

L-139311

PUBLIC UTILITIES COMMISSION
SAN FRANCISCO WATER DEPARTMENT

QUARRY LEASE

between

CITY AND COUNTY OF SAN FRANCISCO,
as Landlord

and

MISSION VALLEY ROCK COMPANY, a California corporation,
as Tenant

For the lease of

Approximately 242 Acres
Alameda County, California

September 26, 2000

PUBLIC UTILITIES COMMISSION
SAN FRANCISCO WATER DEPARTMENT

GROUND LEASE

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**PUBLIC UTILITIES COMMISSION
SAN FRANCISCO WATER DEPARTMENT**

QUARRY LEASE

THIS QUARRY LEASE (this "Lease") dated for reference purposes only as of September 26, 2000, is by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation ("City" or "Landlord"), acting by and through its Public Utilities Commission ("SFPUC"), and **MISSION VALLEY ROCK CO.**, a California corporation ("Tenant").

City and Tenant hereby agree as follows:

1. BASIC LEASE INFORMATION

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

Lease Reference Date:	September 26, 2000
Landlord:	CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through the SFPUC
Tenant:	MISSION VALLEY ROCK CO., a California corporation
Premises (Section 3.1):	Approximately 242 acres of land located in Alameda County, California, owned by City under the jurisdiction of the SFPUC, as more particularly described in <u>Exhibit A</u> attached hereto and shown in <u>Exhibit A-1</u> attached hereto. Tenant shall also have a nonexclusive license to use the area shown on <u>Exhibit A-2</u> for landscaping and for the placement

of a conveyor belt to transport mined material from the Premises to the access road.

Term
(Section 4.1):

Commencement Date:
November 1, 2000.

Expiration Date:
October 31, 2040.

Base Rent (Section 5.1):

Annual Base Rent:
\$100,000 per year for each of the first twenty (20) years of the Term, payable in annual installments commencing on the Commencement Date and on each subsequent anniversary thereof for the following nineteen (19) years.

Percentage Rent
(Section 5.2):

10.5% ("Royalty Rate") of the Sales Price, times the aggregate and material, including overburden, extracted from the Premises and measured in tons.

Adjustment Dates
(Section 5.2(f)):

On the fifth (5th) anniversary of the Commencement Date, and each fifth (5th) anniversary thereafter during the Term.

Use (Article 7):

The quarrying and removal of gravel and rock products, the construction, maintenance and use of related necessary structures and equipment, incidental vineyard and orchard uses and other uses contemplated by the Approved Plans and Permits, and for no other purpose whatsoever. The strip of land connecting the 242 acre parcel to the CalTrans easement under I-680 shall only be used for ingress and egress purposes and for the transportation of quarried materials.

Security Deposit/Bond
(Article 23):

Two Million Dollars (\$2,000,000)

Notice Address of City
(Section 24.1):

Public Utilities Commission
Commercial Land Management
1155 Market Street, 5th Floor
San Francisco, California 94102
Attn: Gary Dowd, Manager
Fax No.: (415) 487-5200

with a copy to:

Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Attn: PUC General Counsel
Fax No.: (415) 554-4283

Key Contact for City:

Gary Dowd, SFPUC Commercial Land Manager

Telephone No.:

(415) 487-5211

Notice Address of Tenant

(Section 24.1):

Mission Valley Rock
7999 Athenour Way
Sunol, California 94586
Fax No.: (510) 862-0229

Key Contact for Tenant:

William Howard

Telephone No.:

(510) 862-2257

Alternate Contact
for Tenant:

Mort Calvert

Telephone No.:

(510) 862-2257

Brokers (Section 24.8):

None.

2. DEFINITIONS

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

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

2.2 "Adjustment Date(s)" means the date(s) for adjusting the Royalty Rate as specified in Basic Lease Information and Section 5.2(f) hereof.

2.3 "Affiliate of Tenant" means any person or entity which directly or indirectly, through one or more intermediaries, controls, is controlled by or is under the common control with, Tenant. As used above, the words "control," "controlled" and "controls" mean the right and power, directly or indirectly through one or more intermediaries, to direct or cause the direction of substantially all of the management and policies of a person or entity through ownership of voting securities or by contract, including, but not limited to, the right to fifty percent (50%) or more of the capital or earnings of a partnership or, alternatively, ownership of fifty percent (50%) or more of the voting stock of a corporation.

