

MEMORANDUM OF UNDERSTANDING
(Asphalt Plant Site and Napoleon Site)

THIS MEMORANDUM OF UNDERSTANDING (this “MOU”), dated for reference purposes only as of October 25, 2016 (“**Agreement Date**”), is by and between THE CITY AND COUNTY OF SAN FRANCISCO (“**City**”), through its Public Utilities Commission (“**SFPUC**”), and THE CITY AND COUNTY OF SAN FRANCISCO through its Public Works Department (“**Public Works**”). The SFPUC and Public Works are sometimes referred to collectively in this MOU as the “**Parties**.”

RECITALS

A. In 1945, the San Francisco Board of Supervisors (the “**BOS**”) passed Resolution No. 4744 (Series of 1939) requiring that City purchase certain real property “for the construction, operation, and maintenance of the North Point Sludge Treatment Plant near Islais Creek [now the Southeast Water Pollution Control Plant (“**SEP**”).”

B. Pursuant to BOS Resolution No. 4744 (Series of 1939) and specifically for the purposes of a sludge treatment plant, in 1948, City purchased Parcels 5281/001 and 5288/003 (now combined to form Parcel 5281/001), commonly known as 1801 Jerrold Avenue (“**Asphalt Plant Site**”), pursuant to an agreement approved by BOS Ordinance No. 4849 (Series of 1939). A depiction of the Asphalt Plant Site is attached as **Exhibit A** and the legal description of the Asphalt Plant Site is attached as **Exhibit B**.

C. In 1955, Public Works constructed a municipal asphalt plant (“**Asphalt Plant**”) on the Asphalt Plant Site and operated it until Fiscal Year 2010. The Asphalt Plant Site occupies approximately 64,340 square feet directly across Quint Street from the SEP.

D. Effective August 1, 1996, jurisdiction over City’s wastewater system, including sewer facilities, assets, and properties, was transferred to the SFPUC.

E. Pursuant to City Charter Section 8B.121, which provides for the SFPUC’s exclusive charge of real estate assets under its jurisdiction, the SFPUC has exclusive jurisdiction over San Francisco Block 4343/Lot 031, Block 4343/Lot 018, and Block 4346/Lots 001 and 001A (the “**SFPUC Parcels**”), which are bounded by Napoleon, Evans, and Cesar Chavez Streets. Although the SFPUC Parcels have no material surface structural improvements, the SFPUC owns, operates, and maintains extensive subsurface wastewater facilities (“**Wastewater Facilities**”) placed beneath the SFPUC Parcels in the area (the “**Wastewater Restricted Area**”) depicted on the attached **Exhibit C**. The SFPUC uses a portion of the SFPUC Parcels for parking and to maintain the security fencing, gates, gate intercom system, gate operators, and seven furnished trailers with ADA ramps (“**Trailers**”) for office use.

F. Public Works maintains a facility for its operational vehicles, equipment, and storage on Cesar Chavez Street near Evans Street (“**DPW Yard**”). The DPW Yard is located on and adjacent to the SFPUC Parcels, as further explained in Recital H below.

G. On February 22, 2000, by Resolution No. 00-0064, the SFPUC authorized execution of a revocable, personal, non-exclusive, and non-possessory permit (the “**Existing Permit**”) between the SFPUC, as permittor, and Public Works, as permittee, that provides for Public Works’ privilege

to enter and use a portion of the SFPUC Parcels for equipment and materials storage and parking (such portion of Block 4343/Lot 018, and Block 4346/Lots 001 and 001A, is referred to in this MOU as the “**Existing Permit Area**”). The Existing Permit was designated by the SFPUC as Permit No. P-3884 and the Parties completed execution of the Existing Permit on February 28, 2000. The Existing Permit Area includes a portion of the Wastewater Restricted Area.

H. Public Works desires to acquire jurisdiction over and occupy approximately 59,132 square feet of the SFPUC Parcels (the “**Napoleon Site**”) to expand its DPW Yard area and operations. The Napoleon Site includes a portion of the Existing Permit Area and a portion of the Wastewater Restricted Area (the “**Napoleon Wastewater Restricted Area**”). A depiction of the Napoleon Site, including the Napoleon Wastewater Restricted Area, is attached as **Exhibit D**. The legal description of the Napoleon Site is attached as **Exhibit E**.

I. In addition, Public Works desires to obtain ownership of the Trailers located on another portion of the Napoleon Site. The Trailers are operational but have limited residual monetary value to the SFPUC. A description of the Trailers is attached as **Exhibit F**.

J. The SEP facilities are old, and require substantial maintenance, repair, and replacement. The SFPUC is undertaking scheduled repair and replacement projects at the SEP and at various locations in San Francisco in the near term, and has immediate need for additional space for storage of equipment and vehicles and temporary relocation of existing uses in the vicinity of the SEP. In the longer term, the SFPUC anticipates a continuing need for more space for capital improvement projects related to existing facilities and upgrades to the wastewater system. Because of the existing intense competition for available industrial land in San Francisco, particularly in proximity to the SFPUC’s existing utility plants and facilities, the SFPUC now seeks to secure land necessary to support its current and future obligations to provide essential utility services.

K. The SFPUC desires to acquire jurisdiction over the Asphalt Plant Site in exchange for consenting to the transfer of the Napoleon Site and ownership of Trailers to Public Works, subject to the Required Approvals (defined below in Section 14) and otherwise on the terms and conditions contained in this MOU. Concurrently with the jurisdictional transfer, the SFPUC will issue a new license to Public Works (the “**New License**”) in substantially the form attached as **Exhibit G** to allow Public Works occupancy of a portion of the SFPUC Parcels (the exact dimensions of which shall be agreed upon by the Parties prior to the issuance of the New License) for use as a site for equipment and materials storage and parking that will essentially consist of the Existing Permit Area reduced by those portions of the Existing Permit Area that are within the Napoleon Site (the “**New License Area**”), which portions will be jurisdictionally transferred to Public Works as part of the Napoleon Site pursuant to this MOA.

L. Public Works desires to acquire jurisdiction over the Napoleon Site and ownership of the Trailers, in exchange for consenting to the jurisdictional transfer of the Asphalt Plant to the SFPUC, subject to the Required Approvals and otherwise on the terms and conditions contained in this MOU.

M. In a letter dated October 17, 2016, the San Francisco Planning Department found that (1) the proposed jurisdictional transfer of the Asphalt Plant Site from Public Works to the SFPUC; and (2) the proposed jurisdictional transfer of the Napoleon Site from the SFPUC to Public Works were consistent with City’s General Plan and the eight priority policies of Planning Code Section 101.1(b).

N. On June 2, 2016, the Planning Department issued a determination that the jurisdictional transfers contemplated herein satisfied the criteria for a Categorical Exemption (Class 1) pursuant to California Environmental Quality Act (“CEQA”) Guidelines.

O. City’s Director of Property has determined that the current fair market value of the Asphalt Plant Site is substantially and reasonably equivalent to the current fair market value of the Napoleon Site, together with the appraised value of the Trailers, as set forth in the memorandum dated October 26, 2016 (“**Appraisal Memorandum**”).

P. The Parties wish to enter into this MOU to set forth their agreement regarding the jurisdictional transfers proposed in this MOU.

NOW, THEREFORE, the Parties agree as follows:

AGREEMENT:

1. **Recitals.** The foregoing recitals are true and correct and are incorporated by this reference into this MOU.

2. **Definitions.** For purposes of this MOU, the initially capitalized terms used in this MOU shall have the following meanings:

- (a) “**Appraisal Memorandum**” shall have the meaning given in Recital O above.
- (b) “**Asphalt Plant**” shall have the meaning given in Recital C above.
- (c) “**Asphalt Plant Site**” shall have the meaning given in Recital B above.
- (d) “**Asphalt Plant Vacation Date**” shall have the meaning given in Section 5(b)(i) below.
- (e) “**BOS**” means City’s Board of Supervisors.
- (f) “**City**” means the City and County of San Francisco.
- (g) “**City Real Estate Division**” or “**RED**” means the division of City’s General Services Agency that, among other things, acts as a real estate consultant to City Departments and City’s Mayor and Board of Supervisors.
- (h) “**Construction Activity**” shall have the meaning given in Section 9.1(a) below.
- (i) “**DPW Yard**” shall have the meaning given in Recital F above.
- (j) “**Existing Permit**” means the SFPUC Revocable Permit No. P-3884 dated February 7, 2000, further described in Recital G above.
- (k) “**Existing Permit Area**” shall have the meaning given in Recital G above.
- (l) “**Hazardous Material**” shall have the meaning given in Section 11 below.
- (m) “**Jurisdictional Transfer Resolution**” means a BOS resolution, ordinance, or other legislation that: (i) determines the Asphalt Plant Site is no longer necessary or

advantageous to Public Works and can be more advantageously used by SFPUC, (ii) directs the jurisdictional transfer of the Asphalt Plant Site to SFPUC, (iii) determines the Napoleon Site is no longer necessary or advantageous to the SFPUC and can be more advantageously used by Public Works; (iv) ratifies the Public Utilities Commission determination that the Napoleon Site is surplus to the needs of any utilities, and (v) directs the jurisdictional transfer of the Napoleon Site and transfer of ownership of the Trailers to Public Works.

- (n) “**Napoleon Site**” shall have the meaning given in Recital H above.
- (o) “**Napoleon Site Vacation Date**” shall have the meaning given in Section 5(a)(ii) below.
- (p) “**Napoleon Wastewater Restricted Area**” shall have the meaning given in Recital H above.
- (q) “**New License**” means the form of SFPUC Revocable License described in Recital K above.
- (r) “**New License Area**” shall have the meaning given in Recital K above.
- (s) “**Public Works Affiliates**” shall have the meaning given in Section 8 below.
- (t) “**Removable Property**” shall have the meaning given in Section 5(a)(iii) below.
- (u) “**Required Approvals**” shall have the meaning given in Section 14 below.
- (v) “**SFPUC Affiliates**” shall have the meaning given in Section 7 below.
- (w) “**SFPUC Parcels**” shall have the meaning given in Recital E above.
- (x) “**Trailers**” shall have the meaning given in Recital E above.
- (y) “**Transfer Date**” shall have the meaning given in Section 4(a) below.
- (z) “**Use Restrictions**” shall mean the provisions, terms, and conditions stated in the attached **Exhibit H**.
- (aa) “**Wastewater Restricted Area**” shall have the meaning given in Recital E above.
- (bb) “**Wastewater Facilities**” shall have the meaning given in Recital E above.

3. “**As Is, Where Is**” Transfer. Public Works understands and agrees that the SFPUC is transferring the Napoleon Site and ownership of the Trailers, and Public Works is acquiring the Napoleon Site and the Trailers, on an “AS IS, WHERE IS, WITH ALL FAULTS” basis. The SFPUC understands and agrees that Public Works is transferring the Asphalt Plant Site, and, subject to the obligations of Public Works to remove Debris and its Removable Property pursuant to Section 5(b)(ii) below and except as otherwise provided in Section 5(b), on the Transfer Date, the SFPUC shall accept the Asphalt Plant Site, on an “AS IS, WHERE IS, WITH ALL FAULTS” basis. The transfer of jurisdiction of the Napoleon Site to Public Works shall be subject to all existing leases,

easements, title exceptions, and other encumbrances, whether or not disclosed by a current preliminary title report and, similarly, the transfer of jurisdiction to the Asphalt Plant Site to the SFPUC shall be subject to all existing leases, easements, title exceptions, and other encumbrances, whether or not disclosed by a current preliminary title report.

4. Transfer of Jurisdiction and Trailer Ownership and Existing Permit Revocation.

(a) **Napoleon Site and Trailers.** On the tenth (10th) day (the “**Transfer Date**”) after the date the Required Approvals are completed, (i) jurisdiction over the Napoleon Site and ownership of the Trailers shall automatically transfer to Public Works; (ii) the Existing Permit shall automatically terminate and be deemed revoked; and (iii) the New License shall automatically become effective; provided, however, if, for any reason, the New License has not been mutually executed and delivered by the Parties on or before the Transfer Date, the Existing Permit shall stay in effect with respect to the New License Area only but shall automatically terminate and be deemed revoked on the date that the New License is mutually executed and delivered by the Parties, which execution and delivery shall occur as soon as practicable on or after the Transfer Date, but, in any event, prior to the Napoleon Site Vacation Date (defined below in Section 5(a)(i)). Notwithstanding such transfer of jurisdiction, the SFPUC may continue to occupy the Napoleon Site after the Transfer Date until its vacation of the site pursuant to the provisions of Section 5(a) below.

