Benefits. Without limiting Section 21.6, 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.

21.9 Special Provisions Regarding Permitted Subleases; Sublease to Existing Operator. The Parties to this Lease intend that, if SMP 30 is revised and this Lease is amended to permit the operation of a ready mix concrete plant and an asphalt plant on the Premises, the Tenant named herein shall conduct operations as the operator of the asphalt plant to be located on the Premises. So long as Tenant is the operator of an asphalt plant on the Premises from the date the first such plant is established, Tenant, in Tenant's sole discretion (but subject to the requirements of this Article 21 other than Section 21.1(b), including without limitation Section 21.2 and Section 21.3), may from time to time during the Term of this Lease sublease portions of the Premises to third parties for the purpose of conducting the operations permitted under this Lease (other than the operation of the asphalt plant which is to be operated by Tenant) (each such Sublease, a "Permitted Sublease" and the subtenant under each Permitted Sublease, a "Permitted Subtenant"). The financial terms of a Permitted Sublease between Tenant and the Permitted Subtenant shall not be subject to review and/or approval by City. Further, Tenant may enter into a Permitted Sublease with Existing Operator for portions of the Premises, subject to the requirements of this Article 21, provided that if Existing Operator provides a written representation to the City that it has the financial and operational capability to fulfill the obligations of this Lease which are to be performed by Existing Operator under the Sublease, Existing Operator shall not be required to provide financial statements or a statement of its relevant experience as otherwise required under Section 21.2. Permitted Subleases shall not be subject to a Transfer Fee, provided that if such a Sublease is entered into prior to the establishment of the asphalt batching plant, and Tenant does not later operate such plant from and after the first date such a plant is established on the Premises, then upon notice from City the Transfer Fee shall be payable in the amount of \$1,500,000 plus imputed interest at a rate of 3%

per annum from the effective date of the Sublease in question to the date of payment. In no event shall Tenant assign to any other entity the primary responsibility for (i) constructing the Minimum Required Improvements or (ii) performing the utility relocations described under Section 12.3(c). Notwithstanding the foregoing, a Sublease will be deemed a Transfer for purposes of Section 21.1(b) in any instance where Tenant does not continue to be a point of contact for City during the term of such Sublease in coordinating activities on the Premises and otherwise ensuring compliance with the requirements of this Lease.

21.10 Certain Affiliate Transfers Exempt from Transfer Fee. If at any time during the Term of this Lease Tenant Transfers this Lease to an Affiliate, such Transfer shall not be subject to a Transfer Fee, provided that such Affiliate remains an Affiliate of the entity comprising Tenant at the time of the Transfer (as such Tenant entity is owned and constituted on the date of the Transfer) for the term of the Sublease or, in the case of an Assignment, for the balance of the Term of this Lease. If at any time during the term of this Lease the relationship changes between Tenant and any Affiliate to whom Tenant has Transferred this Lease or between Tenant and any Affiliate then subleasing all or any portion of the Premises from Tenant, such that such party is no longer an Affiliate of Tenant (as such Tenant entity is owned and constituted on the date of the Transfer), then the Transfer Fee shall be payable within thirty (30) days after the date of such change in the relationship.

22. DEFAULT; REMEDIES

22.1 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, and the continuation of such failure for a period of ten (10) days after the same is due;

(b) **Vacation or Abandonment.** Any vacation or abandonment of the Premises for more than fourteen (14) consecutive days;

(c) **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;

(d) **Insurance.** Tenant fails to maintain any insurance required to be maintained by Tenant under this Lease, which failure continues without cure for five (5) business days after written notice from SFPUC;

(e) **Transfer.** Tenant suffers or permits a Transfer of this Lease or any interest therein to occur in violation of this Lease or suffers or permits a Significant Change to occur in violation of this Lease.

(f) **Covenants, Conditions and Representations.** Any failure to perform or comply with any other covenant, condition or representation made under this Lease, including without limitation the failure to obtain and maintain all requisite approvals and permits, the failure to begin quarrying on or before the date set forth in Section 11.2 hereof, the failure to timely prepare the water protection and emergency response plan described in Section 11.7, the failure to act in accordance with any such approved water protection and emergency response plan, or any of the representations, warranties or certifications made in Section 36.33 are materially untrue or inaccurate, 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 capable of cure but is not capable of cure within such 15-day period, Tenant shall have a reasonable period (not to exceed 180 days) 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; provided, however, if Tenant has failed to perform the same covenant, condition, or representation three (3) times in any twenty-four (24) month period, no such fifteen (15) days notice and cure period shall thereafter be applicable until a period of twelve (12) months passes during which such covenant, condition, or representation is in each instance timely satisfied Tenant, at which time the fifteen (15) day notice and grace period provided for above shall again apply with respect to such covenant, condition, or representation.

(g) **Default, Termination or Transfer of Apperson Lease.** Any default under the Apperson Lease beyond any notice and cure period provided therein, any termination of the Apperson Lease, any transfer of Tenant's interest in the Apperson Lease other than to a Permitted Transferee at the time Tenant's interest in this Lease is transferred to such Permitted Transferee, or any failure to transfer Tenant's interest in the Apperson Lease at the time Tenant's interest in this Lease is assigned to a Permitted Transferee.

(h) **Transfer of SMP 30 or SMP 17.** Any transfer to any party other than Tenant or a Permitted Transferee of revised or unrevised SMP 17 or revised or unrevised SMP 30, or any failure to transfer SMP 17 and SMP 30 to a Permitted Transferee at the time Tenant's interest in this Lease is assigned to a Permitted Transferee.

22.2 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, Percentage Rent, Processing Royalty 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, the cost of removing Tenant's equipment, personal property and improvements, the costs associated

with reletting the Premises, and a portion of the cost of reclamation and restoration required under that version of SMP 30 (including the restoration plan and landscaping plan) in effect as of the date of termination, such portion to be determined by multiplying the total estimated cost of reclamation and restoration following completion of mining under SMP 30 by the ratio which the number of tons of sand and gravel extracted by Tenant during the Term bears to the total number of tons of sand and gravel estimated to be present on the Premises at the Commencement Date if the Premises were to be mined to the Required Mining Depth under SMP 30 in effect as of the termination date, if City enters into a new mining lease of the Premises, or, if City does not enter into a new mining lease for the Premises but elects to convert the Premises to a water storage facility following the termination of this Lease, the total cost of reclamation and restoration. 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. 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 subsection 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.

22.3 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.

22.4 Waiver of Rights to Recover Possession. In the event City terminates Tenant's right to possession of the Premises pursuant to this Article 22, Tenant hereby waives any rights to recover or regain possession of the Premises under any rights of redemption to which it may be entitled by or under any present or future Law, including, without limitation, California Code of Civil Procedure Sections 1174 and 1179 or any successor provisions.

23. WAIVER OF CLAIMS; INDEMNIFICATION

23.1 Waiver of Claims.

(a) 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 from any cause whatsoever; provided however, nothing herein shall relieve City from liability to the extent caused by the active 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.

(b) 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 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.

(c) As part of Tenant's agreement to accept the Premises in its "As Is" condition as provided herein, and without limiting such agreement and any other waiver contained herein, except as specifically set forth below Tenant on behalf of itself and its successors and assigns, waives its right to recover from, and forever releases and discharges, City and its Agents, and their respective heirs, successors, administrators, personal representatives and assigns, from any and all Losses, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the physical or environmental condition of the Premises and any related improvements or any Laws or regulation applicable thereto or the suitability of the Premises for Tenant's intended use. Notwithstanding the foregoing, except as provided in Section 23.1(b) above with respect to consequential or incidental damages, Tenant does not waive its right, if any, to recover from, or otherwise release or discharge, the City, its Agents, and their respective heirs, successors, administrators, personal representatives and assigns, from any Losses to the extent arising or resulting from Pre-Existing Pollution Conditions (except to the extent resulting from the exacerbation of an Pre-Existing Pollution Condition by Tenant, its Agents or Invitees) or from the negligence or willful misconduct of the City or its Agents relating to work performed by such parties during the Term for the City's utility installations or facilities other than the quarry.

(d) 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 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

Tenant acknowledges that the releases contained herein includes all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims within the scope of the release. Tenant realizes and acknowledges that it has agreed upon this release 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.

23.2 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, on or about the Premises or any other City property during the Term of the Lease; (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 during the Term of the Lease; (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; (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; or (g) City's issuance of this Lease to Tenant, including but not limited to any third party lawsuit challenging the validity or effectiveness of this Lease; all regardless of the 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 such Losses as are caused by the active negligence or intentional wrongful acts or 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. The insurance requirements and other provisions of this Lease shall not limit Tenant's indemnification obligations under this Section 23.2 or any other indemnification provision of this Lease. Tenant's obligations under this Section shall survive the expiration or sooner termination of the Lease. Notwithstanding the foregoing, Tenant shall not Indemnify the City, its Agents or Indemnified Parties for any Loss to the extent arising or resulting from Pre-Existing Pollution Conditions (except to the extent resulting from the exacerbation of any Pre-Existing Pollution Condition by Tenant, its Agents or Invitees) or from acts or from the negligence or willful misconduct or omissions of the City or its Agents relating to work performed by such parties for the City's utility installations or facilities other than the quarry.

24. INSURANCE

24.1 Tenant's Insurance. Tenant shall procure and maintain throughout the Term of this Lease and pay the cost thereof the following insurance:

(a) **Property Insurance.** At all times Tenant shall, at its sole cost, keep the Premises insured for the mutual benefit of City and Tenant against loss or damage by such perils as are included in the standard "All Risks Form" of property damage insurance, in amounts sufficient to prevent City or Tenant from becoming a co-insurer within the terms of the applicable policies, and, in any event, in an amount equal to 100% of the Full Insurable Value of the Premises.

(b) **Commercial General Liability and Other Insurance.** Tenant shall at all times, at its cost, also maintain insurance for the mutual benefit of City and Tenant as follows:

(i) "Commercial General Liability" insurance policies with coverage at least as broad as Insurance Services Office form CG 00 01 10 93 (or its replacements) insuring

against claims for bodily injury (including death), property damage, personal injury and advertising injury occurring upon the Premises (including the Improvements), and operations incidental or necessary thereto occurring on the Premises or any part of the Premises, such insurance, with such limits as may reasonably be required by City from time to time, but in any event not less than Ten Million Dollars (\$10,000,000.00) each occurrence and annual aggregate, covering bodily injury and broad form property damage including contractual liability (which to the extent possible under the above-referenced policy form) includes coverage of the indemnity obligations in Section 23.2), independent contractors, explosion, collapse, underground (XCU), and products and completed operations coverage.

(ii) Worker's compensation insurance with employer's liability insurance covering all persons employed by Tenant and with respect to whom death or bodily injury claims could be asserted against City or Tenant, with limits of not less than \$1,000,000 each accident, \$1,000,000 policy limit bodily injury by disease, \$1,000,000 each employee bodily injury by disease.

(iii) Business automobile liability insurance covering all owned, non-owned or hired motor vehicles to be used by Tenant and its Agents in connection with Tenant's use and occupancy of the Premises, affording protection for bodily injury (including death) and property damage in the form of Combined Single Limit Bodily Injury and Property Damage policy with limits of not less than One Million Dollars (\$1,000,000) per accident.

(iv) Contractor's Pollution Legal Liability insurance, with limits of not less than \$5,000,000 each occurrence and annual aggregate specific to the Premises, including errors and omissions.