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

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

2.6 "Approved Plans and Permits" means all permits, plans, materials and maps relating to the Premises and submitted to, or required by, Alameda County, the City, and any other governmental or regulatory entity with jurisdiction, and approved or to be approved by such entity, including without limitation the following: Surface Mining Permits 29 and 32, the Sunol Valley Quarry Phasing Plan attached hereto as Exhibit B, the Alameda Watershed Management Plan dated as of September 26, 2000, the Landscape and Recreation Plan, and the Environmental Impact Reports for Surface Mining Permits 29 and 32 and the mitigation requirements set forth therein. Any permits, plans, materials, and maps relating to the Premises which arise after the date of this Lease, and any modifications to any existing Approved Plans and Permits, shall be subject to the City's prior written approval.

2.7 "Assignment" has the meaning given in Section 15.1 hereof.

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

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

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

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

2.12 "**Commencement Date**" means the date on which the Term of this Lease commences as described in Section 4.1 hereof.

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

2.14 "**Effective Date**" means the date on which this Lease becomes effective pursuant to Section 4.2 hereof.

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

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

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

2.18 "**Event of Default**" means any one of the events of default described in Section 16.1 hereof.

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

2.20 "General Manager" means the General Manager of the San Francisco Public Utilities Commission.

2.21 "Gross Revenues" means the gross selling price, after discount, of all gravel, rocks, overburden, and other products derived from, sold, or delivered in or from the Premises by Tenant, its permitted subtenants, licensees, or concessionaires, whether for cash or on credit (whether collected or not). In the event Tenant sells product from the Premises to an Affiliate of Tenant, "Gross Revenues" shall mean the selling price of such product that Tenant would have received had Tenant sold such product to an entity that was not Affiliate of Tenant (based upon comparable sales to non-Affiliates of Tenant).

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

2.23 "Hazardous Material Claims" means any and all enforcement, investigation, Remediation or other governmental, regulatory or private actions, agreements or orders

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

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

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

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

2.27 "**Index**" means the Consumer Price Index for All Urban Consumers (base years 1982-1984 = 100) for the San Francisco-Oakland-San Jose area, published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is changed so that the base year differs from that used as of the date most immediately preceding the Commencement Date, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the Term, Landlord shall replace it with such other government index or computation which, in Landlord's reasonable estimation, would obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

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

2.41 "Premises" has the meaning given in Section 3.1 hereof. The Premises shall include any permitted Improvements, together with any additions, modifications or other Alterations thereto permitted hereunder. Notwithstanding anything to the contrary in this Lease, the Premises do not include the SFPUC Facilities, nor any water rights, riparian rights, water stock, mineral rights unrelated to normal sand, gravel and rock quarrying operations or timber rights relating to the Premises; provided, however, Tenant shall have the right to conduct standard dewatering operations in accordance with industry custom and shall have the right to use and dispose of ground water obtained in connection therewith. Tenant may not sell any water from the Premises to any third party without the prior written consent of the General Manager, and the proceeds of any such sale shall be included in Gross Revenues.

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

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

2.44 "Rent" means the Base Rent, together with Percentage Rent and any and all Additional Charges.

2.45 "Sales Price" means the average of (i) the average price per ton charged by Tenant for sand, and (ii) the average price per ton charged by Tenant for gravel, during a Percentage Rent Period.

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

2.47 "SFPUC Facilities" means any and all electric power transmission lines, pump stations, water pipelines, drainage pipelines, hatch covers, wells, ranney collectors, and other surface and subsurface utility facilities owned by the SFPUC and now or later located in, under,

on or about the Premises for the collection, storage, transportation or distribution of energy or water for municipal purposes, together with all appurtenances thereto and all monuments thereof.

2.48 "SMP 29 and 32" means Surface Mining Permit No. 29 and Surface Mining Permit No. 32, as adopted and approved by the Board of Supervisors of the County of Alameda.

2.49 "Sunol Valley Quarry Phasing Plan" shall mean the Sunol Valley Quarry Phasing Plan attached hereto as Exhibit B.

2.50 "Sublease" has the meaning given in Section 15.1 hereof.

2.51 "Taking" means a taking or damaging, including severance damage, by eminent domain, inverse condemnation or for any public or quasi-public use under Law. A Taking may occur pursuant to the recording of a final order of condemnation, or by voluntary sale or conveyance in lieu of condemnation or in settlement of a condemnation action. To the extent permitted by Law, Landlord waives any right it may have to initiate or conduct a Taking of the Premises in order to terminate this Lease.