(b) **Asphalt Plant Site.** On the Transfer Date, jurisdiction over the Asphalt Plant Site shall automatically transfer to the SFPUC. Notwithstanding such transfer of jurisdiction, Public Works may continue to occupy the Asphalt Plant Site after the Transfer Date until its vacation of the site pursuant to the provisions of Section 5(b) below.

(c) **Documentation of Transfers.** Within sixty (60) business days after the Required Approvals are completed, RED shall prepare, execute, and file all applicable documentation to effect the transfer and memorialize the jurisdictional transfers of the Asphalt Plant Site and the Napoleon Site in City’s real estate records.

5. Vacation of the Napoleon Site and the Asphalt Plant Site.

(a) Napoleon Site.

- (i) The SFPUC may continue to occupy the Napoleon Site and the Trailers after the Transfer Date for a period not to exceed three hundred sixty (360) days after the Transfer Date. Within one hundred eighty (180) days of the Transfer Date, the SFPUC shall give Public Works at least sixty (60) days’ written notice of the date the SFPUC shall vacate the Napoleon Site and Trailers (the “**Napoleon Site Vacation Date**”).
- (ii) Prior to the Napoleon Site Vacation Date, at its sole cost, the SFPUC shall maintain the Napoleon Site and Trailers.
- (iii) Prior to the Napoleon Site Vacation Date, the SFPUC shall remove all equipment, vehicles, and personal property (“**Removable Property**”) from the Napoleon Site and Trailers. If the SFPUC fails to remove any Removable Property on or before the Napoleon Site Vacation Date, Public Works may (A) accept any remaining

Removable Property in its "as-is" condition, or (B) reject and remove any Removable Property.

- (iv) On the Napoleon Site Vacation Date, Public Works shall assume all liability and responsibility for any Hazardous Materials on or under the Napoleon Site, including all liability and responsibility for any removal or remediation of any such Hazardous Materials.

(b) Asphalt Plant Site.

- (i) On or prior to the Napoleon Site Vacation Date, Public Works shall give the SFPUC notice of the date (the "**Asphalt Plant Vacation Date**") that Public Works proposes to vacate the Asphalt Plant Site, which date shall be no later than thirty (30) days after the Napoleon Site Vacation Date.
- (ii) On or before the Asphalt Plant Vacation Date, Public Works shall remove all Removable Property and any discarded equipment, vehicles, personal property, lumber, equipment, trash, rubbish, or building materials present on or about the Asphalt Plant Site ("**Debris**") from the Asphalt Plant Site, but shall not be obligated to remove any structure or fixture.
- (iii) If the SFPUC elects to demolish any structures and fixtures on the Asphalt Plant Site following Public Works' vacation of the Asphalt Plant Site, Public Works shall promptly cooperate with the SFPUC in obtaining any approvals for such demolition.
- (iv) On and after the Transfer Date, the SFPUC shall assume all liability and responsibility for any Hazardous Materials on or under the Asphalt Plant Site, including all liability and responsibility for any removal or remediation of such Hazardous Materials.

6. Consideration. Pursuant to the Appraisal Memorandum, the fair market value of the Asphalt Plant Site is substantially and reasonably equivalent to the fair market value of the Napoleon Site and the Trailers. Accordingly, except as may be otherwise expressly provided in this MOU, the SFPUC shall not be obligated to transfer any monetary consideration to Public Works for the Asphalt Plant Site, and Public Works shall not be obligated to transfer any monetary consideration to the SFPUC for the Napoleon Site and the Trailers.

7. Asphalt Plant Site Access. Prior to the Asphalt Plant Vacation Date, the SFPUC and its employees, agents, consultants, contractors, authorized representatives, and invitees (collectively, "**SFPUC Affiliates**") may access and use the Asphalt Plant Site for any necessary geotechnical and environmental investigations, provided that the SFPUC provides Public Works with at least ten (10) business days' written notice prior to such access and use and such access and use shall not unreasonably interfere with Public Works' operations or use of the Asphalt Plant Site. Each Party will appoint a contact person to coordinate access. Prior to the Asphalt Plant Site Vacation Date, the SFPUC shall not construct or place any permanent structures or improvements in, on, under, or about the Asphalt Plant Site, nor shall the SFPUC make any material alterations or additions to any existing structure or improvement on the Asphalt Plant Site or on or in the Napoleon Site (other than any

required repairs or replacements to the Wastewater Facilities). The SFPUC shall bear the expense of all such activities.

8. Napoleon Site Access. Prior to the Napoleon Site Vacation Date, Public Works and its employees, agents, consultants, contractors, authorized representatives, invitees, and guests (collectively, “**Public Works Affiliates**”) may access and use the Napoleon Site for any necessary geotechnical and environmental investigations, provided that Public Works provides the SFPUC with at least ten (10) business days’ written notice prior to such access and use and shall not unreasonably interfere with the SFPUC’s operations or use of the SFPUC Parcels. Each Party will appoint a contact person to coordinate access. Prior to the Napoleon Site Vacation Date, Public Works shall not construct or place any permanent structure or improvement in, on, under, or about the Napoleon Site, nor shall Public Works make any alteration or addition to any existing structure or improvement on the Napoleon Site. Public Works shall bear the expense of all such activities.

9. SFPUC Reserved Rights. After the Transfer Date, the SFPUC and the SFPUC Affiliates may continue to enter and use the Napoleon Wastewater Restricted Area in perpetuity to access, operate, maintain, repair, expand, and replace the Wastewater Facilities contained in the Napoleon Wastewater Restricted Area, and to perform such other actions as are reasonably necessary for the SFPUC to install, operate, maintain, repair, expand, and replace the Napoleon Wastewater Facilities and any new facilities in, on, or under the Napoleon Wastewater Restricted Area. At the SFPUC’s request, but subject to the provisions of Section 9.1(c)(iv) below, Public Works shall immediately remove any of Public Works’ Removable Property from the Napoleon Wastewater Restricted Area to allow the SFPUC and SFPUC Affiliates access to the Wastewater Facilities located in the Napoleon Wastewater Restricted Area. If the SFPUC deems it necessary, in the event of an emergency, at the SFPUC’s sole discretion, the SFPUC may remove any such Removable Property or real property improvements and, except as provided in Section 9.1(a) below, the SFPUC shall not be responsible for restoring or returning the same to its prior condition. Further, at all times after the Transfer Date, in connection with the Parties’ respective rights to use, occupy, and/or access the Napoleon Wastewater Restricted Area as contemplated by this MOU, the Parties shall each comply, as applicable, with the terms and conditions (“**Use Restrictions**”) stated in the attached **Exhibit H**.

9.1 SFPUC Construction, Inspection, Maintenance, Replacement, Expansion, and Repairs to Wastewater Facilities.

- (a) In connection with any emergency or planned or scheduled (i.e., non-emergency) construction, inspection, maintenance, replacement, expansion, or repairs to the Wastewater Facilities conducted by or behalf of the SFPUC on or within the Napoleon Wastewater Restricted Area (each a “**Construction Activity**”), (i) after completion of the Construction Activity, the SFPUC shall promptly return all asphalt or cement paved areas, all unpaved areas, and all fencing and gates (including associated electronic gate-opening and security equipment) within the Napoleon Wastewater Restricted Area to their previous condition. In addition, upon completion of construction, the SFPUC shall repair, or reimburse Public Works for the costs of repairing, any damage to any structure placed or located within the Napoleon Site Wastewater Restricted Area that does not violate the Use Restrictions to the extent such damage was caused by the negligence or willful misconduct SFPUC or SFPUC Affiliates. Otherwise, the SFPUC shall have no obligation to repair or restore any structure, Removable Property, or other utility facility (other than Wastewater Facilities) within the

Napoleon Wastewater Restricted Area that is displaced or damaged in connection with a Construction Activity.

- (b) The SFPUC shall provide Public Works with no less than sixty (60) days' prior written notice of any Construction Activity on any portion of the Napoleon Site, the Wastewater Restricted Area, or the New License Area, except in the event of an emergency, where the SFPUC shall provide as much notice as is reasonably practicable under the circumstances.
- (c) If the SFPUC proposes or performs any Construction Activity that includes new construction or replacement with respect to the Wastewater Facilities located within the Napoleon Wastewater Restricted Area.

- (i) the SFPUC shall provide to Public Works, at the address for the Director set forth in Section 17 below, a copy of the conceptual engineering report, the 95% completed plans, and the final plans and specifications for any such proposed installation, repair, or construction work, as each becomes available, to provide the Public Works an opportunity to review and comment on such report and plans;

- (ii) the SFPUC shall obtain Public Works' approval of the plans and specifications for any proposed Construction Activity, which approval shall not be unreasonably withheld or delayed and shall not be denied or conditioned unless the proposed Construction Activity will constitute a permanent interference with Public Works' ability to occupy and use a material portion of the surface of the Napoleon Wastewater Restricted Area as contemplated by this MOU;

- (iii) the existing footprint of the Wastewater Facilities shall not be expanded within the Napoleon Site, unless Public Works otherwise consents in writing;

- (iv) the SFPUC shall

- (A) use reasonable efforts to minimize the extent and duration of any construction activity associated with a Construction Activity that will materially interfere with Public Works' use and occupancy of the Napoleon Wastewater Restricted Area;

- (B) at Public Works' request, shall reasonably cooperate with Public Works to identify for Public Works' use an alternate site of land in San Francisco controlled by the SFPUC to provide a secure space, without the requirement of any rental, license fee, or other payment by Public Works to the SFPUC, for the parking or storage of Public Works' vehicles (including equipment on wheels, but excluding the private vehicles of Public Works Affiliates) then placed or situated on the Napoleon Wastewater Restricted Area for the duration of the Construction Activity; provided that that such cooperation shall not require the SFPUC to expend funds for the relocation or storage of such vehicles;

- (C) at Public Works' request, shall reasonably cooperate with Public Works to develop methods and plans to temporarily relocate during the course of any such Construction Activity any of Public Works' Removable

Property (other than vehicles relocated pursuant to clause (B) above) then placed or situated upon the Napoleon Wastewater Restricted Area (provided that such cooperation shall not require the SFPUC to expend funds or provide a storage location for such Removable Property); and

(v) promptly after the completion of any Construction Activity, the SFPUC shall provide Public Works with a copy of the as-built plans for such Construction Activity. After approval is obtained, SFPUC shall provide Public Works with at least ten (10) business days' prior notice of the date that the Construction Activity is to commence.

10. Costs. The SFPUC shall pay one hundred percent (100%) of the appraisal costs and initial survey costs incurred prior to the completion of the Required Approvals. Public Works shall pay one hundred percent (100%) of any survey and mapping costs incurred regarding the Napoleon Site and the Asphalt Plant Site following the completion of the Required Approvals. Each Party shall pay fifty percent (50%) of the fees for the Deputy City Attorneys incurred in the preparation of this MOU, and of the fees, including staff time, charged for a General Plan Referral by City's Planning Department. Except as otherwise provided in this Section 10, each Party shall bear its own costs resulting from, or in connection, with: (a) the negotiation, review, evaluation, preparation, and approval of this MOU; (b) costs resulting from, or incurred in connection with, the preparation and review of staff reports to the SFPUC and the BOS and any legislation or resolutions necessary for the Required Approvals; (c) costs resulting from, or incurred in connection with, the preparation and review of responses to City's Budget & Legislative Analyst's questions relative to MOU legislation; (d) costs resulting from, or in connection with the preparation and review of responses to queries, and meetings with BOS members and/or SFPUC Commissioners relative to the proposed jurisdictional exchange; (e) subject to the provisions of this Section 10, costs resulting from, or incurred in connection, with the production of mapping or other ancillary documents relative to the MOU; (f) costs resulting from, or incurred in connection with, the production of records relative to the Napoleon Site and the Asphalt Plant Site in connection with this jurisdictional exchange; (g) costs resulting from, or incurred in connection with, any title review, or physical characteristics review with respect to the Napoleon Site, the Asphalt Plant Site, and Trailers or review of other matters in connection with the jurisdictional exchange, including all actual costs relating to the hiring of consultants and the performing of studies as may be necessary to perform any such reviews; and (h) all other costs or fees associated with the Parties' review in connection with the evaluation, negotiation, and planning of the jurisdictional exchange contemplated by this MOU.

11. Restrictions on Use; Compliance with Law. At its own expense, each Party shall comply with all applicable laws, regulations, and requirements of federal, state, county, and municipal authorities now in force or that may hereafter be in force with respect to each Party's activities under or pursuant to this MOU, including compliance with all laws relating to Hazardous Materials. Each Party shall immediately notify the other Party in writing of any release or discharge of any Hazardous Materials, whether or not the release is in quantities that would be required under the law requiring the reporting of such release to a governmental or regulatory agency. As used in this MOU, "Hazardous Materials" shall mean any substance, liquid, or material that has been determined by any state, federal or local government authority to be capable of posing a risk of injury to health, safety, or property.