(c) **Insurance to be Provided by Contractors in Connection With Improvements**. In the event Tenant engages any contractors to perform Improvements to the Premises, Tenant shall require such contractors to provide evidence of commercial general liability insurance and comprehensive all-risk builders insurance for the benefit of Tenant and Landlord and which shall at all times be in full force and effect during the course of any construction on the Premises. Such insurance shall provide not less than \$2,000,000 of combined single limit public liability insurance. Each such contractor shall also provide evidence of worker's compensation insurance, with employer's liability insurance, covering all persons employed by such contractor at the Premises.

(d) **Professional Liability**. Tenant shall require all architectural, design, engineering, geotechnical and environmental professionals under contract with Tenant for any relocation of or modification to City's facilities, including, without limitation, any utility line relocation, to maintain professional liability (errors or omissions) insurance, with limits of not less than \$1,000,000 each claim and aggregate, with respect to all professional services provided to Tenant therefor, and a deductible of not more than \$100,000 per claim.

24.2 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) Shall be carried under a valid and enforceable policy or policies issued by insurers of recognized responsibility that are rated Best A—:VIII or better (or a comparable successor rating) and legally authorized to sell such insurance within the State of California;

(b) Should any of the General Liability, Contractors' Pollution Legal Liability and/or Errors and Omissions coverages required to be provided by Tenant be provided under a claims-made form:

(i) The retroactive date must be shown, and must be before the date of the contract or the beginning of contract work.

(ii) Insurance coverage must be maintained without lapse and evidence of insurance must be provided for at least five (5) years after the expiration or termination of this Lease, to the effect that, should occurrence 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.

(iii) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date Tenant must purchase extended reporting period coverage for a minimum of five (5) years after the expiration or termination of this Lease.

(iv) A copy of the claims reporting requirements must be submitted to for review.

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

(d) All liability insurance policies provided by Tenant shall contain, or be endorsed to provide, the following:

(i) Name Tenant as the insured and the City and County of San Francisco, its officers, agents and employees, as additional insured, 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. Such policies shall also provide for severability of interests and that an act or omission of one of the

named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

(iii) All policies shall be endorsed to provide thirty (30) days' advance written notice to City of cancellation, non-renewal or reduction in coverage by either party, mailed to the address(es) for City set forth in Section 36.1 below.

(e) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared by Tenant and approved by City under accepted insurance standards. Tenant may maintain a deductible of not more than \$100,000 for the Commercial General Liability coverage required under Section 21.1(b)(i) and not more than \$250,000 for the worker's compensation insurance coverage require under Section 21(b)(ii), provided that at the time Tenant maintains such deductibles, Tenant's net worth and financial standing remains substantially similar to Tenant's net worth and financial standing as of the date this Lease is executed.

24.3 Proof of Insurance. Tenant shall deliver to City certificates of insurance in form and with insurers 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 thirty (30) 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, after giving Tenant ten (10) days prior notice, 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 therefor.

24.4 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.

24.5 No Limitation on Indemnities. Tenant's compliance with the provisions of this Section shall in no way relieve or decrease Tenant's indemnification obligations hereunder, or any of Tenant's other obligations or liabilities under this Lease.

24.6 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, provided Tenant has been given written notice of such lapse by city, and Tenant has failed within ten (10) business days thereafter to cause such insurance to be reinstated if such insurance is then commercially available.

24.7 Tenant's Personal Property. Tenant shall be responsible, at its expense, for separately insuring Tenant's Personal Property, including, without limitation, mobile equipment.

24.8 City's Self Insurance. Tenant acknowledges that City has no insurance obligations hereunder, and City shall not be required to carry any insurance with respect to the Premises or otherwise.

24.9 Waiver of Subrogation. Notwithstanding anything to the contrary contained herein, to the extent permitted by their respective policies of insurance, City and Tenant each hereby waive any right of recovery against the other party and against any other party maintaining a policy of insurance covering the Premises and their contents, or any portion thereof, for any loss or damage experienced by such other party with respect to the Premises or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party. If any policy of insurance relating to the Premises carried by Tenant does not permit the foregoing waiver or if the coverage under any such policy would be invalidated due to such waiver, Tenant shall obtain, if possible, from the insurer under such policy a waiver of all rights of subrogation the insurer might have against City or any other party maintaining a policy of insurance covering the same loss, in connection with any claim, loss or damage covered by such policy. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of City for all work performed by the Tenant, its employees, agents and subcontractors.

25. ACCESS BY CITY

25.1 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 in a reasonable manner, at all reasonable times, and at its sole cost and expense, for any of the following purposes:

- (i) To determine whether the Premises are in good condition and to inspect the Premises (including, without limitation, soil borings or other Hazardous Material Investigations);
- (ii) To determine whether Tenant is in compliance with its obligations hereunder and to cure or attempt to cure any such default in accordance with the provisions of Section 22.3 hereof;
- (iii) To serve, post or keep posted any notices required or allowed under any of the provisions of this Lease;
- (iv) To do any maintenance or repairs to the Premises that City has the right or the obligation, if any, to perform hereunder upon delivery of not less than five (5) days prior written notice;

(v) To show it to any prospective purchasers, brokers, Encumbrancers or public officials, or, during the last year of the Term of this Lease, exhibiting the Premises to prospective tenants or other occupants, and to post any "for sale" or "for lease" signs in connection therewith upon delivery of not less than five (5) days prior written notice;

(vi) To conduct surveys and other data gathering efforts in furtherance of restoration and water resource planning initiatives that may be conducted by City as part of its ongoing operation of a water utility, so long as such surveys do not unreasonably interfere with Tenant's operations.

(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 any Improvements or Tenant's Personal Property on or about the Premises, if such alteration or removal is necessary to appropriately respond to the emergency. 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 property, to the extent City has not acted unreasonably in light of the circumstances, 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.** Unless City shall have behaved unreasonably in light of the circumstances, City shall not be liable, 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 in accordance with this Article 25.

(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.

25.2 Pipeline and Utility Installations. Without limiting Section 25.1 above, but provided the same does not result in any material disruption to Tenant's use hereunder, 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.

25.3 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 (including, without

limitation, the Expansion Premises Haul Road) and as City otherwise determines necessary or appropriate for purposes of maintaining or using the SFPUC Facilities, for spoils disposal, or for other purposes, provided that City shall use its reasonable good faith efforts to use such roadways in a manner that will, to the extent practicable, minimize any disruption to Tenant's use hereunder.

26. ESTOPPEL CERTIFICATES AND APPERSON LEASE CERTIFICATES

26.1 Lease Estoppels. 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 Commencement Date and 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 defaults under this Lease (or if so, specifying the same), (d) the dates, if any, to which the Rent has been paid, and (e) any other information that may be reasonably required by any such persons or entities. Any such certificate delivered pursuant to the provisions hereof may be relied upon by the other Party or any prospective purchaser or Encumbrancer of its estate.

26.2 Apperson Lease Certificates. Tenant shall, from time to time during the Term upon not less than twenty (20) days' prior written notice from SFPUC, execute, acknowledge and deliver to SFPUC, a statement in writing certifying that the Apperson Lease is unmodified and in full force and effect (or, if there have been modifications, that the Apperson Lease is in full force and effect as modified and stating the modifications), (c) that there are no defaults under the Apperson Lease (or if so, specifying the nature of any defaults), (d) the dates, if any, to which the rent has been paid under the Apperson Lease, and (e) any other information that may be reasonably required by SFPUC. Promptly upon written demand by SFPUC, Tenant shall use reasonable efforts to obtain from the lessor under the Apperson Lease and furnish to SFPUC certificate of such lessor stating the matters described in the foregoing sentence.

27. SURRENDER; RESTORATION

27.1 Surrender of the Premises.

(a) **Early Surrender Premises.** If the Term of the Lease is extended through the Extended Processing Plant Term, Tenant shall surrender the Early Surrender Premises in the condition required by Section 27.1(b) of this Lease and by the reclamation conditions in the Revised SMP 30 on or before the Revised SMP 30 Expiration Date.

(b) **Generally.** Upon the Expiration Date or any earlier termination of this Lease, Tenant shall surrender to City the Premises in the condition contemplated hereunder, free and clear of all liens, easements and other Encumbrances created or suffered by, through or under Tenant. Prior to surrender, Tenant shall remove all gravel and rock products in accordance with the Approved Plans and Permits, and shall perform the work specified in the Existing Reclamation Plan or the Updated Reclamation Plan, as then applicable under SMP 30, Revised

SMP 30 or Further Revised SMP 30, as applicable, except as otherwise specifically provided in Section 11.10. On or before the Expiration Date or any earlier termination hereof, 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 constructed or permitted to be constructed by Tenant on the Premises (except for any Improvements or Alterations that City agrees are to remain part of the Premises pursuant to the provisions of Section 8.2 above). 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 such removal. In connection therewith, Tenant shall obtain any and all necessary permits and approvals, including, without limitation, any required environmental review or 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.

27.2 Indemnity. 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 incurred by a succeeding tenant resulting from Tenant's failure to surrender the Premises. Tenant acknowledges that such Losses may exceed the amount of the financial assurances required by Alameda County to ensure reclamation of the Premises.

27.3 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 therefor 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 13.2 above.

27.4 Termination Without Further Notice. This Lease shall terminate without further notice on the Expiration Date.

28. HAZARDOUS MATERIALS

28.1 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, except as provided herein. With the prior written consent of City, which consent shall not be

unreasonably withheld, conditioned or delayed, Tenant may bring to the Premises and keep, store and use Hazardous Materials in, on or about the Premises so long as Tenant provides prior written notice to the City of the identity and quantity of such Hazardous Materials proposed to be kept, stored and used on the Premises and demonstrates to City's reasonable satisfaction that the use of each such Hazardous Material in the amount proposed is customary in Tenant's operations on the Premises, that each such Hazardous Material will be used in a manner which strictly complies with all Environmental Laws and that such use by Tenant will not materially increase the risk of fire or other casualty to the Premises. Notwithstanding the foregoing, Tenant may use on the Premises fuel and petroleum products used in connection with servicing vehicles, machinery and other equipment located on the Premises and janitorial or office supplies or materials in such limited amounts as are customarily used for general office purposes relative to the reasonably expected use of such supplies and materials on the Premises. Notwithstanding anything to the contrary contained herein, however, in no event shall Tenant permit any storage, usage, generation, release or disposal of Hazardous Materials in a manner that may cause the Premises to be contaminated by any Hazardous Materials or in violation of any Environmental Laws. Tenant shall protect its employees and the general public in accordance with all Environmental Laws. 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 during the Term of this Lease. 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 this Lease and all applicable Environmental Laws, and Tenant shall promptly provide all such information. Tenant shall promptly deliver to City copies of any reports relating to the existence or absence of any Hazardous Material on or about the Premises, but shall not deliver copies of any such reports to any other person or entity without City's prior written approval, except to the extent Tenant is required to deliver copies of such reports to another person or entity pursuant to a court order or by applicable Law, in which event Tenant shall give City prompt notice of such delivery. Tenant shall keep all test results and reports relating to the existence or absence of any Hazardous Material on or about the Premises strictly confidential unless Tenant has obtained City's written authorization to release such results and reports, and shall indemnify City from any and all Claims resulting from Tenant's failure to keep any information strictly confidential; provided, Tenant shall not be liable if and to the extent Tenant is required to disclose such information pursuant to a court order or by applicable Law or has received City's written permission to release such information. Without limiting City's access rights under Article 25 hereof, City and its Agents shall have the right to inspect the Premises for Hazardous Material and compliance with the provisions hereof at all reasonable times upon reasonable advance oral or written notice to Tenant (except in the event of an emergency). City shall be responsible for all Investigation, Remediation, Claims and Losses related to Hazardous Materials located at, on, under or emanating from the Premises on or prior to the Commencement Date hereof to the extent not caused or exacerbated by Tenant or its Agents. City may, or may not, decide to remediate any such Hazardous Materials. In the event City decides not to remediate and Tenant cannot mine the Premises as a result thereof, Tenant may terminate this Lease without liability therefor. Prior to expiration or earlier termination of this Lease, Tenant, at its sole cost and expense, shall remove any and all Hazardous Materials introduced in, on, under or about the Premises during Tenant's occupancy of the Premises by any

parties other than City and its Agents. Prior to the expiration or earlier termination of this Lease, City and Tenant shall conduct a joint inspection of the Premises for the purpose of identifying Hazardous Materials existing on the Premises which Tenant is required to remove by the end of the Lease Term.

28.2 Tenant's Environmental Indemnity. If Tenant breaches any of its obligations contained in Section 28.1 above, 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 23.2 above, 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. Notwithstanding the foregoing, Tenant shall not Indemnify the City, its Agents or Indemnified Parties for any Losses or any Hazardous Material Claims that arise or result from Pre-Existing Pollution Conditions (except to the extent resulting from the exacerbation of a Pre-Existing Pollution Condition by Tenant, its Agents or Invitees) or from the negligence or willful misconduct of the City, its Agents or its Contractors relating to work performed by such parties during the Term for the City's utility installations or facilities other than the quarry. 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, except as indicated above, including, without limitation, fines and penalties imposed by regulatory agencies, natural resource damages and losses, and revegetation of the Premises. 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. However, Tenant shall not be deemed to have caused or permitted a Release to the extent it results from Pre-Existing Pollution Conditions (except to the extent resulting from the exacerbation of a Pre-Existing Pollution Condition by Tenant, its Agents or Invitees) or is caused by City actions identified above. 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 covered by this Indemnity.

29. SECURITY DEPOSIT; LETTER OF CREDIT

29.1 Security Deposit. Tenant shall pay to City upon execution of this Lease the sum of Five Hundred Thousand Dollars (\$500,000) 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, or any 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 hereunder, 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. If the Base Rent is increased pursuant to any of the provisions of this Lease, Tenant shall increase the amount of the security deposit accordingly. 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.

29.2 Performance Bond; Letter of Credit. In lieu of the security deposit provided in Section 29.1 above, Tenant may deliver to City (i) a valid surety bond in the sum equal to amount specified, issued by a surety company acceptable to City's Controller in such form as approved by the City Attorney of City or (ii) an unconditional, irrevocable standby letter of credit issued by a financial institution acceptable to the SFPUC General Manager and in form approved by the City Attorney with an original term of no less than one year and automatic extensions through the end of the Term of this Lease and ninety (90) days thereafter. Any such letter of credit shall provide for payment to City upon the issuer's receipt of a sight draft from City together with City's certificate certifying that the requested sum is due and payable from Tenant and Tenant has failed to pay, and with no other conditions. Tenant shall keep such surety bond or letter of credit, at its expense, in full force and effect until the ninetieth (90th) day after the Expiration Date or other termination hereof, to insure, the faithful performance by Tenant of all of the covenants, terms and conditions of this Lease. Such bond or letter of credit shall provide ninety (90) days' prior written notice to City of cancellation or material change thereof. Tenant shall provide evidence of renewal of the letter of credit or bond to SFPUC at least sixty (60) days prior to the date the Letter of Credit expires. In the event of any nonextension of the letter of credit or bond, Tenant shall replace such security with another form permitted hereunder at least sixty (60) days prior to expiration and if Tenant fails to do so City shall be entitled to present its written demand for payment of the entire face amount of such letter of credit or bond and to hold the funds so obtained as the Security Deposit required hereunder. Any unused portion of the funds so obtained by City shall be returned to Tenant upon replacement of the letter of credit or deposit of cash security in the full amount required hereunder. If City draws on the letter of credit or bond pursuant to the terms hereof, Tenant shall immediately replenish the letter of credit or bond or provide City with an additional letter of credit or bond conforming to the requirement of this Section so that the amount available to City from the letter(s) of credit or bond(s) provided hereunder is the amount specified above.

30. COMMUNITY OUTREACH

Tenant shall continue outreach to various community groups and stakeholders in the vicinity of the Premises to educate the public with respect to the Premises and the proposed revisions to SMP 30 and SMP 17 ("Community Outreach Program"). SFPUC may from time to time suggest reasonable revisions or changes to the proposed Community Outreach Program, and

Tenant shall consider any such suggestions in good faith. Tenant agrees and acknowledges that maintaining professional working relations with the SFPUC's constituents, community groups and stakeholders in the vicinity of the Premises is critical to implementing the goals of the SFPUC. It shall be reasonable for the SFPUC to withhold its consent to the proposed Community Outreach Program in the event such proposed Community Outreach Program is inconsistent with or would adversely affect the SFPUC's relationship with such parties.

31. ENVIRONMENTAL AGREEMENTS

It is anticipated that prior to or after the Effective Date, Tenant will enter into one or more agreements with the Center for Biological Diversity and the Alameda Creek Alliance to fund certain studies, monitoring activities, programs and restoration projects (the "Environmental Agreements") that will substantially, if not fully, alleviate certain concerns such groups have regarding the environmental effect of mining at the Premises and at the Apperson Ridge site. As of the Effective Date, SFPUC cannot commit to implement any projects identified in the Environmental Agreements, or to permit the implementation of projects that require the use of the Initial Premises, the Expansion Premises or any other SFPUC property, but SFPUC will reasonably cooperate in exploring the feasibility of any such programs. Without limiting the generality of the foregoing, SFPUC cannot commit to implement projects that require discretionary action on the part of the SFPUC or the City in advance of environmental review that may be required under CEQA.

32. SFPUC SPOILS AND WATER DISPOSAL

32.1 Spoils Disposal for Water System Improvement Project Requirements.

(a) **Water System Improvement Projects; Alluvial Spoils.** The SFPUC proposes undertaking a number of water system improvement projects and related habitat restoration in Sunol Valley and the vicinity during the Term of this Lease. A number of such proposed projects would generate alluvial spoils and gravel spoils. SFPUC reserves the right to deposit or cause SFPUC's contractors to deposit all spoils excavated from the proposed Alameda Siphon No. 4 project and all spoils excavated from that portion of the proposed San Antonio Backup Pipeline project adjacent to the Expansion Premises on the Initial Premises. (As of the date of this Lease these proposed projects are undergoing separate environmental review under CEQA.) If approved, such spoils would be deposited at a location selected by Tenant and reasonably approved by SFPUC, provided that unless otherwise directed by Tenant and approved by SFPUC, such spoils are proposed to be deposited in the main pit. Tenant shall extract sand and gravel from such spoils as part of Tenant's normal aggregate processing operations. The Parties acknowledge that SFPUC may generate additional usable alluvial and gravel spoils from other area projects. If SFPUC desires to dispose of such materials on the Premises, SFPUC shall provide relevant sampling data and other information as reasonably requested by Tenant. Tenant in its reasonable discretion shall approve or disapprove such proposed disposal within thirty (30) days of its receipt of the information described in the preceding sentence. If approved, SFPUC may dispose of such additional spoils in the manner described in this paragraph.

(b) **Disposal of SFPUC Project Spoils.** Without limiting the generality of Section 2.3 above, SFPUC reserves the right to cause SFPUC's contractors to place a portion of the spoils generated by SFPUC's proposed water system improvement projects in Sunol Valley and the vicinity (the "WSIP Spoils") adjacent to the Expansion Premises parallel to Calaveras Road during the Initial Term and the Extension Term. City agrees that the volume of WSIP Spoils placed adjacent to the Expansion Premises by SFPUC contractors shall not exceed 100,000 cubic yards and shall be placed at the locations indicated on Exhibit E in accordance with specifications set forth in Exhibit E, or as otherwise reasonably approved by Tenant, and in a manner that will not interfere with anticipated future mining of the Expansion Premises. Tenant agrees to allow SFPUC and its contractors reasonable access through the Premises, on the Expansion Premises Haul Road and otherwise, to dispose of such WSIP spoils as described herein. The Application for Revised SMP 30 shall include a description of the WSIP Spoils and a proposal that the proposed WSIP Spoils be used adjacent to the Expansion Premises as a visual screening berm. Following the Revised SMP 30 Effective Date, Tenant, at Tenant's sole expense, shall pursue the use of the WSIP spoils as approved under Revised SMP 30, including the performance of any required finish grading, and the installation and maintenance of suitable landscaping to the extent provided in Revised SMP 30 as approved by Alameda County and SFPUC. It is anticipated that SFPUC will issue a revocable license or other permission to Tenant governing the performance of such screening berm-related duties to the extent they are to be performed outside of the Premises.

32.2 Water Disposal for SFPUC Requirements. Subject to the provisions of the penultimate sentence of this Section 32.2, SFPUC reserves the right, following any required environmental review, to install a water discharge pipe that feeds into the main pit at the southern end of the Initial Premises for the occasional discharge of water from SFPUC's water system. SFPUC shall coordinate with Tenant on the operation of the discharge pipe, with the objectives of minimizing erosion of the quarry pit due to such discharges and obtaining reasonable assessments of the volume of water discharged from time to time into the quarry pit. Such discharges may occur (1) as part of scheduled maintenance, system upgrades or operational activities; or (2) as part of water treatment incidents that may require discharge of water that cannot be served to customers; or (3) following an earthquake or other emergency constituting a Force Majeure event. Tenant has been provided with an estimate of the volumes of water that SFPUC presently anticipates may be discharged into the main pit on the Initial Premises as a result of SFPUC water system operations that do not constitute Force Majeure events, and Tenant agrees to manage such water additions as part of its aggregate washing and water recycling operations on the Premises to the extent feasible, including the ultimate discharge of such water to Alameda and San Antonio Creeks when necessary and as allowed under the Approved Plans and Permits. SFPUC shall provide as much advance notice as possible to Tenant for discharges of water to the main pit exceeding 1.0 million gallons in a 24 hour period. Tenant agrees to maintain a discharge capacity of 150 acre-feet in its wash water pits to accommodate water discharges by the SFPUC; provided that, subject to receipt of any required permits and approvals, (i) Tenant shall be entitled to discharge water into the SMP 24 pits (or at another location identified by City for which City has provided required designs, plans and specifications and has obtained required permits and approvals) in order to maintain the discharge capacity set forth

above and shall obtain any approvals or permits required in connection therewith, and (ii) SFPUC's shall reimburse Tenant for the cost of obtaining the required approvals and permits referenced in item (i) above, and (iii) SFPUC shall reimburse Tenant for any additional capital costs of designing and installing a system to comply with the requirements of this Section 32.2 as well as the reasonable and direct costs of pumping the volume of water discharged by SFPUC through the aforementioned water discharge pipe to the extent such pumping is required to maintain the discharge capacity set forth above. City and Tenant shall cooperate in good faith and shall use diligent good faith efforts in applying for and obtaining required approvals and permits and in designing any system required under this Section 32.2.

33. ALAMEDA CREEK PLAN; FUNDING REQUIREMENTS

33.1 Funding for Initial Creek Restoration Study. Concurrently with submittal of the Application for Revised SMP 30 to Alameda County, Tenant will pay SFPUC Two Hundred Thousand Dollars (\$200,000) to support restoration planning for the quarry reach of Alameda Creek in Sunol Valley (the "Creek Restoration Study Contribution"). SFPUC will direct the Creek Restoration Study Contribution to a consultant to study alternatives to remove the PG&E drop structure and restore natural hydrologic and geomorphic processes to Alameda Creek within the quarry reach. The scope of work for the study will be defined by the SFPUC, in consultation with PG&E and the Alameda Creek Fisheries Restoration Workgroup. The study is referred to in this Lease as the "Creek Restoration Study." It is anticipated that the restoration plan for this reach of Alameda Creek will be consistent with the long term goal of sustaining an anadromous steelhead run by recreating historic hydrological and geomorphic processes to the extent feasible.