12. Allocation of SFPUC's Liability. From and after the Transfer Date, the SFPUC shall assume responsibility for the defense and resolution of any and all claims, demands, losses,

liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments, and awards, and costs and expenses, including without limitation, reasonable attorneys' and consultants' fees and costs (together, "**Claims**") to the extent based on any bodily injury or death or property damage that occurs after the Transfer Date resulting or arising from the condition of the Asphalt Plant Site, whether direct or indirect, known or unknown, foreseen or unforeseen.

13. Allocation of Public Works' Liability. From and after the Napoleon Site Vacation Date, Public Works shall assume responsibility for the defense and resolution of any and all Claims to the extent based on any bodily injury or death or property damage that occurs after the Transfer Date resulting or arising from the condition of the Napoleon Site or the Trailers, whether direct or indirect, known or unknown, foreseen or unforeseen.

14. Required Approval Contingency. This MOU shall only be effective as of the date that each of the following actions (together the "**Required Approvals**") have been completed:

- (a) The SFPUC, acting at its sole discretion, approves a resolution that:
 - (i) requests the jurisdictional transfer to Public Works of the Napoleon Site (exclusive of the Wastewater Facilities) and authorizes the transfer of ownership of the Trailers to Public Works;
 - (ii) declares the Napoleon Site to be surplus to the needs of any utility, except for the SFPUC's reserved rights with respect to the Napoleon Wastewater Restricted Area as provided in this MOU; and
 - (iii) authorizes execution and delivery of this MOU;
- (b) Each of the Parties executes and delivers this MOU; and
- (c) The BOS and Mayor, each acting at its or his or her sole discretion, approve the Jurisdictional Transfer Resolution (defined in Section 2 above).

15. No Assignment. This Agreement is personal to each of the named Parties, and shall not be assigned, conveyed, or otherwise transferred by any Party under any circumstances. Any attempt to assign, convey, or otherwise transfer this MOU shall be null and void and cause the immediate termination and revocation of this MOU.

16. Notices. All notices, demands, consents, or approvals that are, or may be required to be, given by either Party to the other under this MOU shall be in writing and shall be delivered in person, or sent by United States Postal Service, postage prepaid, or reputable commercial courier, and addressed as follows:

If to SFPUC: San Francisco Public Utilities Commission
525 Golden Gate Avenue, 13th Floor
San Francisco, California 94102
Attn: General Manager
Telephone: (415) 554-3155

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

San Francisco, California 94102
Attn: Real Estate Director
Telephone: (415) 487-5210
If to Public Works: Department of Public Works
City Hall, Room 348
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102
Attn: Mohammed Nuru, Director
Telephone: (415) 554-6920

With a copy to: Director of Real Estate
City & County of San Francisco
25 Van Ness, Suite 400
San Francisco, CA 94102
Attention: John Updike
Telephone: (415) 554-9860

or at such other address that a Party may from time to time designate by written notice to the other Parties given pursuant to the provisions of this Section. Any telephone numbers provided are to facilitate communication and shall not be a sufficient method of delivering notice. Any correctly addressed notice sent by a method that provides confirmation of delivery shall be deemed delivered on the first date of confirmed delivery or confirmed attempted delivery.

17. Other Notices. The SFPUC shall provide prior written notice of the SFPUC's planned project activities in the Napoleon Wastewater Restricted Area or the New License Area to Public Works at the following address:

Department of Public Works
City Hall, Room 348
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102
Attn: Mohammed Nuru, Director
Telephone: (415) 554-6920

Public Works shall provide prior written notice of Public Works' planned project activities in the Wastewater Restricted Area or the New License Area to the SFPUC at the following address:

Assistant General Manager, Wastewater Enterprise
San Francisco Public Utilities Commission
525 Golden Gate Avenue, 13th Floor
San Francisco, CA 94102

Wastewater Enterprise
San Francisco Public Utilities Commission
3801 Third Street, Suite 600
San Francisco, CA 94124
Attention: Kent Eickman and Derek Lam

or to such other address with respect to any party as that party may from time to time designate by notice to the others given pursuant to the provisions of this Section.

18. Authority. All matters requiring Public Works' approval shall be approved by the Director of Public Works or his or her authorized designee. All matters requiring the SFPUC's approval shall be approved by the SFPUC, if required, or by the General Manager, or his or her authorized designee.

19. Time of Essence. Time is of the essence with respect to the performance of the Parties' respective obligations in this MOU.

20. Cooperation. Subject to the terms and conditions of this MOU, staff of all Parties to this MOU shall use reasonable efforts to do, or cause to be done, all things reasonably necessary or advisable to carry out the purposes of this MOU as expeditiously as practicable, including, without limitation, performance of further acts and the execution and delivery of any additional documents in form and content reasonably satisfactory to all Parties (subject to any necessary approvals). Notwithstanding anything to the contrary in this MOU, no Party is in any way limiting its discretion or the discretion of any department, board, or commission with jurisdiction over the actions described in this MOU. In addition to any conditions described in this MOU, the Parties' obligations are expressly subject to the receipt of all legally required approvals following environmental review.

21. Obligations Run With the Land; Future Access. If Public Works or any City department or agency that succeeds to Public Works' interests in the Napoleon Site transfers any portion of the Napoleon Wastewater Restricted Area to a person or entity that is not a City department or agency, such transferring Party shall reserve an easement to City acceptable to the SFPUC that incorporates the rights and obligations of the Parties as to such portion of the transferred Napoleon Wastewater Restricted Area, including the Use Restrictions, as provided in this MOU, which the Parties intend shall constitute an easement that shall run with the land and be binding on future owners of such transferred portion of the Napoleon Wastewater Restricted Area. A reserved easement shall be recorded in City's Official Records, and shall incorporate the Parties' respective rights and obligations set forth in this MOU as to such portion of the transferred Napoleon Wastewater Restricted Area provided that such reserved easement shall be subject to any necessary approval of the SFPUC's Commission, as applicable, and, to the extent required, the BOS and Mayor. If Public Works transfers jurisdiction over or permits the use of all or any portion of the Napoleon Site, Public Works shall provide such transferee with a copy of this MOU. If the SFPUC transfers jurisdiction over or permits the use of the Wastewater Facilities, the SFPUC shall provide such transferee with a copy of this MOU.

22. Miscellaneous. (a) This MOU may be amended or modified only by a writing signed by the Director of Public Works, or his or her authorized designee, and the SFPUC, through its General Manager, or his or her authorized designee. (b) No waiver by any Party of any of the provisions of this MOU shall be effective unless in writing and signed by an authorized representative, and only to the extent expressly provided in such written waiver. (c) This MOU (including all its exhibits) contains the entire understanding between the Parties as of the Agreement Date, and all prior written or oral negotiations, discussions, understandings, and agreements are merged into this MOU. (d) Notwithstanding anything to the contrary set forth in this MOU, no officer, director, or employee of Public Works or the SFPUC has the authority to bind his or her department to take any action to be performed by his or her department under this MOU unless and until the SFPUC and the BOS and the Mayor, as applicable, approves of the action. (e) All transactions described in this MOU are subject to and must be conducted in accordance with the applicable requirements of City's Charter and codes and applicable state and/or federal laws. (f) The Parties agree to execute and acknowledge such other and further documents as may be necessary or reasonably required to carry out the mutual

intent of the Parties as expressed in this Amendment. (g) All exhibits to this MOU are incorporated into this MOU by this reference and made part of this MOU as if stated in full in this MOU.

23. Corrections of Technical Errors. If by reason of inadvertence, and contrary to the intention of the Parties, errors are made in this MOU, then the Parties by mutual agreement may correct such error by written memorandum executed by them without the necessity of a formal amendment to this MOU. The General Manager of the SFPUC may execute such written memorandum on behalf of the SFPUC, and the Director of Public Works may execute such written memorandum on behalf of Public Works.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have caused this MOU to be executed as of the Agreement Date written above.

CITY AND COUNTY OF SAN FRANCISCO

DEPARTMENT OF PUBLIC WORKS

By: _____
Mohammed Nuru, Director

Date: _____, 2016

PUBLIC UTILITIES COMMISSION

By: _____
Harlan L. Kelly, Jr., General Manager

Date: _____, 2016

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

DENNIS J. HERRERA
City Attorney

By: _____
Richard Handel, Deputy City Attorney
Attorney
on behalf of the SFPUC

By: _____
Christopher Tom, Deputy City
on behalf of Public Works

APPROVED BY:

**PUBLIC UTILITIES COMMISSION
PURSUANT TO RESOLUTION NO. __**

By: _____
Donna Hood, Commission Secretary

Date: _____, 2016

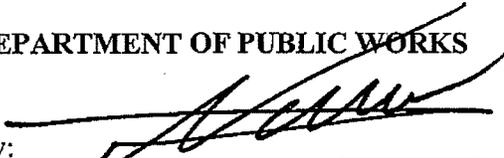
EXHIBITS:

- EXHIBIT A – ASPHALT PLANT SITE DEPICTION
- EXHIBIT B – ASPHALT PLANT SITE LEGAL DESCRIPTION
- EXHIBIT C – DEPICTION OF WASTEWATER RESTRICTED AREA
- EXHIBIT D – DEPICTION OF NAPOLEON SITE AND NAPOLEON WASTEWATER RESTRICTED AREA
- EXHIBIT E – NAPOLEON SITE LEGAL DESCRIPTION
- EXHIBIT F – DESCRIPTION OF TRAILERS
- EXHIBIT G – FORM OF NEW LICENSE
- EXHIBIT H – USE RESTRICTIONS

IN WITNESS WHEREOF, the Parties have caused this MOU to be executed as of the Agreement Date written above.

CITY AND COUNTY OF SAN FRANCISCO

DEPARTMENT OF PUBLIC WORKS

By: 
Mohammed Nuru, Director

Date: 10/28/16, 2016

PUBLIC UTILITIES COMMISSION

By: 
Harlan L. Kelly, Jr., General Manager

Date: 10/28/16, 2016

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By: 
Richard Handel, Deputy City Attorney
on behalf of the SFPUC

DENNIS J. HERRERA
City Attorney

By: _____
Christopher Tom, Deputy City Attorney
on behalf of Public Works

APPROVED BY:

PUBLIC UTILITIES COMMISSION
PURSUANT TO RESOLUTION NO. 16-0228

By: 
Donna Hood, Commission Secretary

Date: 10/28/16, 2016

EXHIBITS:

- EXHIBIT A – ASPHALT PLANT SITE DEPICTION
- EXHIBIT B – ASPHALT PLANT SITE LEGAL DESCRIPTION
- EXHIBIT C – DEPICTION OF WASTEWATER RESTRICTED AREA
- EXHIBIT D – DEPICTION OF NAPOLEON SITE AND NAPOLEON WASTEWATER RESTRICTED AREA
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- EXHIBIT H – USE RESTRICTIONS

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CITY AND COUNTY OF SAN FRANCISCO

DEPARTMENT OF PUBLIC WORKS

By: _____
Mohammed Nuru, Director

Date: _____, 2016

PUBLIC UTILITIES COMMISSION

By: _____
Harlan L. Kelly, Jr., General Manager

Date: _____, 2016

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By: _____
Richard Handel, Deputy City Attorney
on behalf of the SFPUC

DENNIS J. HERRERA
City Attorney

By: 
Christopher Tom, Deputy City Attorney
on behalf of Public Works

APPROVED BY:

**PUBLIC UTILITIES COMMISSION
PURSUANT TO RESOLUTION NO. __**

By: _____
Donna Hood, Commission Secretary

Date: _____, 2016

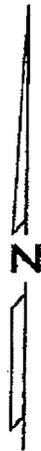
EXHIBITS:

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EXHIBIT A
ASPHALT PLANT SITE DEPICTION

(See attached.)

Exhibit A



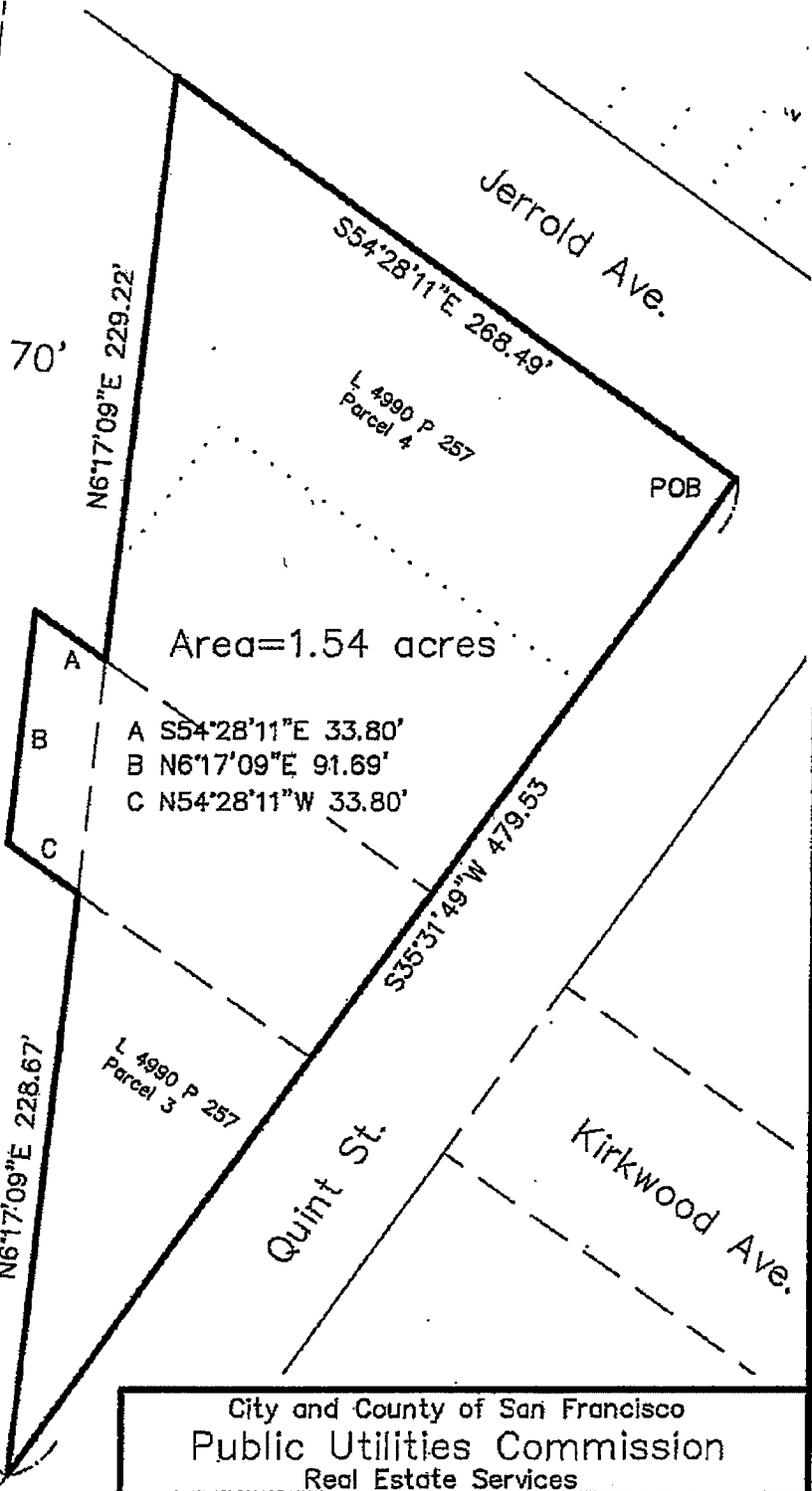
Not to Scale



Tony E. Durkee
3-20-13

Centerline Westward Main Track, per Liber 4990 Page 257

R.R. R/W



City and County of San Francisco Public Utilities Commission Real Estate Services
ASPHALT PLANT LOT
City and County of San Francisco

EXHIBIT B
ASPHALT PLANT SITE LEGAL DESCRIPTION

March 20, 2013

Exhibit B
LEGAL DESCRIPTION
Asphalt Plant Lot

All that certain real property situate in the City and County of San Francisco, State of California, being more particularly described as follows;

BEGINNING at the intersection of the southerly line of Jerrold Avenue and the westerly line of Quint Street;

thence along the westerly line of Quint Street, South $35^{\circ}31'49''$ West, 479.53 feet to the easterly line of said Rail Road Right-of-Way;

thence along the easterly line of said Rail Road Right-of-Way, North $6^{\circ}17'09''$ East, 228.67 feet to the southerly line of Kirkwood Avenue, as said Avenue existed prior to the vacation of a portion thereof by Resolution No. 560-78, July 10, 1978, B.10-P.19;

thence along the southerly line of said Kirkwood Avenue, North $54^{\circ}28'11''$ West, 33.80 feet;

thence North $6^{\circ}17'09''$ East, 91.69 feet, to the northerly line of said Kirkwood Avenue;

thence along the northerly line of said Kirkwood Avenue, South $54^{\circ}28'11''$ East, 33.80 feet to the easterly line of said Rail Road Right-of-way;

thence along the easterly line of said Rail Road Right-of-way, North $6^{\circ}17'09''$ East, 229.22 to the southerly line of Jerrold Avenue;

thence along the southerly line of Jerrold Avenue, South $54^{\circ}28'11''$ East, 268.49 feet to the **POINT OF BEGINNING**.

Containing 1.54 acres, more or less.

A plat showing the above-described parcels is attached herein and made a part hereof as Exhibit "B".

This description was prepared by me or under my direction in conformance with the Professional Land Surveyors' Act.

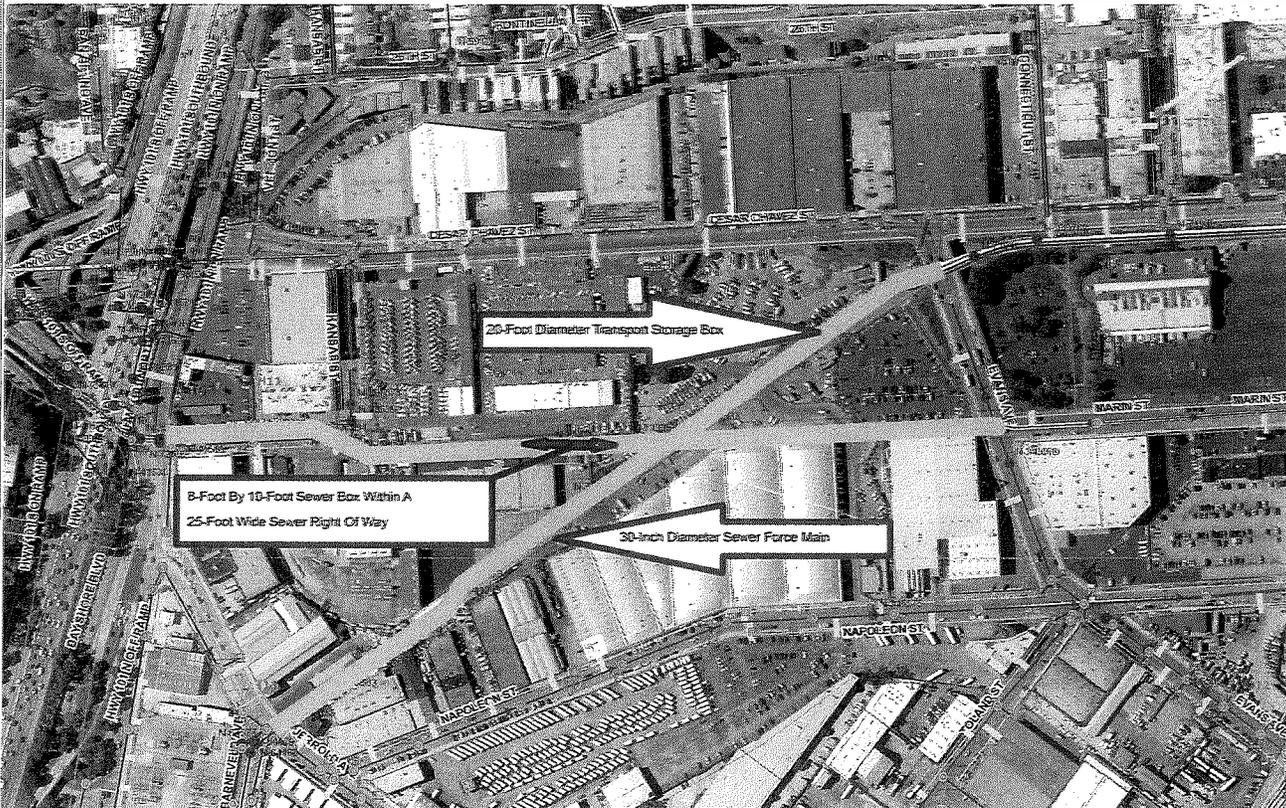
Tony E. Durkee 3-20-13
Tony E. Durkee, PLS 5773



END OF DESCRIPTION

EXHIBIT C
DEPICTION OF WASTEWATER RESTRICTED AREA

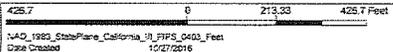
EXHIBIT C - WASTEWATER RESTRICTED AREA (SHOWN IN GREEN)



Legend

- Mountain Streets
- Manholes
 - ACT
 - INACT
- Catchbasins
 - ACT
 - INACT
- Drifts
 - ACT
 - INACT
- Diversions
 - ACT
 - INACT
- Miscellaneous Nodes
 - ACT
 - INACT
- Sewer Asset Replacement (SAR) (SCHEDULE)
- Pipe Line (All Active)
 - Green
 - Grey
 - Blue
- Sewer Pipes
 - ACT
 - INACT
- Force Mains
 - ACT
 - INACT
- Miscellaneous Pipes
 - ACT
 - INACT
- Transport Storage and Tunnels
 - IS
 - IS-TUNN
 - TUNN
 - TUNN-GRDN
- Pump Stations
- Manholes
 - ACT

1:2,560



426.7 0 213.33 426.7 Feet
 S:\AQ_1985_Stats\Plans_California_31_77P3_0403_Feet
 Date Created 10/27/2016

The City does not guarantee that the information on this site is accurate or complete. The City is not responsible for any damages arising from the use of information on this site. Users should verify the information before making major commitments.

Notes
 (Exact location) of wastewater facilities subject to field verification.

EXHIBIT D

DEPICTION OF NAPOLEON SITE AND NAPOLEON WASTEWATER RESTRICTED AREA

(See attached.)

EXHIBIT E
NAPOLEON SITE LEGAL DESCRIPTION

(See attached.)

Exhibit E

Napoleon Site Legal Description

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE NORTHLEY LINE OF NAPOLEON STREET AND WESTERLY LINE OF EVANS STREET, THENCE ALONG SAID NORTHERLY LINE OF NAPOLEON STREET, SOUTH $87^{\circ}09'50''$ WEST, A DISTANCE OF 347.95 FEET TO THE POINT OF BEGINNING;

THENCE LEAVING SAID NORTHERLY LINE, NORTH $02^{\circ}50'10''$ WEST, A DISTANCE OF 232.86 FEET;

THENCE SOUTH $87^{\circ}09'50''$ WEST, A DISTANCE OF 5.07 FEET;

THENCE NORTH $19^{\circ}58'45''$ WEST, A DISTANCE OF 10.67 FEET;

THENCE NORTH $25^{\circ}25'15''$ WEST, A DISTANCE OF 92.76 FEET;

THENCE NORTH $27^{\circ}28'20''$ EAST, A DISTANCE OF 86.87 FEET;

THENCE NORTH $02^{\circ}50'10''$ WEST, A DISTANCE OF 22.50 FEET;

THENCE SOUTH $87^{\circ}09'50''$ WEST, A DISTANCE OF 67.51 FEET;

THENCE NORTH $02^{\circ}50'10''$ WEST, A DISTANCE OF 23.00 FEET;

THENCE SOUTH $87^{\circ}09'50''$ WEST, A DISTANCE OF 12.27 FEET TO A POINT OF NONTANGENCY;

THENCE ALONG SAID NONTANGENT CURVE, HAVING A RADIAL BEARING OF NORTH $87^{\circ}09'50''$ EAST, WITH A RADIUS OF 171.12', AN INTERIOR ANGLE OF $58^{\circ}04'20''$, AND AN ARC LENGTH OF 173.44 FEET;

THENCE NORTH $55^{\circ}00'34''$ EAST, A DISTANCE OF 75.44 FEET;

THENCE NORTH $37^{\circ}48'49''$ WEST, A DISTANCE OF 77.29 FEET;

THENCE SOUTH $54^{\circ}18'39''$ WEST, A DISTANCE OF 282.33 FEET;

THENCE SOUTH $49^{\circ}16'14''$ WEST, A DISTANCE OF 24.18 FEET;

THENCE SOUTH $60^{\circ}18'16''$ EAST, A DISTANCE OF 40.57 FEET;

THENCE NORTH 70°11'06" EAST, A DISTANCE OF 10.61 FEET;

THENCE SOUTH 42°25'18" EAST, A DISTANCE OF 41.95 FEET;

THENCE WITH A CURVE TO THE LEFT, WITH A RADIUS OF 50.00 FEET, AN INTERIOR ANGLE 51°27'23", AND AN ARC LENGTH OF 44.90 FEET;

THENCE NORTH 86°07'19" EAST, A DISTANCE OF 68.58 FEET;

THENCE WITH A CURVE TO THE RIGHT, WITH A RADIUS OF 40.00 FEET, HAVING AN INTERIOR 91°02'31" AN ARC LENGTH OF 63.56 FEET;

THENCE SOUTH 02°50'10" EAST, A DISTANCE OF 21.60 FEET;

THENCE NORTH 87°09'50" EAST, A DISTANCE OF 24.19 FEET;

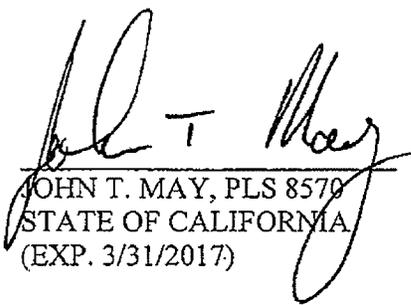
THENCE SOUTH 02°50'10" EAST, A DISTANCE OF 421.20 FEET;

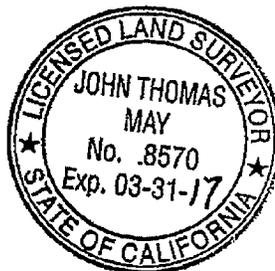
THENCE NORTH 87°09'50" EAST, A DISTANCE OF 68.32 FEET TO THE POINT OF BEGINNING.