33.2 Analysis of Channel Restoration Alternatives. Aspects of channel restoration alternatives analyzed in the Creek Restoration Study that are related to mining under Revised SMP 30 may be examined in the CEQA documentation for Revised SMP 30 and Further Revised SMP 30, and included in the terms and conditions of Revised SMP 30 and Further Revised SMP 30, as applicable.

33.3 Creek Restoration Contribution. Tenant shall make a contribution (including without limitation, in-kind contributions and contributions to third parties) to be used for implementation of the preferred channel restoration alternative (the "Creek Restoration Contribution"). The amount of the Creek Restoration Contribution and the terms and conditions of its payment and use will be negotiated in connection with City's approval of Revised SMP 30, as provided in Section 3.3(f)(ii) above.

34. RELATIONSHIPS WITH REGULATORY AUTHORITIES

Tenant agrees and acknowledges that maintaining professional working relations with regulatory agencies with jurisdiction over or interest in SFPUC's operations in the vicinity of the Premises is critical to implementing the goals of the SFPUC. Tenant shall use its good faith efforts throughout the Lease term to not take any actions relating to the Initial Premises, Expansion Premises, Stockpile and Plant Sites, areas subject to the Conveyor and Access

Agreements or the Apperson Ridge site that would (with reasonable foreseeability) adversely affect SFPUC's or City's relationship with any regulatory agency.

35. SURVIVAL OF ENA OBLIGATIONS REGARDING TRANSACTION COSTS

Tenant is obligated under the ENA to pay SFPUC certain Transaction Costs (as defined in the ENA) to the extent such Transaction Costs exceed the Negotiating Fee (as defined in the ENA) paid by Tenant. To the extent that SFPUC has not invoiced Tenant for, and Tenant has not paid, the Transaction Costs prior to the Effective Date, such obligation shall be an obligation of Tenant under this Lease. Except as provided in this Article 35, this Lease supersedes the ENA.

36. GENERAL PROVISIONS

36.1 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, addressed as follows, or 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 prior to the effective date of such change:

To the SFPUC: Real Estate Services
 Public Utilities Commission
 1155 Market St., 4th Floor
 San Francisco, CA 94103
 Attn: Director
 Facsimile: (415) 487-5200

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, CA 94102-4682
 Attn: General Counsel, SFPUC
 Facsimile: (415) 554-8793

To Tenant: Oliver de Silva, Inc.
 11555 Dublin Blvd.
 Dublin, CA 94568
 Attention: James B. Summers
 Facsimile: (925) 803-4327

with a copy to: Oliver de Silva, Inc.
11555 Dublin Blvd.
Dublin, CA 94568
Attention: Ernest D. Lampkin
Facsimile: (925) 803-4339

and a copy to: Oliver de Silva, Inc.
11555 Dublin Blvd.
Dublin, CA 94568
Attention: Michael Willcoxon, Esq.
Facsimile: (925) 803-4270

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 36.1 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 above 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, prior to receipt of the original, of a telefacsimile copy of the notice.

36.2 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 thereof, irrespective of the length of time for which such failure continues, no acceptance of full or partial Rent or Additional Charges during the continuance of any such breach, and no acceptance of possession of the Premises prior to 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 hereof 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 hereof 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.

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

36.4 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.

36.5 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.

36.6 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 or approval of City is required to be obtained by Tenant hereunder, City may give or withhold such consent or approval in its sole and absolute discretion. Except to the extent otherwise provided herein or required as a matter of law, any decisions to be made by City hereunder as to approvals, consents, waivers and the like may be made by the General Manager, and the General Manager has the full authority and power to bind City in all such matters and in any additional matters that constitute ordinary property management decisions.

36.7 Successors and Assigns. Subject to the provisions of Article 21 hereof 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 (or by any subsequent landlord) of its interest in the Premises, 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, provided that, in each such case, the transferee expressly assumes, for the benefit of Tenant, all of the obligations of Landlord hereunder.

36.8 Brokers. Neither party has had any contact or dealings regarding the leasing of the Premises, nor 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. 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 the expiration or any sooner termination of this Lease.

36.9 Severability. If any provision of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, 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.

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

36.11 Entire Agreement; No Amendment of Existing Agreement. This instrument (including the exhibits hereto, which are made a part of this Lease) contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior written or oral negotiations, discussions, understandings and agreements with respect to the subject matter hereof. 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 of this Lease and any changes therefrom) 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. Notwithstanding the foregoing, except to the extent this Lease specifically references a particular Existing Agreement and obligation thereunder, this Lease does not amend or supersede any Existing Agreement with respect to the subject matter thereof.

36.12 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 party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Lease, reasonable fees of attorneys of 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.

36.13 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 at a monthly base rental rate equal to Eighty-Three Thousand Three Hundred Thirty-Three Dollars (\$83,333.00) per month, and Percentage Rent and Processing Royalty Rent at a Royalty Rate and Processing Royalty Rate equal to, respectively, one hundred percent (100%) of the Royalty Rate and Processing Royalty Rate in effect immediately prior to the expiration, 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 and 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, and whether or not such amounts are at the holdover rate specified above or the rate in effect at the end of the Term of the Lease.

36.14 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.

36.15 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.

36.16 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 hereof. 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.

36.17 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.

36.18 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 the Premises, or any portion thereof.

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

36.20 No Franchise Right. Nothing in this Lease shall be construed as granting or creating any franchise rights in favor of Tenant pursuant to any federal, state or local laws.

36.21 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.

36.22 Non-Discrimination in City Contracts and Benefits Ordinance.

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

(b) **Sublease and Other Subcontracts.** Tenant shall include in all Subleases and other contracts relating to the Premises a non-discrimination clause applicable to such subtenant or other contractor in substantially the form of subsection (a) above. In addition, Tenant shall incorporate by reference in all subleases and other contracts the provisions of Section 12B.2(a), 12B.2(C)-(C), and 12C.3 of the San Francisco Administrative Code and shall require all subtenants and other contractors 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, in any of its operations in San Francisco, the Premises, or where work is being performed for the City 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 payment due Tenant.

36.23 Requiring Health Benefits for Covered Employees.

(a) 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.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

(f) 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.

(g) 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.

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

(i) 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.

(j) 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.

36.24 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 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 the officer at any time from the commencement of negotiations for such contract until the termination of negotiations for such contract or three (3) months has elapsed from the date the contract is approved by the City elective officer, or the board on which that City elective officer serves.

36.25 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 or 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.

36.26 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 12G.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.

36.27 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 such provision, and agrees that if Tenant becomes aware of any such fact during the term of this Lease, Tenant shall immediately notify the City. Tenant further certifies that it has made a complete disclosure to the SFPUC of all facts bearing upon any possible interest, direct or indirect, which Tenant believes any member of the SFPUC, or other office or employee of the City and County of San Francisco, presently has or will have in this Lease or in the performance thereof. Willful failure to make such disclosure, if any, shall constitute a material default hereunder.

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

36.29 Tropical Hardwood and Virgin Redwood Ban. The 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 12I.3.b and 12I.4.b of the San Francisco Administrative Code, Tenant shall not permit any construction with the use of 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 Section 12I of the San Francisco Administrative 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.

36.30 No Tobacco Advertising. Tenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the City, including the Premises. This prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

36.31 Mitigation Measures. Tenant shall perform, at its sole cost, all of the mitigation measures identified in the Approved Plans and Permits and any CEQA Document or instrument relating thereto, to the extent they relate to the Premises and Tenant's mining and other activities hereunder. Without limiting the City's rights and remedies under this Lease for the failure to perform any mitigation measure, the City will monitor and enforce implementation of the mitigation measures as appropriate and necessary.

36.32 Disclosure. Tenant understands and agrees that under the City's Sunshine Ordinance (San Francisco Administrative Code Chapter 67) and the State Public Records Law (Government 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.

36.33 Representations and Warranties of Tenant. Tenant represents and warrants as follows, as of the Effective Date:

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

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

(c) **No Limitation on Ability to Perform.** Neither Tenant's articles of incorporation nor Tenant's bylaws, nor any other agreement or Law in any way prohibits, limits or otherwise affects the right or power of Tenant to enter into and perform all of the terms and covenants of this Lease. Tenant is not party to or bound by any contract, agreement, indenture, trust agreement, note, obligation or other instrument which could prohibit, limit or otherwise adversely affect the Lease. No consent, authorization or approval of, or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other person is

required for the due execution, delivery and performance by Tenant of this Lease or any of the terms and covenants contained in this Lease. There are no pending or, to Tenant's best knowledge, threatened suits or proceedings, or undischarged judgments affecting Tenant before any court, governmental agency, or arbitrator which reasonably might materially adversely affect the enforceability of this Lease or the business, operations, assets or condition of Tenant.

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

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

(f) **Meeting Financial Obligations.** Tenant is meeting its current liabilities as they mature; no undisputed federal or state tax liens have been filed against it; and Tenant is not in default or claimed default under any agreement for borrowed money.

(g) **Apperson Lease.** Tenant has provided SFPUC with a true, correct and complete copy of the Apperson Lease, including any amendments thereto (other than the redaction of certain financial terms from the Original Lease, the First Amendment and the 1989 Amendment, the redaction of which is clear on the pages of those documents). The Apperson Lease constitutes the entire agreement between the owner of the Apperson Site, as landlord, and Tenant, as tenant, regarding the Apperson Lease, and Tenant has not entered into, nor does there exist any other documents, in connection with or evidencing the Apperson Lease or the rights and obligations of Tenant with respect to the Apperson Lease. As of the date of Effective Date, the Apperson Lease is in full force and effect, Tenant is not in default thereunder, and Tenant is not aware of any facts and circumstances which, with notice or the passage of time would constitute such default.

(h) **Ownership of Tenant.** Tenant has provided SFPUC with a true, correct and complete statement of the constituent shareholders and holders of beneficial ownership interests in Tenant.

(i) **SMP 17.** Tenant has provided SFPUC with a true, correct and complete copy of SMP 17.

36.34 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.

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 CITY'S BOARD OF SUPERVISORS SHALL HAVE BEEN DULY ENACTED APPROVING THIS LEASE AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY, WHICH RESOLUTION SHALL THEN BE DULY APPROVED BY THE CITY'S MAYOR. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON ENACTMENT OF SUCH A RESOLUTION AND THE APPROVAL THEREOF BY THE MAYOR, AND THIS LEASE SHALL BE NULL AND VOID UNLESS CITY'S MAYOR AND THE BOARD OF SUPERVISORS APPROVE THIS LEASE, IN THEIR RESPECTIVE SOLE AND ABSOLUTE DISCRETION, AND IN ACCORDANCE WITH ALL APPLICABLE LAWS. APPROVAL OF THIS LEASE BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH ORDINANCE WILL BE ENACTED, NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

[No further text this page.]