CONTAINING 59,132.1 SQ. FEET (1.4 ACRES) MORE OR LESS.

A PLAT SHOWING THE ABOVE DESCRIBED PARCEL IS ATTACHED HEREIN AND MADE A PART HEREOF AS EXHIBIT "B".

END OF DESCRIPTION


JOHN T. MAY, PLS 8570
STATE OF CALIFORNIA
(EXP. 3/31/2017)



4/22/16
DATE

EXHIBIT F
DESCRIPTION OF TRAILERS

(See attached.)

EXHIBIT F

DESCRIPTION OF TRAILERS

The following trailers at the Napoleon Site Yard will remain,

- Seven (7) 50-foot long by 12-foot wide trailers (approximate dimensions)
- Decks, exterior lighting, cameras, fencing, and gates
- All furniture: workstation, desks shelving, chairs in the trailer
- Washer and dryer

EXHIBIT G

FORM OF NEW LICENSE

**SAN FRANCISCO PUBLIC UTILITIES COMMISSION
REVOCABLE LICENSE**

(License #NRP-4163A)

(Supersedes and replaces former SFPUC Permit #P-3884)

THIS REVOCABLE LICENSE (this "License") dated for reference purposes only as of _____, 2016, is made by and between the SAN FRANCISCO PUBLIC UTILITIES COMMISSION (the "SFPUC"), an enterprise department of the City and County of San Francisco ("City"), and the SAN FRANCISCO DEPARTMENT OF PUBLIC WORKS, a City department ("Licensee").

City and Licensee agree as follows:

1. License.

(a) This License hereby supersedes and replaces that certain Revocable Permit P-3884 dated as of February 7, 2000 by and between City and Licensee ("2000 Permit.") Accordingly, on the Commencement Date (defined in Section 4 (Term of License) below), the 2000 Permit shall terminate and the term of this License shall commence.

(b) City confers to Licensee a revocable, personal, non-exclusive, and non-possessory privilege to enter upon and use that certain real property owned by City situated in the City and County of San Francisco, State of California, more particularly described in the attached Exhibit 1 (the "License Area"), for the limited purpose and subject to the terms, conditions, and restrictions set forth below. The License Area is shown generally on Drawing No. _____ attached as Exhibit 2. This License gives Licensee a license only and notwithstanding anything to the contrary in this License, it does not constitute a grant by City of any ownership, leasehold, easement, or other property interest or estate whatsoever in any portion of the License Area. Nothing in this License shall be construed as granting or creating any franchise rights pursuant to any federal, state, or local laws.

THE PRIVILEGE GIVEN TO LICENSEE UNDER THIS LICENSE IS EFFECTIVE ONLY INSOFAR AS THE RIGHTS OF CITY IN THE LICENSE AREA ARE CONCERNED, AND LICENSEE SHALL OBTAIN ANY FURTHER PERMISSION NECESSARY BECAUSE OF ANY OTHER EXISTING RIGHTS AFFECTING THE LICENSE AREA. WITHOUT LIMITING THE FOREGOING, THIS LICENSE IS BEING ISSUED SUBJECT AND SUBORDINATE TO ALL OF THE TERMS AND CONDITIONS OF THAT CERTAIN DEED DATED MAY 17, 1988, AND RECORDED JUNE 30, 1988 AT REEL E627 IMAGE 1874 (DOCUMENT NO. E198822) OF THE OFFICIAL RECORDS OF SAN FRANCISCO COUNTY, PURSUANT TO WHICH CITY ACQUIRED ITS INTEREST IN THE LICENSE AREA, A COPY OF WHICH IS ATTACHED TO THIS LICENSE AS EXHIBIT 3. (THE "DEED"), AND ALL OTHER EXISTING AND FUTURE DOCUMENTS AND

INSTRUMENTS OF RECORD AFFECTING THE LICENSE AREA (COLLECTIVELY, WITH THE DEED, THE "RECORDED DOCUMENTS"). LICENSEE MUST SECURE ALL ADDITIONAL NECESSARY APPROVALS, PERMITS, LICENSES, AND CONSENTS, AND DELIVER ALL NECESSARY NOTICES, BEFORE COMMENCING WORK IN THE LICENSE AREA, INCLUDING ANY APPROVALS, PERMITS, LICENSES, CONSENTS, OR NOTICES REQUIRED FROM OR TO THE GRANTOR UNDER THE RECORDED DOCUMENTS. FOR THE SFPUC'S BENEFIT, LICENSEE COVENANTS AND AGREES THAT LICENSEE SHALL FULLY COMPLY WITH THE TERMS AND CONDITIONS OF THE RECORDED DOCUMENTS AND ANY OTHER RULES AND REGULATIONS PROMULGATED BY CITY AS THEY APPLY TO ANY WORK TO BE PERFORMED OR FACILITIES TO BE INSTALLED BY LICENSEE ON THE LICENSE AREA PURSUANT TO THIS LICENSE, AND CITY SHALL HAVE NO RESPONSIBILITY OR LIABILITY OF ANY KIND WITH RESPECT THERETO. LICENSEE ACKNOWLEDGES AND AGREES THAT NEITHER CITY NOR ANY OF ITS DEPARTMENTS, COMMISSIONS, OFFICERS, DIRECTORS, AND EMPLOYEES, AND ALL PERSONS ACTING BY, THROUGH, OR UNDER EACH OF THEM HAVE MADE, AND CITY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE PRESENT OR FUTURE SUITABILITY OF THE LICENSE AREA FOR LICENSEE'S INTENDED WORK OR FACILITIES, THE IMPACT OF ANY TERM OR CONDITION OF THE RECORDED DOCUMENTS ON LICENSEE'S RIGHTS UNDER THIS LICENSE, OR THE ABILITY TO OBTAIN OR DELIVER, OR THE PROCEDURE FOR OBTAINING OR DELIVERING, ANY NECESSARY APPROVALS, LICENSES, PERMITS, CONSENTS OR NOTICES FROM OR TO THE GRANTOR UNDER THE RECORDED DOCUMENTS OR ANY OTHER PARTY WITH RESPECT TO ANY MATTERS CONTAINED IN THIS LICENSE.

2. Use of License Area.

(a) Permitted Acts. Licensee may enter and use the License Area for the sole purposes of (i) employee parking; and (ii) storage of bulk landscaping materials; equipment, and Licensee's vehicles, and for no other purpose whatsoever.

(b) Subject to the SFPUC Uses. Licensee is aware that the License Area includes constitutes a portion of the SFPUC's wastewater facilities. Notwithstanding anything to the contrary in this License, any and all of Licensee's activities pursuant to this License shall be subject and subordinate at all times to the SFPUC's existing and future use of the License Area for municipal and other purposes. The SFPUC shall in no way be liable for any damage or destruction to Licensee's property and/or improvements resulting from the condition of the License Area or SFPUC facilities, from any wastewater facility break or from any wastewater facility repair or maintenance activities. At the SFPUC's request, Licensee shall immediately remove any of Licensee's property or improvements from the License Area to allow the SFPUC access to SFPUC facilities. If the SFPUC deems it necessary, at the SFPUC's sole discretion, the SFPUC may remove any such property or improvements and the SFPUC shall not be responsible for restoring or returning the same to its prior condition.

3. **Installation of Facilities.** Licensee may perform the permitted acts described in Section 2(a) (Permitted Acts) above on the License Area and has already installed certain facilities consisting of reinforced masonry, concrete block walls with footings (the “**Existing Improvements**”) on the License Area pursuant to the 2000 Permit. License may install new improvements (the “**Facilities**”) only upon satisfaction of the following conditions, which are for the SFPUC’s sole benefit:

(a) **Approval of Plans and Specifications.** Licensee shall install the permitted Facilities in accordance with plans and specifications (including drawings) approved in advance and in writing by the SFPUC (the “**Approved Plans**”). Once approved, the Approved Plans may be revised or amended only with SFPUC’s prior written approval after SFPUC’s Bureau of Environmental Management has determined that no further environmental review is required by CEQA as a result of any such revision or amendment.

(b) **Energy Service and Related Facilities.** The SFPUC is the provider of electric services to the SFPUC property, and THE SFPUC's Interconnection Services Department coordinates with Pacific Gas and Electric Company and others to implement this Section. Except as provided above with respect to any electricity services provided by the SFPUC, Licensee shall make arrangements and pay for all utilities and services furnished to the License Area, including gas, electricity, water, sewage, telephone, and trash collection services, and for all deposits, connection, and installation charges.

Except as otherwise provided in this License, the SFPUC has no responsibility or liability of any kind with respect to any utilities that may be on or about the License Area. Licensee has the sole responsibility to locate any utility facilities within the License Area and protect them from damage resulting from Licensee's use of the License Area.

(c) **Permits, Licenses, and Approvals.** Before beginning any work in the License Area, Licensee shall obtain any and all permits, licenses, and approvals (collectively, “**Approvals**”) of all regulatory agencies and other third parties that are required to commence, complete, and maintain the permitted work. Promptly upon receipt of such Approvals, Licensee shall deliver copies of them to SFPUC. Licensee recognizes and agrees that no approval by SFPUC for purposes of Licensee's work under this License shall be deemed to constitute the approval of any federal, state, or local regulatory authority with jurisdiction, and nothing in this License shall limit Licensee's obligation to obtain all such regulatory Approvals, at Licensee's sole cost.

(d) **Limits of the SFPUC’s Consent.** The SFPUC’s consent to or approval of any improvements, equipment, or fixtures shall not relieve Licensee or its engineers, architects, or contractors from any liability for negligence, errors, or omissions associated with the design and construction of any such improvements, equipment, or fixtures. In no event shall the SFPUC’s approval of plans or specifications be deemed to constitute a representation or warranty by the SFPUC concerning the suitability of the improvements, equipment, or fixtures for Licensee’s purposes or that the work called for in the plans and specifications complies with applicable building codes or other applicable Laws, as defined in Section 6 (Compliance with Laws), or industry standards, nor shall such approval release Licensee from its obligation to supply plans and specifications that conform to applicable building codes, other applicable Laws, and industry standards.

(e) **Exercise of Due Care.** Licensee shall use, and shall cause its Agents (as defined below) to use, due care at all times to avoid any damage or harm to the SFPUC's wastewater collection boxes, facilities, or other property and to native vegetation and natural attributes of the License Area and to minimize slope erosion. Licensee shall not disturb the surface of the License Area or perform any excavation work without the SFPUC's prior written approval, which the SFPUC may withhold at its sole discretion. the SFPUC may condition and/or oversee any permitted excavation work. At its own expense, Licensee shall mark the location of the SFPUC's wastewater collection boxes or other facilities within the License Area and shall not use any pick, plow, or other sharp tool to remove the two feet of soil around the wastewater facilities or other facilities, provided that Licensee may use hand shovels or pneumatic shovels in compliance with all other terms and conditions of this License. Licensee shall immediately inform the SFPUC of any actual or potential damage to the wastewater facilities, and any such damage shall be promptly repaired by Licensee, at its own expense, to the SFPUC's satisfaction prior to backfilling; provided, at its sole discretion, the SFPUC may elect to make any necessary repairs itself, at Licensee's sole cost, by notifying Licensee of such fact. Upon completion of the repairs, the SFPUC shall send to Licensee a bill therefor, which Licensee shall pay within thirty (30) days following receipt. Under no circumstances shall Licensee damage, harm, or take any rare, threatened, or endangered species present on or about the License Area.

(f) **Cooperation with Public Utilities Commission.** Licensee and its Agents shall work closely with the SFPUC personnel to minimize any potential disturbance (even if temporary) of the natural features of the License Area and to avoid disruption (even if temporary) of the wastewater facilities, in, under, on, or about the License Area and the SFPUC uses of such facilities.

(g) **Heavy Equipment.** Licensee shall not use any heavy construction equipment over or about the SFPUC's wastewater facilities, except as otherwise expressly allowed in Section 5(i) (Heavy Equipment and Vehicles) below.

(h) **Work Schedule.** Licensee must begin installation work, if at all, within ninety (90) days after the SFPUC approves the Approved Plans with respect to such proposed construction. At least ten (10) business days prior to the commencement of any work on the License Area, Licensee shall notify the SFPUC's Construction Inspector ("**Construction Inspector**"), at _____, of the date such work shall commence and the intended construction schedule. Notification must also be given to Underground Service Alert at least two (2) days prior to start of work. Notwithstanding the approval of such schedule by SFPUC, the Construction Inspector shall have the right to require Licensee to adjust such schedule from time to time. All work must be performed during regular working hours (Monday through Friday) between 8:00 a.m. and 4:30 p.m., exclusive of the SFPUC holidays. Any work performed during any other time or day must be preapproved by SFPUC at least ten (10) business days prior to commencing such work. Notwithstanding the work hours set forth above, Licensee shall comply with any applicable local ordinance that imposes later start times and/or earlier cessation times for construction activities. Licensee shall complete all work and restoration no later than _____ (____) days after the commencement of the term of this License, subject to unavoidable delays. For purposes of this License, "unavoidable delays" shall mean any delays by reason of acts of God, accidents, breakage, strikes, lockouts, other labor disputes, enemy action, civil commotion, protests, riots, demonstrations, federal or state governmental restrictions, or by

any other reason beyond Licensee's reasonable control. Licensee may apply to SFPUC for a one-time extension for a period not to exceed _____ days.

(i) **Restoration of License Area.** Immediately following completion of any work permitted under this License, Licensee shall remove all debris and any excess dirt and shall restore the License Area to its condition immediately prior to such work, to the SFPUC's satisfaction. Licensee shall restore any damage caused to existing roads and restore excavated areas erosion control netting, all as requested by the SFPUC, and shall comply with all applicable regulations of the regulatory agency with jurisdiction.

(j) **Wastewater Facility Depth/Installation of Above-Ground Markers.** Before commencing any excavation work in the License Area, Licensee shall measure the depth of the SFPUC's wastewater facilities, if any, located in the License Area by potholing and forward such information to the SFPUC. Any potholing authorized by this License shall be subject to the Construction Inspector's direction. Potholing using of soft dig method (vacuum soil extraction system) is preferred. If Licensee wishes to use any other mechanical method such as digging with a backhoe, Licensee must submit a request to the SFPUC in writing at least five (5) business days prior to the proposed commencement date and obtain SFPUC's prior written consent, which may be issued or withheld at the SFPUC's sole discretion. Notwithstanding the foregoing, the last two feet (2') of soil above the top of any the SFPUC wastewater facility must be dug manually, without the use of any machines. Upon completion of work, Licensee shall promptly notify the SFPUC in writing of the depth of the SFPUC's wastewater facility and related facilities in the License Area. Licensee shall install above-ground markers identifying the location of any underground facilities installed pursuant to this License. The location, type, and installation of markers and identifying information on the markers shall be subject to SFPUC's prior written approval.

(k) **As-Built Drawings/Reports.** Promptly upon completion of the installation of the Facilities, Licensee shall furnish SFPUC with two (2) complete copies of final as-built drawings for the Facilities, which drawings shall include sufficient detail so as to allow the SFPUC to precisely locate the Facilities. If Licensee or any of its Agents or consultants prepares any environmental, seismic, geophysical, or other written report relating to the License Area and/or any work performed on the License Area, Licensee shall furnish to the SFPUC a complete copy of such report, including any schedules, exhibits, and maps, promptly upon completion of the same.

(l) **Responsibility for Maintenance of Facilities.** Licensee shall be solely responsible for repairing and maintaining all Facilities placed in or on the License Area pursuant to this License in good and safe condition, and the SFPUC shall have no duty whatsoever for any repair or maintenance of the License Area or any such Facilities. Licensee shall notify the SFPUC in writing not less than five (5) business days before performing any repair or maintenance work in the License Area, except in the case of an emergency when Licensee shall notify the SFPUC telephonically and in writing as soon as reasonably possible.

(m) **Revocability.** Licensee acknowledges and agrees that the installation of the Facilities, regardless of cost, shall not in any way whatsoever limit the SFPUC's right to revoke this License pursuant to the terms hereof or any of the SFPUC's other rights under this License.

(n) **Contractors.** Licensee shall not accept and release its contractor for work authorized or required by this License before securing the SFPUC's written approval.

(o) **Cathodic and Other Protection.** the SFPUC may adopt from time to time such rules and regulations with regard to Licensee's Facilities and operations under this License as the SFPUC may determine are necessary or appropriate, at the SFPUC's sole discretion, to safeguard against corrosion of, or other damage to, the SFPUC's wastewater facilities and related facilities. Licensee shall immediately comply with all such rules and regulations upon receipt of a copy of such rules and regulations.

(p) **Distance Between Pipes.** Intentionally omitted.

(q) **Potholing.** Any potholing required or authorized by this License shall be subject to the direction of the SFPUC's Construction Inspector, and in strict accordance with the potholing method described in Section 3(j) (Wastewater Facility Depth/Installation of Above-Ground Markers) above.

4. **Term of License.** The privilege conferred to Licensee pursuant to this License shall commence on the date on which this License is executed and delivered by the SFPUC following SFPUC authorization and approval (the "**Commencement Date**"), and shall immediately expire upon written notice from the SFPUC revoking this License. At its sole option, the SFPUC may freely revoke this License at any time without cause or liability, and without any obligation to pay any consideration to Licensee or return to Licensee any part of the license fee or, if applicable, the use fee. Upon any such revocation, Licensee will immediately surrender the License Area in the condition required by this License.

5. **Restrictions on Use.** The following uses (by way of example only and without limitation) of the License Area by Licensee, or any other person claiming by or through Licensee, are inconsistent with the limited purpose of this License and are strictly prohibited as provided below:

(a) **Improvements.** Except as otherwise expressly provided in this License, Licensee shall not construct or place any temporary or permanent structures or improvements in, on, under, or about the License Area, nor shall Licensee make any alterations or additions to any of existing structures or improvements on the License Area, unless Licensee first obtains SFPUC's prior written consent, which SFPUC may give or withhold at its sole and absolute discretion. For purposes of this License, asphalt, concrete, and cementitious driveways, sidewalks, and parking areas, shacks, and storage facilities, and fences shall be deemed "improvements."

(b) **Trees and Other Plantings.** Licensee shall not plant any trees or other vegetation in or on the License Area, except as otherwise expressly provided in this License and except in accordance with detailed plans consistent with SFPUC's Vegetation Management Policy, which may be amended from time to time and as approved by SFPUC in writing in advance.

(c) **Dumping.** Licensee shall not cause or permit the dumping or other disposal in, on, under, or about the License Area of landfill, refuse, Hazardous Material (as defined below),

or any other materials, including but not limited to materials that are unsightly or could pose a hazard to the human health or safety, native vegetation or wildlife, or the environment.

(d) **Hazardous Material.** Licensee shall not cause, nor shall Licensee allow any of its Agents or Invitees (as such terms are defined in Section 15 (Indemnity) below) to cause, any Hazardous Material (as defined below) to be brought upon, kept, used, stored, generated, released, or disposed of in, on, under, or about the License Area, or transported to, from, or over the License Area. Licensee shall immediately notify the SFPUC when Licensee learns of, or has reason to believe that, a release of Hazardous Material has occurred in, on, under, or about any part of the License Area. Licensee shall further comply with all applicable Laws [as defined in Section 6 (Compliance with Laws)] requiring notice of such releases or threatened releases to governmental agencies, and shall take all action necessary or desirable to mitigate the release or minimize the spread of contamination. If Licensee or its Agents or Invitees cause a release of Hazardous Material, Licensee shall promptly return the License Area to the condition immediately prior to the release, without cost to the SFPUC, in accordance with all Laws, and using the highest and best technology available. In connection with such remedial action, Licensee shall afford the SFPUC a full opportunity to participate in any discussion or negotiations with governmental agencies and environmental consultants regarding any settlement agreement, cleanup or abatement agreement, consent decree, or other compromise proceeding involving Hazardous Material, and any other abatement or cleanup plan, strategy, and procedure. For purposes of this License, “**Hazardous Material**” means material that, because of its quantity, concentration, or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state, or local governmental authority to pose a present or potential hazard to public health, welfare, or the environment. Hazardous Material includes, without limitation, the following: any material or substance defined as a “hazardous substance, pollutant or contaminant” pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 *et seq.*, or pursuant to Section 25316 of the California Health & Safety Code or any other federal, state, or local Law; a “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 License Area or are naturally occurring substances in the License Area; and any petroleum, including, without limitation, crude oil or any crude-oil fraction, natural gas, or natural gas liquids, provided, the foregoing shall not prohibit Licensee from traversing to, from, and across the License Area in standard motor vehicles that do not exceed the weight limitations set forth below. The term “**release**” or “**threatened release**” when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under, or about the License Area.

(e) **Nuisances.** Licensee shall not conduct any activities in, on, under, or about the License Area that constitute waste, nuisance, or unreasonable annoyance (including, without limitation, emission of objectionable odors, noises, or lights) to the SFPUC, to the owners or occupants of neighboring property, or to the public, or that constitute waste or nuisance per se.

(f) **Damage.** Licensee shall not do anything in, on, under, or about the License Area that could cause damage to or interference with any wastewater facilities, facilities, or other property located in, on, under, or about the License Area. Licensee will compensate the SFPUC for any and all damage caused to the License Area and the SFPUC facilities resulting from the

activities of Licensee and its Agents and Invitees, including without limitation, damage resulting from defective work.

(g) **Use of Adjoining Land.** Licensee acknowledges that the privilege given under this License shall be limited strictly to the License Area. Licensee shall not traverse over or otherwise use any adjoining lands of the SFPUC.

(h) **Ponding; Water Courses.** Licensee shall not cause any ponding on the License Area or any flooding on adjacent land. Licensee shall not engage in any activity that causes any change, disturbance, fill, alteration, or impairment to the bed, bank, or channel of any natural water course, wetland, or other body of water on, in, under, or about the License Area, nor shall Licensee engage in any activity that could pollute or degrade any surface or subsurface waters or result in the diminution or drainage of such waters.

(i) **Heavy Equipment and Vehicles.** To prevent damage to the SFPUC's underground wastewater facilities, Licensee's use of vehicles and equipment within twenty feet (20') of each side of the centerline of any the SFPUC wastewater facility (measured on the surface) shall be subject to the following restrictions:

(i) The depth of soil cover over the tops of the SFPUC's wastewater facilities 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 subsection (ii). If any equipment with axle loading exceeds the loads stated in subsection (ii) below or if the depth of soil cover is less than stated above, Licensee shall submit to SFPUC for review and approval, at SFPUC's sole discretion, engineering calculations prepared by a licensed Professional Engineer licensed in California showing that the SFPUC's wastewater facilities will not be adversely affected by Licensee's proposed activities. If the SFPUC's wastewater facilities may be adversely affected, Licensee shall submit remedial measures for the SFPUC's approval to ensure that no adverse effect will occur.

(ii) The effects of vehicle and equipment loads to the wastewater facility must not exceed the effects of the "AASHTO 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.). Licensee shall be responsible for providing SFPUC adequate evidence that its equipment and vehicles meet the foregoing requirements.

(iii) Licensee shall not use vibrating compaction equipment without SFPUC's prior written approval, which approval may be given or withheld at SFPUC's sole discretion.

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

(2') of soil around the wastewater facility shall be removed manually or by other methods approved by SFPUC with due care as provided in Section 3(e) (Exercise of Due Care).