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

TENANT:

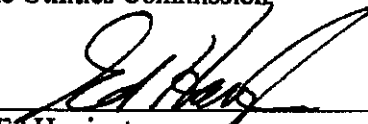
OLIVER DESILVA, INC.,
a California corporation

By: 
Its: Chairman

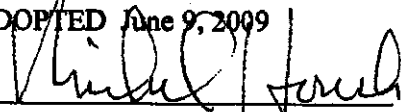
By: Ernest S. Lampkin
Its: VP, CFO

CITY:

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

By: 
Ed Harrington
General Manager, Public Utilities Commission

APPROVED BY
PUBLIC UTILITIES COMMISSION
PURSUANT TO RESOLUTION NO. 09-0095
ADOPTED June 9, 2009


Secretary

APPROVED BY BOARD OF
SUPERVISORS BY RESOLUTION
NO. 467-09 DATED November 24, 2009

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

By Anita L. Wood
Anita L. Wood
Deputy City Attorney

EXHIBIT A-1

Description of Initial Premises

Portions of Parcel 65 of Sunol and San Antonio lands in Alameda County as described in the deed from Spring Valley Water Co. to the City and County of San Francisco by deed dated March 3, 1930 in book 2350, page 1 of Official Records of Alameda County; said portions being the area shown outlined and labeled as the "Initial Premises" on Exhibit A-3 attached to this Lease.

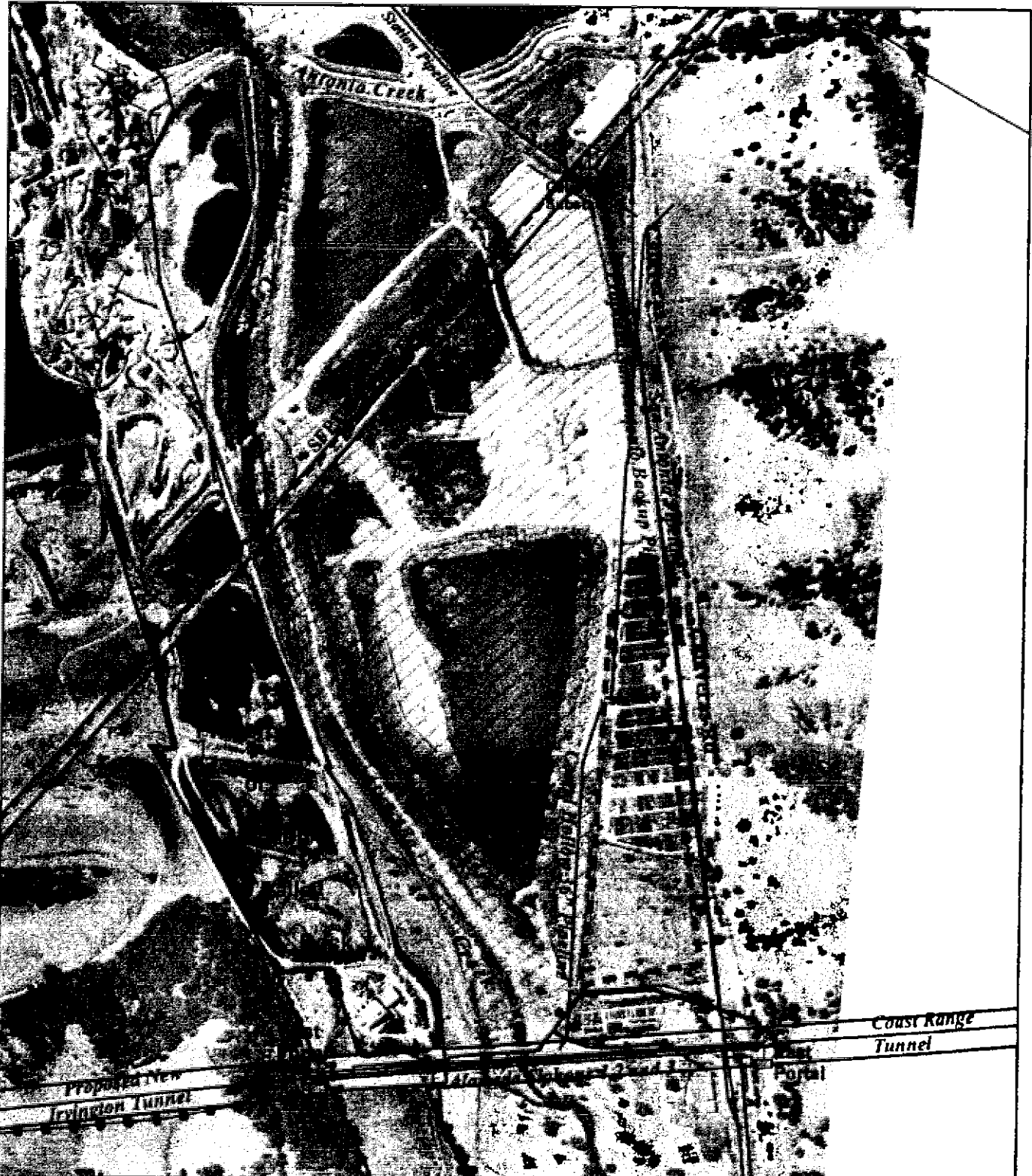
EXHIBIT A-2








Description of Expansion Premises

Portions of Parcel 65 of Sunol and San Antonio lands in Alameda County as described in the deed from Spring Valley Water Co. to the City and County of San Francisco by deed dated March 3, 1930 in book 2350, page 1 of Official Records of Alameda County; said portions being the area shown outlined and labeled as the "Expansion Premises" on Exhibit A-3 attached to this Lease.

EXHIBIT A-3

**Diagram Showing Initial Premises and Expansion Premises
[Attached]**

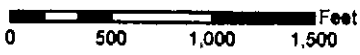


-  SFPUC Fee Owned Parcels
-  Existing SFPUC Pipelines
-  SFPUC Buildings
-  Proposed New Irvington Tunnel
-  Proposed SFPUC Pipeline
-  Initial Premises
-  Expansion Premises


Aerial Photo Date: 2008

San Francisco Public Utilities Commission
Right of Way

Exhibit A-3



Feet



N

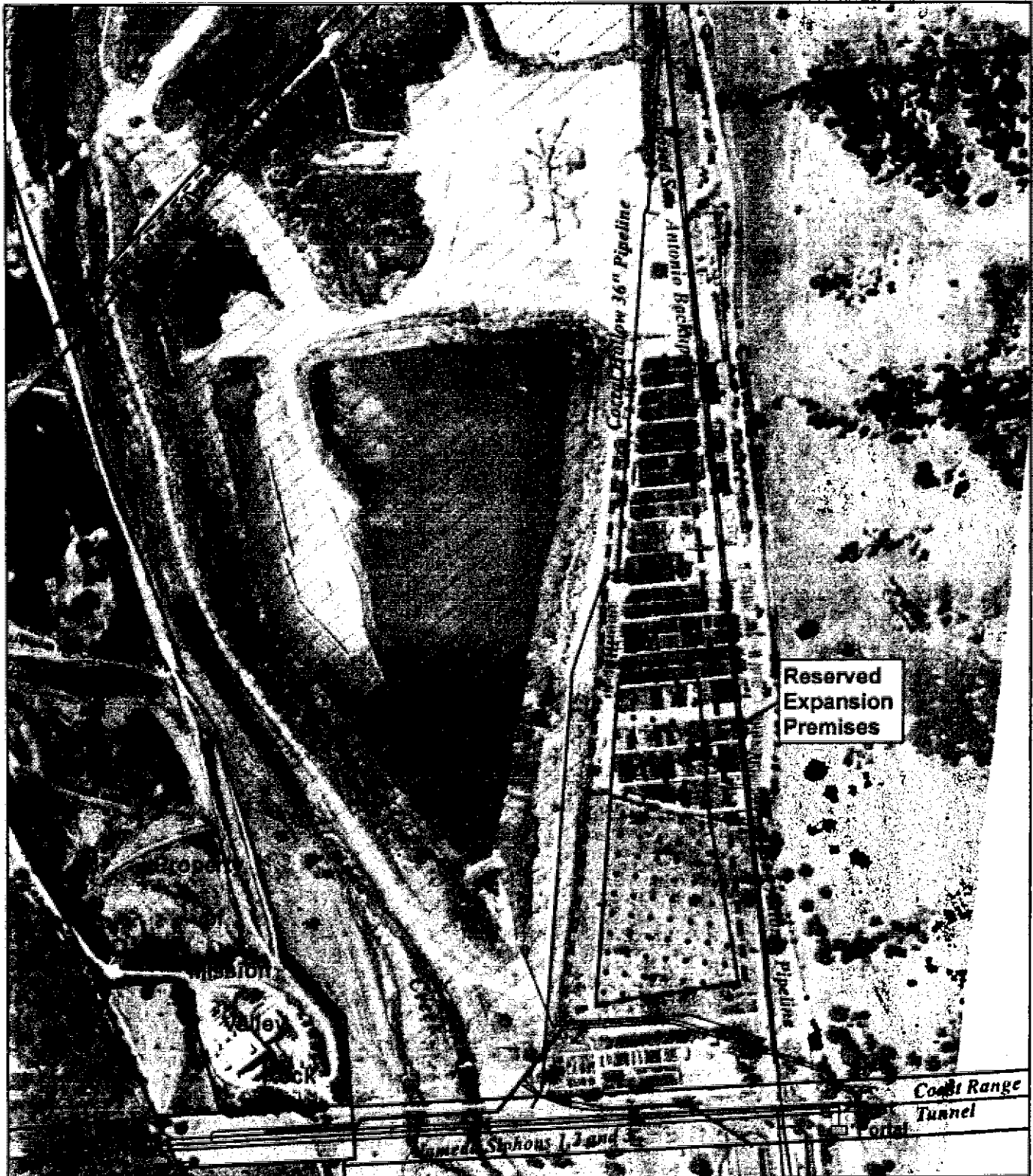
June 3, 2009

The City does not guarantee that the information is accurate or complete. The City provides this information on an "as is" basis and is not responsible for any damages arising from the use of data. Users should verify the information before making project commitments.

EXHIBIT A-4





Diagram Showing Proposed Reserved Expansion Premises





[Attached]



Reserved
Expansion
Premises

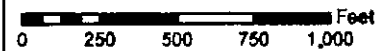
Coast Range
Tunnel

-  SFPUC Fee Owned Parcels
-  Existing SFPUC Pipelines
-  Proposed SFPUC Pipeline
-  SFPUC Buildings

-  Proposed New Irvington Tunnel
-  Initial Premises
-  Expansion Premises
-  Reserved Expansion Premises

San Francisco Public Utilities Commission
Right of Way

Exhibit A-4



June 3, 2009

Aerial Photo Date: 2008

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EXHIBIT B

Minimum Required Improvements

1. **Slurry cutoff wall:** Installation of a slurry cutoff wall to reduce the inflow of water from Alameda Creek into the active mining pit on the Premises. The general location of the cutoff wall is shown on Attachment D to the RFP. The cutoff wall along Alameda Creek will be approximately 7,800 feet long at an estimated depth of 35 to 45 feet and should meet a permeability standard not exceeding 10-7 cm/sec. Depending on the results of studies to be conducted as part of the Application for Revised SMP 30, a second 2,300 foot long slurry cutoff wall along the left bank of San Antonio Creek may also be required at an estimated depth of 40 feet (see Attachment D to the RFP). Slurry wall materials and construction shall meet applicable standards established by the American Petroleum Institute for mixing and field-testing of bentonite slurries, and ASTM standards for laboratory testing of slurry properties and hydraulic conductivity. Plans and specifications for the slurry cutoff wall shall be subject to the review and approval of SFPUC and shall contain the following elements:
 - i. Coordination of construction
 - ii. Equipment layout and storage areas
 - iii. Specifications for excavators and mixing equipment
 - iv. Procedures for slurry mixing, trenching and backfilling
 - v. Materials specifications including sources and certificates of manufacturer's compliances
 - vi. Control of drainage and spills/ environmental protection plan
 - vii. Clean up of site

The specific design details set forth above (including but not limited to the length of the required cutoff wall) may be subject to change as reasonably approved by SFPUC, provided that in all events the SFPUC's goal of minimizing seepage losses from Alameda Creek shall be attained.