6. Compliance with Laws. At its expense, Licensee shall conduct and cause to be conducted all activities on the License Area permitted by this License in a safe and reasonable manner and in compliance with all laws, statutes, ordinances, rules, regulations, policies, orders, edicts, and the like (collectively, "Laws") of any governmental or other regulatory entity with jurisdiction (including, without limitation, the Americans with Disabilities Act) and all covenants, restrictions, and provisions of record, whether presently in effect or subsequently adopted and whether or not in the contemplation of the parties. At its sole expense, Licensee shall procure and maintain in force at all times during its use of the License Area any and all business and other licenses or approvals necessary to conduct the activities allowed by this License. Licensee understands and agrees that the SFPUC is entering into this License in its capacity as a property owner with a proprietary interest in the License Area and not as a regulatory agency with police powers. Licensee further understands and agrees that no approval by the SFPUC for purposes of this License shall be deemed to constitute approval of any federal, state, the SFPUC, or other local regulatory authority with jurisdiction, and nothing in this License shall limit Licensee's obligation to obtain all such regulatory approvals at Licensee's sole cost, or limit in any way the SFPUC's exercise of its police powers.

7. Covenant to Maintain License Area. Throughout the term of this License, at its sole cost, Licensee shall maintain the License Area at all times in a good, clean, safe, secure, sanitary, and sightly condition, so far as the License Area may be affected by Licensee's activities under this License.

8. Removal or Alteration of Facilities. Without limiting the SFPUC's rights under this License, at the SFPUC's written request, Licensee shall promptly alter or remove, at its sole expense, any and all Facilities, improvements, plantings, or other property installed or placed in, on, under, or about the License Area by Licensee, as may be necessary to avoid any actual or potential interference with the installation, construction, maintenance, operation, repair, replacement, or removal of any of the SFPUC's wastewater facilities, power lines, facilities, or other structures now or later constructed or with any other operations or land uses by the SFPUC. In the request, the SFPUC may specify reasonable time limits for completion of the work. If, after such written notice, Licensee fails to complete the requested work within the prescribed time limits, the SFPUC may perform the requested work and charge Licensee all costs and expenses so incurred by the SFPUC. Such amount shall be due and payable upon the SFPUC's demand. In the event of an emergency, at the SFPUC's sole option, at Licensee's sole expense, and without notice, the SFPUC may, alter, remove, or protect any and all facilities, improvements, plantings, or other property installed or placed in, on, under, or about the License Area by Licensee. Upon the SFPUC's written or oral notice that an emergency exists, the owner of such utility facilities shall take immediate action at its sole expense to protect, remove, or relocate such facilities as required by the SFPUC to meet the emergency.

9. Interruption or Disruption of License Area. Without limiting the SFPUC's rights under this License, if Licensee's use of the License Area is interrupted or disrupted for any reason, including without limitation, in connection with any the SFPUC request for the removal or alteration of Licensee's Facilities located on the License Area pursuant to Section 8 (Removal or Alteration of Facilities) above, Licensee acknowledges and agrees that at its sole cost,

Licensee, shall be responsible for: (a) any and all costs of alteration, removal, and/or restoration of Licensee's improvements to a condition similar to that which existed prior to such interruption, disruption, alteration, or removal, and (b) the implementation or satisfaction of any mitigation measures or obligations that may arise under applicable law, including without limitation, the California Environmental Quality Act ("CEQA"), related to any interruption or disruption of Licensee's use of the License Area. The SFPUC will not be responsible for mitigation of any potential impacts associated with any interruption or disruption of use of the License Area, or any costs related thereto. If Licensee fails to promptly perform its obligations under this Section, at its sole option, the SFPUC may elect to terminate the License immediately upon written notice, or to exercise any and all other rights or remedies available to the SFPUC under this License or at law, including without limitation, the rights set forth in Section 13 (SFPUC's Rights to Cure Defaults by Licensee) of this License.

10. **Signs.** Except for any wastewater facility markers required by the SFPUC or any regulatory agency with jurisdiction, Licensee shall not place, erect, or maintain any sign, advertisement, banner, or similar object in, on, or about the License Area without the SFPUC's prior written consent, which the SFPUC may give or withhold at its sole discretion; provided, however, that, without the SFPUC's prior written consent, if necessary for Licensee's construction use, Licensee may place in the License Area a temporary sign of less than thirty (30) days' duration that does not penetrate the ground surface.

11. **Surrender.** Upon the expiration of this License or within ten (10) days after any sooner revocation or other termination of this License, Licensee shall surrender the License Area in the same condition as received, and broom clean, free from hazards, and clear of all debris. At such time, Licensee shall remove all of its property from the License Area and any signs and, upon the SFPUC's request, the Facilities and any other improvements placed on the License Area during the term of this License, and shall repair, at its cost, any damage to the License Area caused by such removal. Licensee's obligations under this Section shall survive any termination of this License.

12. **Repair of Damage.** If any portion of the License Area or any property of the SFPUC located on or about the License Area is damaged or threatened by any of the activities conducted by Licensee or anyone acting by or through Licensee, at its sole cost, Licensee shall immediately notify the SFPUC of such damage or threat by (a) telephoning SFPUC's dispatch operator as specified in Section 21(b) (Notices), and (b) providing written notice in accordance with Section 21(a) (Notices). The SFPUC may, but shall not be obligated to, remedy such damage or threat at Licensee's sole cost or the SFPUC may elect to witness Licensee's repair work. If the SFPUC elects not to remedy such damage or threat, Licensee shall repair any and all such damage and restore the License Area or property to its previous condition subject to the SFPUC's inspection, review, and approval. the SFPUC has no responsibility or liability of any kind with respect to any utilities that may be on, in, or under the License Area. Licensee has the sole responsibility to locate such utilities and other existing facilities and protect them from damage. Licensee shall be solely responsible for arranging and paying directly for any utilities or services necessary for its activities pursuant to this License; provided, Licensee shall obtain the SFPUC's prior written approval to the provision of such services or utilities in, on, under, or through the License Area.

13. **SFPUC's Right to Cure Defaults by Licensee.** If Licensee fails to perform any of its obligations under this License to restore the License Area, remove or alter Facilities, or repair

damage, or if Licensee defaults in the performance of any of its other obligations under this License, then, at its sole option, the SFPUC may remedy such failure for Licensee's account and at Licensee's expense by providing Licensee with three (3) days' prior written or oral notice of the SFPUC's intention to cure such default (except that no such prior notice shall be required in the event of an emergency as determined by the SFPUC). Such action by the SFPUC shall not be construed as a waiver of any of the SFPUC's rights or remedies under this License, and nothing in this License shall imply any duty of the SFPUC to do any act that Licensee is obligated to perform. Licensee shall pay to the SFPUC upon demand, all costs, damages, expenses, or liabilities incurred by the SFPUC, including, without limitation, reasonable attorneys', experts', and consultants' fees, in remedying or attempting to remedy such default. Licensee's obligations under this Section shall survive the termination of this License.

14. No Costs to the SFPUC. Licensee shall bear all costs or expenses of any kind or nature in connection with its use of the License Area, and shall keep the License Area free and clear of any liens or claims of lien arising out of or in any way connected with its use of the License Area.

15. Indemnity. Licensee shall indemnify, defend, reimburse, and hold harmless the SFPUC, its officers, agents, employees, and contractors, and each of them, from and against any and all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages, and liabilities of any kind ("**Claims**"), arising in any manner out of (a) any injury to or death of any person or damage to or destruction of any property occurring in, on, or about any part of the License Area, whether such injury, death, damage, or destruction is caused by the person or property of Licensee, its officers, directors, members, employees, agents, consultants, contractors, or subcontractors (collectively, "**Agents**"), its invitees, guests, or business visitors (collectively, "**Invitees**"), or third persons, relating to any use or activity under this License, (b) any failure by Licensee to faithfully observe or perform any of the terms, covenants, or conditions of this License, (c) the use of the License Area or any activities conducted on the License Area by Licensee, its Agents, or Invitees, (d) any release or discharge, or threatened release or discharge, of any Hazardous Material caused or allowed by Licensee, its Agents, or Invitees, on, in, under, or about the License Area, any improvements or into the environment, or (e) any failure by Licensee to faithfully observe or perform any terms, covenants, or conditions of the Recorded Documents to the extent that such terms, covenants, or conditions relate to or are triggered by the work to be performed or the Facilities to be installed pursuant to this License; except solely to the extent of Claims resulting directly from the gross negligence or willful misconduct of the SFPUC or the SFPUC's authorized representatives. In addition to Licensee's obligation to indemnify the SFPUC, Licensee specifically acknowledges and agrees that it has an immediate and independent obligation to defend the SFPUC from any claim that 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 Licensee by the SFPUC and continues at all times thereafter. The foregoing indemnity shall include, without limitation, reasonable attorneys', experts', and consultants' fees and costs, investigation and remediation costs, and all other reasonable costs and expenses incurred by the indemnified parties, including, without limitation, damages for decrease in the value of the License Area and claims for damages or decreases in the value of adjoining property. Licensee's obligations under this Section shall survive the expiration or other termination of this License.

16. Waiver of Claims.

(a) Neither the SFPUC nor any of its commissions, departments, boards, officers, agents, or employees shall be liable for any damage to the property of Licensee, its officers, agents, employees, contractors, or subcontractors, or their employees, or for any bodily injury or death to such persons, resulting or arising from the condition of the License Area or its use by Licensee, or Licensee's Agents or Invitees.

(b) Licensee acknowledges that this License is freely revocable by the SFPUC and in view of such fact; Licensee expressly assumes the risk of making any expenditure in connection with this License, even if such expenditures are substantial. Without limiting any indemnification obligations of Licensee or other waivers contained in this License and as a material part of the consideration for this License, Licensee fully RELEASES, WAIVES, AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, the SFPUC, its departments, commissions, officers, directors, and employees, and all persons acting by, through, or under each of them, under any present or future Laws, including, but not limited to, any claim for inverse condemnation or the payment of just compensation under law or equity, in the event that the SFPUC exercises its right to revoke or terminate this License.

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

(d) As part of Licensee's agreement to accept the License Area in its "As Is" condition as provided below, and without limiting such agreement, Licensee, on behalf of itself and its successors and assigns, waives its right to recover from, and forever releases and discharges, the SFPUC and its officers, agents, and employees, and their respective heirs, successors, administrators, personal representatives, and assigns, from any and all Claims, whether direct or indirect, known or unknown, foreseen and/or unforeseen, that may arise on account of or in any way be connected with the physical or environmental condition of the License Area and any related improvements or any applicable Laws or the suitability of the License Area for Licensee's intended use.

17. As Is Condition of License Area; Disability Access; Disclaimer of Representations.

Licensee accepts the License Area in its "AS IS" condition, without representation or warranty of any kind by the SFPUC, its departments, commissions, officers, directors, and employees, and all persons acting by, through, or under each of them, and subject to all applicable Laws governing the use of the License Area. Without limiting the foregoing, this License is made subject to any and all existing and future covenants, conditions, restrictions, easements, encumbrances, and other title matters affecting the License Area, whether foreseen or unforeseen, and whether such matters are of record or would be disclosed by an accurate inspection or survey.

Under California Civil Code Section 1938, to the extent applicable to this License, Licensee is hereby advised that the License Area has not undergone inspection by a Certified Access Specialist ("CASp") to determine whether it meets all applicable construction-related accessibility requirements.

18. **No Assignment.** This License is personal to Licensee and shall not be assigned, conveyed, or otherwise transferred by Licensee under any circumstances. Any attempt to assign, convey, or otherwise transfer this License shall be null and void and cause the immediate termination and revocation of this License.

19. **Cessation of Use.** Licensee will not terminate its activities on the License Area pursuant to this License without prior written notice to the SFPUC.

20. **No Joint Ventures or Partnership; No Authorization.** This License does not create a partnership or joint venture between the SFPUC and Licensee as to any activity conducted by Licensee on, in, or relating to the License Area. Licensee is not a state actor with respect to any activity conducted by Licensee on, in, under or around the License Area. the SFPUC's provision of this License does not constitute the SFPUC's authorization or approval of any activity conducted by Licensee on, in, around, or relating to the License Area.

21. **Notices.**

(a) Except as otherwise expressly provided in this License, any notices given under this License shall be effective only if in writing and given by delivering the notice in person, by sending it first class mail or certified mail with a return receipt requested, or nationally-recognized overnight courier that guarantees next day delivery and provides a receipt therefor, with postage prepaid, addressed as follows (or such alternative address as may be provided in writing):

City or SFPUC: Real Estate Services

Public Utilities Commission
525 Golden Gate Avenue, 10th Floor
San Francisco, California 94102
Attn: Real Estate Director
Re: Napoleon Site
Telephone No.: (415) 487-5210

Licensee: San Francisco Department of Public Works
Office of the Deputy Director for Operations
2323 Cesar Chavez Street
San Francisco, CA 94124
Telephone No.: (____) ____-____

(b) **Emergency Contacts.** Licensee shall immediately notify _____ by phone at _____ of any emergency or incident requiring emergency response.

Correctly addressed notices given by a method that provides confirmation of delivery shall be deemed given on the earlier of confirmed delivery or confirmed attempted delivery. Telephone numbers are provided to facilitate communications; communication by telephone, facsimile, or e-mail does not constitute formal notice under this License.

22. Disability Access. Pursuant to California Civil Code Section 1938, the SFPUC hereby notifies Licensee that as of the date of this License, the License Area has not undergone inspection by a "Certified Access Specialist" in order to determine whether the License Area meets all applicable construction-related accessibility standards under California Civil Code Section 55.53.

23. Severability. If any provision of this License, or its application to any person, entity, or circumstance, shall be invalid or unenforceable, the remainder of this License, 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 License shall be valid and be enforceable to the fullest extent permitted by law, except to the extent that enforcement of this License without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this License.

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

25. General Provisions. (a) This License may be amended or modified only by a writing signed by the SFPUC and Licensee. (b) No waiver by any party of any of the provisions of this License shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver. No waiver shall be deemed a subsequent or continuing waiver of the same, or any other, provision of this License. (c) Except as expressly provided to the contrary, all approvals, consents, and determinations to be made by the SFPUC under this License may be made at the SFPUC's sole and absolute discretion. (d) This instrument (including its attached exhibit(s)) contains the entire agreement between the parties with respect to the SFPUC's licensing of the License Area to Licensee and all prior written or oral negotiations, discussions, understandings, and agreements are merged herein. (e) The section and other headings of this License are for convenience of reference only and shall be disregarded in the interpretation of this License. (f) Time is of the essence in all matters relating to this License. (g) This License shall be governed by California law and City's Charter. (h) Licensee may not record this License or any memorandum of this License. (i) Subject to the prohibition against assignments or other transfers by Licensee hereunder, this License shall be binding upon and inure to the benefit of the parties and their respective heirs, representatives, successors, and assigns. (j) Any sale or conveyance of the property burdened by this License by the SFPUC shall automatically revoke this License. (k) Notwithstanding anything to the contrary contained in this License, Licensee acknowledges and agrees that no officer or employee of the SFPUC has authority to commit the SFPUC to this License unless and until a resolution of SFPUC shall have been duly adopted approving this License and authorizing the transaction contemplated by this License. Therefore, any obligations or liabilities of the SFPUC pursuant to or under this License are contingent upon enactment of such a resolution, and this

License shall be null and void if, at its sole discretion, SFPUC does not approve this License.
(l) This License 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.
(m) Whenever this License requires the SFPUC's or SFPUC's consent or approval, the General Manager of the SFPUC, or his or her designee, shall be authorized to provide such consent or approval, except as otherwise provided by applicable Laws, including City's Charter, or by SFPUC's Real Estate Guidelines. No consent, approval, election, or option shall be effective unless given, made, or exercised in writing.

[SIGNATURES ON FOLLOWING PAGE]

LICENSEE REPRESENTS AND WARRANTS TO THE SFPUC THAT IT HAS READ AND UNDERSTANDS THE CONTENTS OF THIS LICENSE, HAS HAD AN OPPORTUNITY TO REVIEW AND DISCUSS IT WITH COUNSEL OF ITS CHOOSING, AND AGREES TO COMPLY WITH AND BE BOUND BY ALL OF ITS PROVISIONS.

LICENSEE:

SAN FRANCISCO DEPARTMENT OF PUBLIC WORKS, a City department

By: _____
Its: _____
Date: _____

SAN FRANCISCO PUBLIC UTILITIES COMMISSION, a City department

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

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By: _____
Richard Handel, Deputy City Attorney
on behalf of the SFPUC

DENNIS J. HERRERA
City Attorney

By: _____
Christopher Tom, Deputy City Attorney
on behalf of Public Works

**Authorized by
San Francisco Public Utilities Commission**

Resolution No. _____
Adopted: _____

Attested: _____
Secretary
San Francisco Public Utilities Commission

EXHIBIT 1 TO REVOCABLE LICENSE

Description of License Area

All that certain real property located in the County of San Francisco, California, described as follows:

A portion of _____, according to SFPUC records and as shown on the Drawing No. _____ attached as **Exhibit B**.

EXHIBIT 2 TO REVOCABLE LICENSE

Drawing No. _____

[see attached]

EXHIBIT 3 TO REVOCABLE LICENSE

Deed

[see attached]

EXHIBIT H

USE RESTRICTIONS

1. **Napoleon Wastewater Restricted Area – General Restrictions.** Public Works shall not use the Napoleon Wastewater Restricted Area, or permit the same to be used, for any purpose or in any manner that interferes with, damages, or endangers the Wastewater Facilities. Without limiting the foregoing, Public Works agrees that:

- (a) No structure or improvement of any kind or character shall be constructed or placed, and no excavation greater than five (5) feet in depth shall occur, on the Napoleon Wastewater Restricted Area without first submitting to the SFPUC the written materials required by Paragraph 2 below and obtaining the SFPUC's prior written consent.
- (b) Public Works shall not use any vehicle or equipment within the Napoleon Wastewater Restricted Area in excess of the SFPUC loading criteria, as such criteria may be amended by the SFPUC from time to time. As of the date of this MOU, the SFPUC requires that loading must not exceed the American Association of State Highway and Transportation Officials standards of either H-20 or HS-20, based on an axle load of 32 kips.
- (c) Public Works shall not plant any trees or other vegetation in or on the Napoleon Wastewater Restricted Area, except pursuant to detailed plans consistent with the SFPUC's vegetation management policy and as approved in advance by the SFPUC in writing. The SFPUC may remove any trees or shrubs in or on the Wastewater Restricted Area that the SFPUC determines, at its sole and absolute discretion, may harm the Wastewater Facilities.
- (d) Public Works shall not cause nor permit the dumping or other disposal in, on, under, or about the Napoleon Wastewater Restricted Area of landfill, refuse, Hazardous Materials, or any other materials, including, but not limited to, materials that could pose a hazard to human health or safety or the environment.
- (e) Public Works shall not conduct, nor allow, any activities in, on, under, or about the Napoleon Wastewater Restricted Area that cause any ponding on the Napoleon Wastewater Restricted Area or any flooding on adjacent land.
- (f) Any hardscape above the Napoleon Wastewater Restricted Area shall extend no more than two feet (2') below grade.
- (g) Neither the Public Works nor Public Works Affiliates shall engage in any construction activities that could cause deep vibrations to the Napoleon Wastewater Restricted Area (a "DV Activity"). A DV Activity includes sheet or pile driving, but does not include use of typical hand-operated backfill compaction such as wackers.

2. **Future Proposed Public Works' Installations.** If Public Works proposes any installations, repairs, or construction work in the Napoleon Wastewater Restricted Area: (a) Public Works shall provide to the SFPUC, at the address for the Assistant General Manager of the Wastewater Enterprise, a copy of the conceptual engineering report, the 95% completed plans, and the final plans and specifications for any such proposed installation, repair, or construction work, as each becomes

available, to provide the SFPUC an opportunity to review and comment on such report and plans, (b) Public Works shall obtain the SFPUC's approval of the plans and specifications for any proposed installation, repair, or construction work prior to the commencement of any such work, which approval shall not be unreasonably withheld or delayed, (c) there shall be a minimum of an eight (8) foot linear clearance on a horizontal plane between any above-ground installation and any then-existing Wastewater Facilities within the Napoleon Wastewater Restricted Area, unless the SFPUC otherwise consents in writing, (d) such installation, repair, or construction work shall be performed in a manner that does not endanger or damage any then-existing Wastewater Facilities within the Napoleon Wastewater Restricted Area, and (e) promptly after the completion of any such installation, repair, or construction work, Public Works shall provide the SFPUC with a copy of the as-built plans for such installation, repair, or construction work.

3. Insurance and Indemnity. In connection with any construction work conducted by or on behalf of Public Works in the Napoleon Wastewater Restricted Area, Public Works shall cause its contractors and subcontractors to maintain at all times such insurance and include such contractual indemnity provisions as City's Risk Manager recommends. City, through the SFPUC, shall be included as an additional insured with respect to any such insurance.

4. Public Works' Utilities, Maintenance, and Repairs. At its sole cost, Public Works shall repair and restore to its prior condition any damage to the Wastewater Restricted Area caused by Public Works or any Public Works Affiliates upon completion of any construction, installation, maintenance, repair, or any other activity of Public Works and the Public Works Affiliates permitted under this MOU. Except with respect to the Wastewater Facilities or as may be otherwise provided in this MOU, the SFPUC has no responsibility or liability of any kind with respect to any utilities placed by Public Works or any third parties that may be on, in, or under the Napoleon Wastewater Restricted Area. In connection with any construction work performed by or on behalf of Public Works, Public Works has the sole responsibility to locate such utilities and other existing facilities (including the Wastewater Facilities) and protect them from damage. Public Works shall be solely responsible for arranging and paying directly for any utilities or services necessary for its activities under this MOU; provided, Public Works shall obtain the SFPUC's prior written approval to the provision of such services or utilities in, on, under, or through the Napoleon Wastewater Restricted Area.

5. Removal or Alteration of Facilities.

(a) Non-Emergency Removal or Alteration of Facilities. Except for facilities, improvements, or other property installed following the approval process stated, and fully complying with the other requirements set forth, in Paragraph 2 of this **Exhibit H**, without limiting the SFPUC's rights under this MOU, at the SFPUC's written request, Public Works shall promptly alter or remove at its sole expense any and all facilities, improvements, or other property installed or placed in, on, under, or about the Napoleon Wastewater Restricted Area by Public Works, as may be necessary to avoid any actual or potential interference with any of the SFPUC's sewer facilities or other structures the SFPUC may now or later construct, or with the SFPUC's maintenance operations. The SFPUC shall have the right to specify reasonable time limits for completion of the requested work. If after such written notice, Public Works fails to complete the requested work within the prescribed time limits, the SFPUC shall have the right to perform the requested work and Public Works shall be obligated to pay the SFPUC's costs and expenses incurred in performing the work.

(b) Emergency Removal or Alteration of Facilities. In the event of an emergency, at its sole option and without notice, the SFPUC may alter, remove, or protect at Public Works' sole expense, any and all facilities, improvements, plantings, or other property installed or placed in, on, under, or

about the Napoleon Wastewater Restricted Area by Public Works. In such event, the SFPUC shall not be responsible for restoring Public Works facilities, improvements, or other property in the Napoleon Wastewater Restricted Area except as otherwise provided in this MOU.

6. Interfering Uses. The Parties acknowledge that the SFPUC's activities relating to the Napoleon Wastewater Restricted Area may temporarily interfere with Public Works' use of the Wastewater Restricted Area and immediately appurtenant areas. Accordingly, the SFPUC and SFPUC Affiliates may temporarily restrict access to the immediate vicinity of the Napoleon Wastewater Restricted Area. The SFPUC and the SFPUC Affiliates shall use reasonable efforts during any such period of temporarily restricted access to (a) provide adequate, if restricted, access to Public Works to the Napoleon Wastewater Restricted Area and (b) to conduct any such installation, maintenance, repair, and replacement in, under, and on the Wastewater Restricted Area in a manner that minimizes the extent and duration of any interference with Public Works' use, taking into account the scope of work to be performed.

7. Notice of Construction On or Within Wastewater Restricted Area. Except in emergencies (where the SFPUC shall provide as much notice as is reasonably practicable under the circumstances), each Party shall provide the other Party at least thirty (30) days' prior written notice at the address(es) specified in Section 17 (Other Notices) of this MOU of each and all of the planned construction activities of the Party giving such notice on or within the Wastewater Restricted Area.

8. Public Works Use of Napoleon Wastewater Restricted Area. Public Works shall bear all costs or expenses of any kind or nature in connection with its use of the Napoleon Wastewater Restricted Area. Public Works shall keep the Napoleon Wastewater Restricted Area free and clear of any liens or claims of lien arising out of or in any way connected with its use of the Napoleon Wastewater Restricted Area. Except as provided in Section 9.1 of this MOU or as the SFPUC agrees otherwise in writing in advance, the SFPUC shall have no obligation to maintain, repair, or replace any Public Works improvement placed or installed on, over, across, or along the Napoleon Wastewater Restricted Area.