2. **Installation of Movable Sand and Aggregate Processing Facilities:** Provide a processing plan for mining the entire site according to the Alternative F Plan requirements in a cost effective manner that maximizes royalty revenue to the SFPUC.
3. **Creek Bank Restoration:** After consultation with state and federal resource agencies, restoration of the right bank of Alameda Creek and the left bank of San Antonio Creek (looking downstream) with native vegetation and other measures in accordance with the provisions of the Alternative F Plan and maintain any plantings during the term of the Lease. In addition to regulatory agency approval, the final creek bank restoration plan will be subject to City approval and coordination with the Creek Restoration Study.

4. **Relocation of Existing 36 Inch Water Line During Extension Term:** Removal of the existing 36 inch water line currently located on the Expansion Premises and the installation of a new, smaller pipeline at a location outside of the quarry boundary parallel to Calaveras Road.
5. **Use of Native Plants to Screen Quarry Operation:** Planting and maintenance of native plants and trees to minimize the visual impacts of the quarry operation from Calaveras Road, consistent with existing requirements in the Alameda County Surface Mining Ordinance.
6. **Nursery Relocation:** Relocate nursery and install new perimeter fence.
7. **Power Line Relocation:** Relocate the portion of the power line to the filter plant located on the Expansion Premises, if required after review by SFPUC engineering and operations staff.

EXHIBIT C
Gradation, Quality and Pricing Tables – Filter and Drain Material

A. Provision of Sand and Gravel for SFPUC Projects. The materials to be provided pursuant to Section 11.8(a) of the Lease shall meet the following gradation and quality standards.

1. Filter material consisting of sound, durable processed sands free from organic matter, clay balls, and soft particles meeting the following tentative gradation measured in accordance with ASTM C 117 and C 136, after placement and compaction in the proposed replacement dam:

Tentative Filter Material Gradation

Screen/Sieve Size	Percent Passing by Weight
3/8 inch	100
No. 4	95-100
No. 8	65-95
No. 16	40-65
No. 30	20-45
No. 50	5-25
No. 100	0-10
No. 200	0-3

Filter material shall conform to the soundness requirements of ASTM C33 for fine aggregate.

2. Broad-graded filter material consisting of sound, durable processed sands and gravels free from organic matter, clay balls, and soft particles meeting the following tentative gradation measured in accordance with ASTM C 117 and C 136, after placement and compaction in the proposed replacement dam:

Tentative Broad-Graded Filter Material Gradation

Screen/Sieve Size	Percent Passing by Weight
¾ inch	100
3/8 inch	75-100
No. 4	60-80
No. 16	30-55
No. 50	5-30
No. 200	0-3

3. Drain material consisting of sound, durable processed sands and gravels free from organic matter, clay balls, and other soft particles or foreign matter meeting the following

tentative gradation measured in accordance with ASTM C 117 and C 136, after placement and compaction in the proposed replacement dam:

Tentative Drain Material Gradation

Screen/Sieve Size	Percent Passing by Weight
1 inch	100
¾ inch	85-100
3/8 inch	30-98
No. 4	5-45
No. 8	0-3
No. 200	0-2

Drain material shall meet the requirements for durability, soundness, and abrasion resistance listed in the following table:

Drain Material

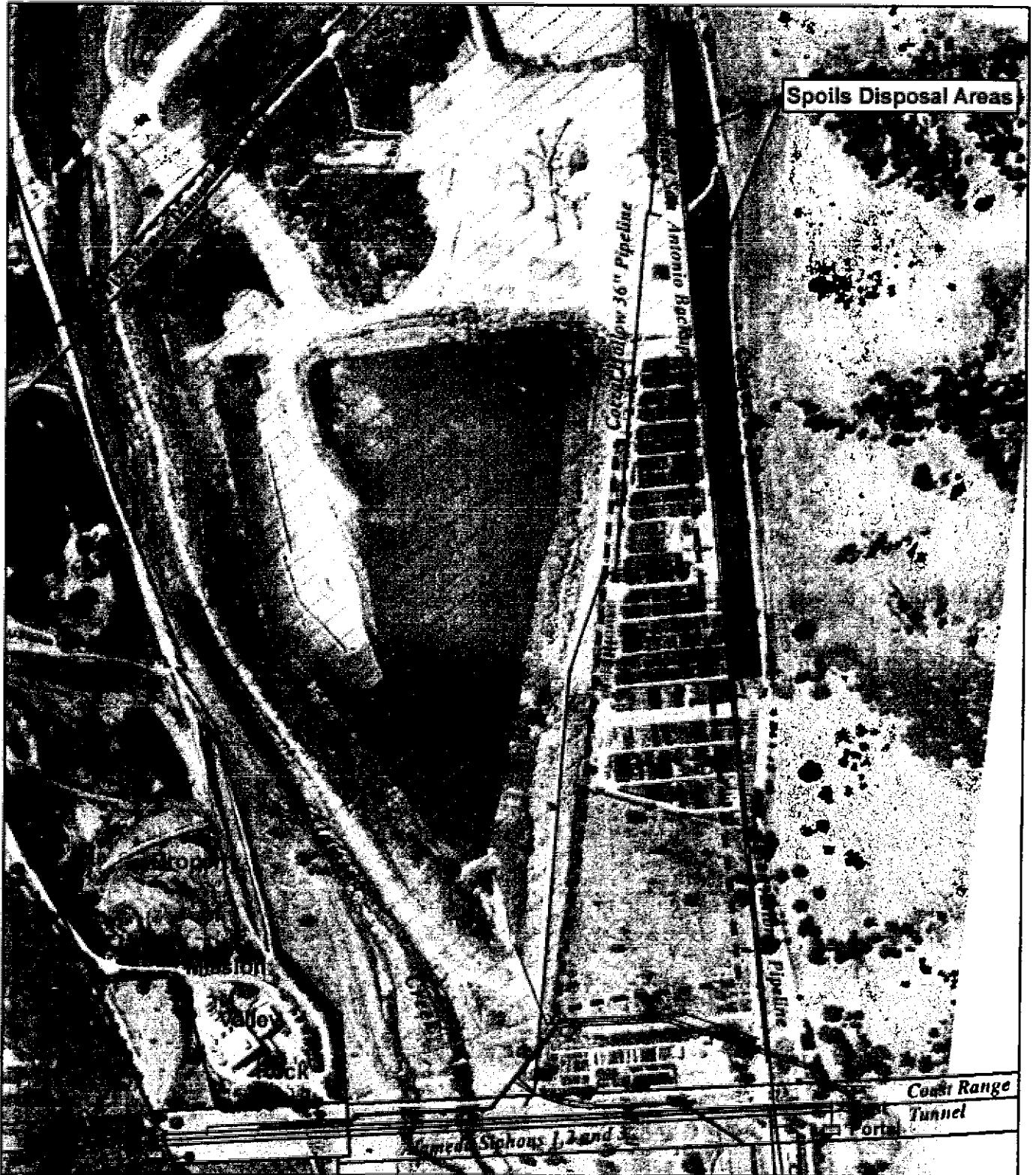
Test Type	Test Standard	Acceptability Criteria
Absorption	ASTM C127	Less than 2%
Specific Gravity	ASTM C127	Greater than 2.60
	ASTM C128	Greater than 2.60
Abrasion Resistance	ASTM C131	Less than 10% loss of weight after 100 revolutions and less than 40% loss of weight after 500 revolutions
Sodium Sulphate Soundness	ASTM C88	Less than 10% loss of weight after 5 cycles

B. Competitive Rates. The price for all such filter and drain materials will be no higher than the then lowest price currently offered by the operator for large volume purchases.

EXHIBIT D
Existing Agreements

1. Memorandum of Agreement Between Quarry Lessee and San Francisco Water Department, dated May 19, 1986, between the San Francisco Water Department of the Public Utilities Commission of the City and County of San Francisco and Oliver de Silva Corporation.
2. The following agreements, sometimes referred to collectively as the "Road Agreements":
 - Exchange Deed and Right of Way Agreement, dated September 20, 1968, between City and County of San Francisco and Diamond A Ranch, Inc., a corporation, and William W. Apperson, as Executor of the Estate of Randolph William Apperson
 - Amendment to Exchange Deed and Right of Way Agreement, dated May 14, 1986, between City and County of San Francisco and William W. Apperson
 - Confirmation of Lease/Roadway, dated December 9, 1986, between William W. Apperson and Oliver de Silva, Inc.

EXHIBIT E
Location of Spoils and Specifications
[Attached]



Spoils Disposal Areas

Proposed New Irvington Tunnel









Antonio Baccari

Existing SFPUC Pipelines

Coast Range Tunnel

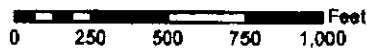
United States Land

Port

-  SFPUC Fee Owned Parcels
-  Existing SFPUC Pipelines
-  Proposed SFPUC Pipeline
-  SFPUC Buildings
-  Proposed New Irvington Tunnel
-  Initial Premises
-  Expansion Premises
-  Spoils Disposal Areas

San Francisco Public Utilities Commission
Right of Way

Exhibit E



June 3, 2009

The City does not guarantee that the information is accurate or complete. The City provides the information on an "as is" basis and is not responsible for any damages arising from the use of data. Users should verify the information before making project commitments.

Aerial Photo Date: 2006

PART 1 - GENERAL

1.01 SUMMARY

- A. This specification section covers the following items of work:
 - 1. Disposal, handling, and compaction of excavated materials, furnish and install site drainage and retaining facilities and erosion mitigation measures, and vegetation restoration of spoil disposal sites.

1.02 RELATED SECTIONS

- A. Section 01150 - Water Treatment and Disposal
- B. Section 01500 - Construction Facilities and Temporary Controls
- C. Section 01570 - Traffic Control
- D. Section 02052 - Site Preparation, Clearing, Grubbing, and Stripping
- E. Section 02111 - Disposal of Excavated Materials
- F. Section 02150 - Trench Shoring Installation
- G. Section 02155 - Utility and Structure Protection
- H. Section 02260 – Hydro-seeding and Mulching

1.03 DEFINITIONS

- A. Spoil Disposal Area A: The disposal site located along west of Calaveras Road near Highway I-680, as designated on the Drawings.
- B. Spoil Disposal Area B: The disposal site located along west of Calaveras Road and just north of the CEMEX Quarry entry, as designated on the Drawings.
- C. Spoil Disposal Area C: The disposal site located along Calaveras Road within the current nursery area, as designated on the Drawings.

1.04 SUBMITTALS

- A. The Contractor shall submit a detailed work plan describing the proposed method and sequencing of construction of the disposal sites including the test pad. After acceptance of the work plan, changes shall not be made to the work plan without the prior written acceptance of the CITY REPRESENTATIVE.
 - 1. The Contractor shall include in the work plan a list of equipment proposed for use in all operations of construction of each disposal site, including but not limited to

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TECHNICAL SPECIFICATIONS
DIVISION 2: SITE WORK
02210: DISPOSAL SITES

equipment for loading, hauling, spreading, moisture conditioning, scarifying, and compacting. For the compaction equipment proposed, sufficient data and drawings shall be furnished for verification of the requirements specified in this section.

2. The Contractor shall include in the work plan a detailed description of the sequencing and operations necessary for construction of each of the disposal sites.
3. Identify proposed haul routes and staging areas.

1.05 QUALITY CONTROL

- A. A minimum of one test pad shall be constructed to establish optimal compaction for different types of excavated material to be disposed at the spoil disposal sites. Contractor shall provide necessary labor and equipment for preparation and compaction of the test pad site. See article 1.05 B of this section for details of the test pad and testing. The compaction equipment shall be a 10-15 ton pad foot vibratory roller compactor or approved equivalent. City Representative will determine whether or not Contractor shall be required to perform soil density tests within the test pad depending on the types and gradation of materials excavated from the tunnel. If City Representative determines that soil density tests shall be performed, a minimum of three soil density tests shall be performed upon placement of every two lifts, with each lift compacted to the specified number of compaction passes with the specified equipment (if applicable). Alternatively, if requested by City Representative, Contractor shall perform survey of settlement after every two equipment passes over each lift at several locations within the test pad area to evaluate the effectiveness of compaction. Soil density tests or survey of settlement data would be reviewed by City Representative or his/her designee and would determine if adjustment of the number of roller compactor passes specified in article 3.01 C is necessary.

B. Test Pad Program

1. Location of the test pad shall be proposed by the Contractor with the understanding that the test pad and associated testing activities will not impact construction progress. Each test pad shall be a minimum 100 feet long by 80 feet wide. It is the intent of the test pad program to use materials that are reasonably uniform at each test pad location, but the general material characteristics at each pad would be sufficiently different from each other to represent the range of different materials that would be produced by the tunnel excavation operations.
2. Compaction equipment shall be a 10-15 ton pad foot vibratory roller compactor or approved equivalent.

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**TECHNICAL SPECIFICATIONS
DIVISION 2: SITE WORK
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3. The following sequence shall be followed for preparation, placement, and compaction of each lift of the test pad:
 - a. Test pad site shall be stripped of existing vegetation by removing the top soil prior to placement of excavated material.
 - b. Excavated material shall be placed in 12 to 18 inch thick lifts, depending on the gradation of the spoils, and spread uniformly through out the entire prepared test pad area. The City Representative shall determine the allowable thickness of each lift for the test pad. The test pad area shall be marked with chalk or lime to clearly distinguish it from the rest of the spoil disposal fill area.
 - c. For compaction of the excavated material in the test pad area, the number of passes of the vibratory roller compactor to be applied to each lift of excavated material placement shall be as follows: three passes for the first two lifts, five passes for the third and fourth lifts, and seven passes for the fifth and sixth lifts. The City Representative may make adjustment to the number of specified passes as he/she sees fit during the test program.
 - d. Contractor needs to demonstrate a systematic path pattern for the specified vibratory roller compactor to ensure compaction is uniform and covers the entire test pad area.
 - e. If test pad soil density tests are determined to be applicable by the City Representative, a minimum of 3 such tests shall be conducted by the field testing technician and laboratory employed by the Contractor at completion of compaction of the second, fourth, and final lifts (minimum of 3 tests x 3 lifts = 9 tests total). The location and number of tests for each specified lift shall be submitted for review and acceptance by the City Representative.
 - f. If City Representative determines that surveying shall be used as an alternative to soil density testing based on the types and gradation of materials excavated from the tunnel, Contractor shall perform survey of settlement after every two equipment passes over each lift at several locations within the test pad area to evaluate the effectiveness of compaction. The location and number of survey points for each lift shall be submitted for review and acceptance by the City Representative.
4. **Field Testing:** The objective of the soil density testing or settlement survey is to evaluate the effectiveness of the compaction equipment on the types of excavated material compacted under the specified compaction passes by measurement of the in place unit weight of the compacted excavated material, or establishment of an average lift settlement for each specified compaction pass. Results of the testing or survey shall be submitted to the City Representative when available but no later than 24 hours after the tests or survey is performed.

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If soil testing is performed, the in place unit weight of the compacted fill shall be measured using one of the following methods:

- a. The sand cone test method (ASTM D1556) or
 - b. Nuclear Method (ASTM D2922)
5. The City Representative or his/her designee will review and interpret the soil density test results or survey data submitted by the Contractor. Any adjustment to the number of compaction passes specified in article 3.02.C of this section, applicable to the entire disposal site, will be conveyed to the Contractor in writing. If deemed necessary, the lift thickness may vary from the specified thickness under article 3.01 C of this section.
6. The City Representative reserves the right to request additional test pads depending on the variation of the characteristics and properties of the excavated materials during tunneling. Additional test pad work, if required, shall be considered additional work.

PART 2 – PRODUCTS

2.01 MATERIALS

- A. Topsoil shall consist of material removed during stripping operations and placed in the stripping stockpiles in accordance with Section 02052, "Site preparation, Clearing, Grubbing, and Stripping."
- B. Drain pipes shall be of reinforced concrete (ASTM C76) or corrugated HDPE (AWWA C906).
- C. Culverts and headwalls shall conform to Section 02631 - Storm Drain System

PART 3 – EXECUTION

3.01 SPOIL DISPOSAL AREAS A, B, and C

- A. Excavated spoils shall be tested for hazardous materials or contaminants in accordance with Section 02111, Disposal of Excavated Materials, before final placement in designated on-site spoil disposal areas. Material identified as hazardous/unsuitable shall not be placed in on-site disposal areas. Final placement in spoil disposal areas shall be subject to approval by the City Representative.

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**TECHNICAL SPECIFICATIONS
DIVISION 2: SITE WORK
02210: DISPOSAL SITES**

**EXHIBIT E – Part 2: Specifications
WD-2581**

- B. Disposal sites shall be stripped of existing top soil prior to spoils placement. Top soil shall be stockpiled for later use.
- C. Drainage pipes, ditches or culverts, inlets and/or headwalls, erosion mitigation measures, and other facilities as required and as indicated on the "Spoil Disposal Areas" Drawings shall be furnished and installed.
- D. Excavated materials placed in on-site spoil disposal areas shall be spread in uniform lifts or layers not exceeding 12 inches in loose thickness. Compaction shall be applied with at least 5 passes of a 10-15 ton pad foot vibratory roller compactor or approved equivalent unless otherwise directed by the City Representative. Compaction testing will not be required outside of the test pad area. Moisture conditioning shall be performed as needed to control dust during dumping, spreading, and compaction.
- E. Oversize rocks larger than 12 inches are allowed in the fill provided they are not nested together and are compacted as specified.
- F. The excavated materials shall be placed uniformly in horizontal layer/lift over the entire spoil disposal site before additional materials are placed on another layer/lift at higher elevation. The material near the slopes should be spread beyond the final slope and the excess material trimmed after completion of each spoil disposal site so that the material on the slopes is well compacted. All loose material on the slopes shall be trimmed and placed on top of the spoil disposal site and compacted. Slope shall be trimmed to the lines and grades as shown on the drawings. The final lines and grades of the spoil disposal sites shall be determined by the City Representative based on the actual volumes of excavated materials placed..
- G. Disposal sites shall be restored and revegetated as specified in section 02260 – "Hydro-seeding and Mulching", including placement of top-soil, hydroseeding, and installation of temporary erosion protection measures.

PART 4 – PAYMENT

- 4.01** All work specified in this section shall be considered incidental work to the Disposal of Excavated Material work unless noted otherwise.

END OF SECTION

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EXHIBIT B

SUBLEASE PREMISES

Sublease Premises is the Initial Premises as defined in the Lease.

EXHIBIT D
ACQUIRED ASSETS

CEMEX Sunol Quarry

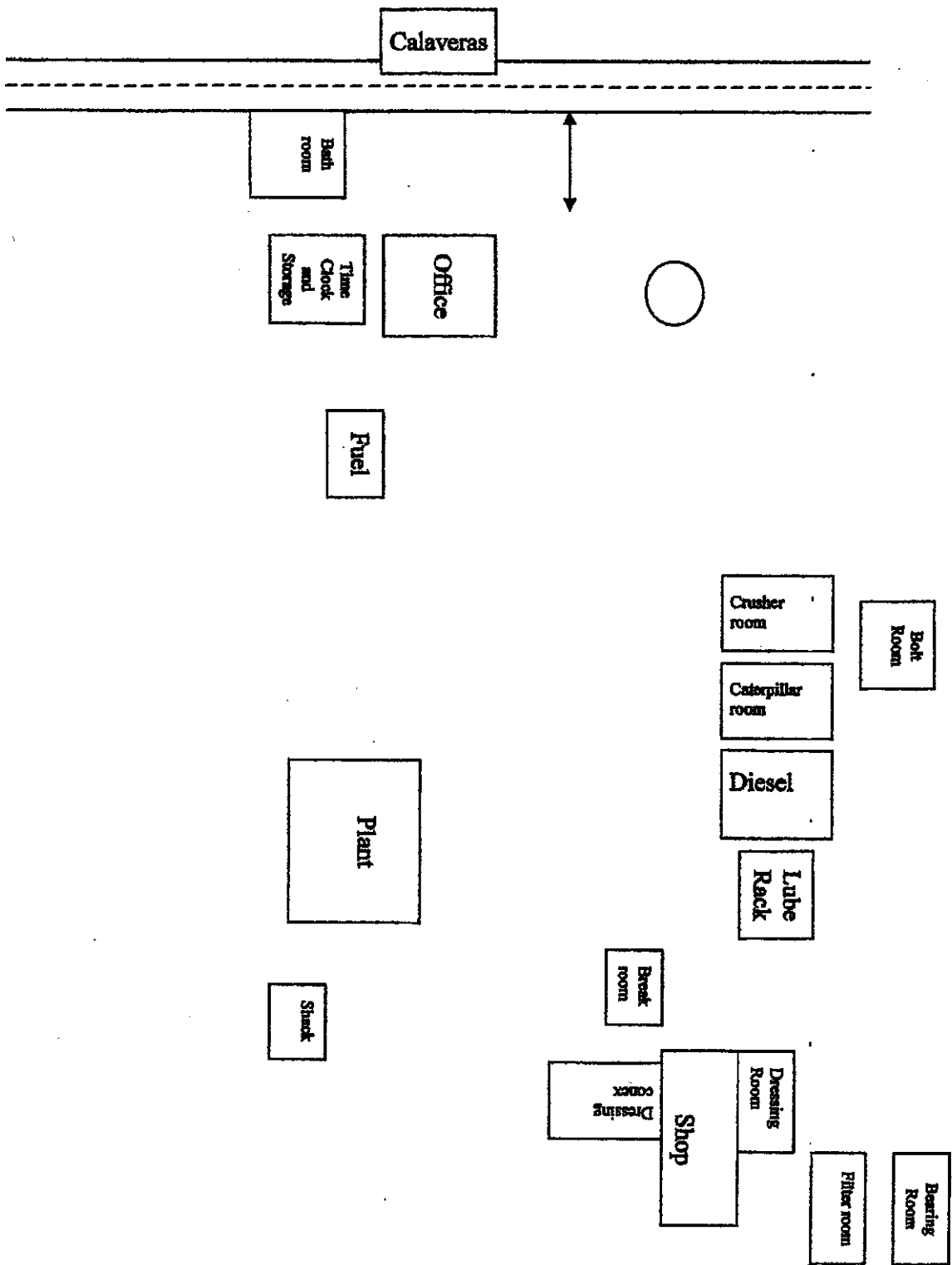
SMP 30

Plant and Equipment Valuation

Description
1 Main Feeder - 42"x12'6"
2 Plant Feeder - 42"x112'
3 C3 Wet Side Feed - 36" x 85'
4 C7 Sand Stacker - 30"x124'
5 C5 RS 3/4" Gravel Stacker - 30"x129'
6 C24 McLanahan Feed - 24"x45'
7 C8 RS 1 1/2" Stacker - 24"x127'
8 C7 RS Pea Gravel Stacker -24"x80'
9 C8 HP 400 Feed - 30"x40'
10 C9 Kue Ken Jaw Product 30"x48'
11 C14 Belt 24"x23'
12 C11 Dry Screen Feed - 36"x76'
13 C10,24 'x60'
14 C13 51" Cone Feed 18"x40'
15 C46 1 1/2" Re-Run - 24"x45'
16 C12 6' x 16' TD Simplicity - 24"x85'
17 C18 RS AB Stacker - 36"x100'
18 C25 24"x47'
19 C18 51" Cone Product - 24"x55'
20 1/2" Crushed Stacker - 30"x60'
21 1/2" Crushed Side Discharge - 30"x25'
22 3/4" Crushed Side Discharge - 30"x25'
23 C23 HP 400 Product - 42"x22'
24 3/4" Crushed Stacker - 30"x60'
25 24"x50'
26 36"x50'
27 1 1/2" Re-Run - 24"x25'
28 66" x 36" SS Wemco FMW
29 44" x 32" TS Eagle FMW

30 Twin Screws 3/4" West ??
 31 5' x 10' DD Rinse Screen Seco
 32 2 @ 44" x 20 SS CMW McLanahan
 33 Water Pump Next to Twin
 34 Wet Screen 5' x 14' TD HS Seco
 35 Trommel Bodison 8' x 30'
 36 HP 400 Crusher
 37 Scalper Screen - 5' x 12' DD Seco Cable
 38 HP 400 Cooling Fan
 39 Dry Screen East - 5'x12' SMICO
 40 Dry Screen West - 5'x12' SMICO
 41 #89 16x36 Kue Ken Jaw Crusher
 42 4 1/4 Cone Crusher w/ Turbo Upgrade
 43 30 x 26 Eagle Single Screw AB
 44 Screen - 6'x16' TD Simplicity
 45 Pump/ Sump 44 Product to 35
 46 FW Pump
 47 FW Transfer Pump
 48 Pit Pump
 49 Pit Pump N/R
 50 Dist Screw to C-12 DutBelt ??
 51 400 Oil Pump
 52 C4 Travel
 53 C5 Travel
 54 HP 400 Hydraulic Pump
 55 HP 400 Crane North Motor
 55A HP 400 Crane South Gear Box/Brake
 56 3/4 Crushed Stacker Travel Inop
 57 West Pump
 58 1/4 Dust Stacker
 1/4 Dust Side Discharge

SMP 30 - Sunol Property Buildings
6527 Calaveras Rd. - Sunol, CA 94586



1.) Office

- a. Consists of one conference area, one bathroom, 3 similar sized offices, a front office area and the scale room.
 - i. Size: (1) 30'x11.5' conference area and bathroom, (3) 9'x11' offices, (1) front office 10'x11' and (1) scale house 10'x11' which totals 40'x 24' with the scale house being 10'x11'

2.) Time clock and Storage room

- a. Used for time clock and storage
 - i. Size: 21'x12'

3.) Bath room

- a. Extra external bathroom
 - i. Size: 10'x 8'

4.) Crusher Room

- a. Crusher parts and shelving
 - i. Size: 10'x20'

5.) Caterpillar Room

- a. Cat Part room
 - i. Size: 19'x8'

6.) Bolt Room

- a. Bolt storage shed
 - i. Size: 12' x 7'

7.) Shop

- i. Size: 30'x22'

8.) Break Room

- a. Break room next to Shop
 - i. Size: 12'x20'

9.) Dressing Room

- a. Dressing room next to Shop on Southside
 - i. Size: 12'x20'

10.) Dressing Conex

- a. Dressing next to shop on north side
 - i. Size: 8'x20'

11.) Filter Room

- a. Keep all of our filters for cats here
 - i. Size: 8'x20'

12.) Bearing Room

- a. Keep all of our bearings here for the plant
 - i. Size: 10'x20'

13.) Laborers Shack

- a. Breakroom for Laborer
 - i. Size: 10'x18'

EXHIBIT E

LEASE SECURITY, RECLAMATION SECURITY AND SMARA SECURITY

DATE: SEPTEMBER 3, 2003

IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER: 3058383

BENEFICIARY
COUNTY OF ALAMEDA
224 W. WINTON AVENUE # 111,
HAYWARD, CA 94544 AND
CALIFORNIA DEPARTMENT OF

APPLICANT
RMC PACIFIC MATERIALS, INC.
6601 KOLL CENTER PKWY
PLEASANTON, CA 94566

CONSERVATION
OFFICE OF MINE RECLAMATION
801 K STREET MS 09-06
SACRAMENTO, CA 95814-3529

AMOUNT
USD 298,000.00
TWO HUNDRED NINETY EIGHT THOUSAND
AND 00/100'S US DOLLARS

EXPIRATION
AUGUST 20, 2004 AT OUR COUNTERS

WE HEREBY ESTABLISH IN YOUR FAVOR OUR IRREVOCABLE STANDBY LETTER OF CREDIT WHICH IS AVAILABLE WITH BANK OF AMERICA, N.A. BY PAYMENT AGAINST PRESENTATION OF THE ORIGINAL OF THIS LETTER OF CREDIT AND YOUR DRAFTS AT SIGHT DRAWN ON BANK OF AMERICA, N.A.

THIS LETTER OF CREDIT SHALL BE DEEMED AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR A ONE YEAR PERIOD ON THE PRESENT EXPIRATION DATE SET FORTH ABOVE AND UPON EACH EXPIRATION DATE, UNLESS AT LEAST SIXTY (60) DAYS PRIOR TO SUCH EXPIRATION DATE, WE NOTIFY YOU IN WRITING BY REGISTERED MAIL OR OVERNIGHT COURIER SERVICE AT THE ABOVE ADDRESS, ATTENTION LEGAL DEPARTMENT, THAT WE ELECT NOT TO EXTEND THIS LETTER OF CREDIT.

WE HAVE BEEN ADVISED THAT THE PURPOSE OF THIS LETTER OF CREDIT IS RELATED TO: "EXCAVATION OF SAND AND GRAVEL MATERIALS ON A SITE LOCATED 1 MILE S.E. OF HIGHWAY 680, BETWEEN CALAVERAS ROAD AND ALAMEDA CREEK, ALAMEDA COUNTY. (CALAVERAS RESERVOIR 7 1/2 QUAD)."

WE HEREBY ENGAGE WITH YOU THAT DRAFT(S) DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE DULY HONORED UPON PRESENTATION, AS SPECIFIED HEREIN.

THIS LETTER OF CREDIT IS SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES 1998, ICC PUBLICATION NO. 590.

IF YOU REQUIRE ANY ASSISTANCE OR HAVE ANY QUESTIONS REGARDING THIS TRANSACTION, PLEASE CALL 213-345-0135.

AUTHORIZED SIGNATURE

SERGIO CARMONA

AUTHORIZED SIGNATURE

THELMA CHAN

DATE: JUNE 21, 2004

AMENDMENT TO IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER: 3058383

AMENDMENT NUMBER 1

BENEFICIARY
COUNTY OF ALAMEDA
224 W. WINTON AVENUE # 111,
HAYWARD, CA 94544 AND
CALIFORNIA DEPARTMENT OF

APPLICANT
RMC PACIFIC MATERIALS, INC.
6601 KOLL CENTER PKWY
PLEASANTON, CA 94566

CONSERVATION
OFFICE OF MINE RECLAMATION
801 K STREET MS 09-06
SACRAMENTO, CA 95814-3529

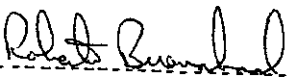
THIS AMENDMENT IS TO BE CONSIDERED AN INTEGRAL PART OF THE ABOVE CREDIT AND MUST BE ATTACHED THERETO.

THE ABOVE MENTIONED CREDIT IS AMENDED AS FOLLOWS:

IN THE SECOND PARAGRAPH, WHERE IT READS "AT LEAST SIXTY (60) DAYS" IS NOW TO READ AS "AT LEAST ONE HUNDRED TWENTY (120) DAYS".

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

IF YOU REQUIRE ANY ASSISTANCE OR HAVE ANY QUESTIONS REGARDING THIS AMENDMENT, PLEASE CALL 213-345-0128.



AUTHORIZED SIGNATURE

ROBERTO BUENABAD



AUTHORIZED SIGNATURE

STELLA ROSALES

THIS DOCUMENT CONSISTS OF 1 PAGE(S).

ORIGINAL

7/16/04
CC P.C.



PAGE: 1

DATE: OCTOBER 28, 2004

AMENDMENT TO IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER: 3058383

AMENDMENT NUMBER 2

BENEFICIARY
COUNTY OF ALAMEDA
224 W. WINTON AVENUE # 111,
HAYWARD, CA 94544 AND
CALIFORNIA DEPARTMENT OF

APPLICANT
RMC PACIFIC MATERIALS, INC.
6601 KOLL CENTER PKWY
PLEASANTON, CA 94566

CONSERVATION
OFFICE OF MINE RECLAMATION
801 K STREET MS 09-06
SACRAMENTO, CA 95814-3529

THIS AMENDMENT IS TO BE CONSIDERED AN INTEGRAL PART OF THE ABOVE CREDIT AND MUST BE ATTACHED THERETO.

THE ABOVE MENTIONED CREDIT IS AMENDED AS FOLLOWS:

THE AMOUNT OF THIS CREDIT HAS BEEN INCREASED BY USD 9,193.00
THE AGGREGATE AMOUNT OF THE CREDIT IS NOW USD 307,193.00

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

IF YOU REQUIRE ANY ASSISTANCE OR HAVE ANY QUESTIONS REGARDING THIS AMENDMENT, PLEASE CALL 213-345-0128.

Stella M. Pons

AUTHORIZED SIGNATURE

THIS DOCUMENT CONSISTS OF 1 PAGE(S).

BANK OF AMERICA - CONFIDENTIAL

PAGE: 1

DATE: APRIL 20, 2007

AMENDMENT TO IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER: 3058383

AMENDMENT NUMBER 3

ISSUING BANK
BANK OF AMERICA, N.A.
1000 W. TEMPLE STREET
7TH FLOOR, CA9-705-07-05
LOS ANGELES, CA 90012-1514

BENEFICIARY
COUNTY OF ALAMEDA
224 W. WINTON AVENUE # 111,
HAYWARD, CA 94544 AND
CALIFORNIA DEPARTMENT OF

APPLICANT
RMC PACIFIC MATERIALS, INC.
6601 KOLL CENTER PKWY
PLEASANTON, CA 94566

CONSERVATION
OFFICE OF MINE RECLAMATION
801 K STREET MS 09-06
SACRAMENTO, CA 95814-3529

THIS AMENDMENT IS TO BE CONSIDERED AN INTEGRAL PART OF THE ABOVE CREDIT AND MUST BE ATTACHED THERETO.

THE ABOVE MENTIONED CREDIT IS AMENDED AS FOLLOWS:

THE AMOUNT OF THIS CREDIT HAS BEEN INCREASED BY USD 76,108.00
THE AGGREGATE AMOUNT OF THE CREDIT IS NOW USD 383,301.00

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

IF YOU REQUIRE ANY ASSISTANCE OR HAVE ANY QUESTIONS REGARDING THIS AMENDMENT, PLEASE CALL 213-481-7844.

AUTHORIZED SIGNATURE

THIS DOCUMENT CONSISTS OF 1 PAGE(S).