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

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

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

2.55 "Transfer" means any Assignment or Sublease.

2.56 "Transferee" means any recognized assignee of any part of Tenant's leasehold interest hereunder or any recognized subtenant of any portion of the Premises, pursuant to a Transfer that complies with Article 15 hereof.

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

3. PREMISES

3.1 Leased Premises.

(a) Subject to the terms, covenants and conditions of this Lease, City leases to Tenant and Tenant leases from City, the approximately 242-acre parcel of the real property located in the County of Alameda, State of California, more particularly described in the attached Exhibit A (the "Premises") and shown in Exhibit A-1; excluding therefrom and reserving unto City, its successors and assigns, the rights set forth in Section 3.2 below. In addition to the Premises, Tenant shall have a non-exclusive license to use the area down on Exhibit A-2 for landscaping and for the placement and use of a conveyor belt to transport mined material to the access road and to Tenant's processing plant and for no other purpose, subject to any existing easement terms and conditions and/or the rights of any third parties. Any acreage stated in this Lease with respect to the Premises is an estimate only, and City does not warrant it to be correct. However, the Parties agree that for all purposes of this Lease, any such acreage shall be deemed to be correct. Nothing in this Lease is intended to grant Tenant any right whatsoever to possess, use or operate the SFPUC Facilities or any portion thereof.

(b) Following Tenant's excavation of the product near the Sunol Water Temple, Tenant shall backfill and landscape that portion of the Premises located within a ¼ mile radius of the Sunol Water Temple (the "Temple Area") in accordance with the Approved Plans and Permits. Following such backfill and landscaping per the Approved Plans and Permits, and upon City's written acceptance of same, this Lease shall be automatically revised to delete the Temple Area from the Leased Premises. Upon City's request, Tenant shall execute an amendment to this Lease to memorialize such revision, although the lack of such separate execution shall not affect the automatic revision as set forth above. The General Manager of the PUC shall have the authority to accept the Temple Area and execute a Lease amendment in connection therewith without further action from the City's Board of Supervisors or Mayor. Notwithstanding any such deletion of the Temple Area from the Premises, Tenant shall replace any plants located in or around the Temple Area which were planted by Tenant and which do not survive for the full Term of this Lease.

3.2 Rights Reserved to City. Notwithstanding anything to the contrary in this Lease, during the Term City reserves and retains all of the following rights relating to the Premises:

(a) Any and all water and water rights, including, but not limited to (i) any and all surface water and surface water rights, riparian rights and appropriative water rights to surface streams and the underflow of streams, and (ii) any and all groundwater and subterranean water rights, and the right to export percolating groundwater for use by City or its water

customers; provided, however, the foregoing shall not impact Tenant's right to conduct dewatering and water disposal operations on the Premises as set forth above.

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

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

(d) All rights to use, operate, maintain, repair, enlarge, replace, modify, expand, and reconstruct the SFPUC Facilities so long as City uses its reasonable efforts not to interfere with Tenant's use of the Premises;

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

(f) All rights of access provided for in Article 19 below.

3.3 Subject to City's Operation of Water Utility. Tenant acknowledges that the property of which the Premises are a part constitutes a portion of City's watershed property, which City holds for the purposes of collecting, storing, transporting and distributing water for domestic and municipal use, and Tenant agrees that it shall not engage in, and City has the right to prohibit, any activity not contemplated by the Approved Plans and Permits and that City determines would endanger or threaten the quality or availability of the water being collected, stored, transported and distributed by City. In connection with City's management and use of its adjoining watershed property, but provided there is no Event of Default or Unmatured Event of Default on the part of Tenant outstanding hereunder and subject to the terms and conditions of this Lease, City shall use its best efforts to avoid interfering with Tenant's quiet use and enjoyment of the Premises. City may adopt from time to time such reasonable rules and regulations with regard to Tenant's facilities and operations hereunder as City may determine are necessary or appropriate to protect City's interests and to ensure that City's intended future use of the Premises as a water storage facility will be achieved. Upon receipt thereof, Tenant shall comply with all such reasonable rules and regulations.

3.4 As Is Condition of Premises.

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

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

4. TERM

4.1 Term of Lease. The Premises are leased for a term (the "Term") commencing on the earlier of (i) the date specified in the Basic Lease Information as the Commencement Date, or (ii) the date on which City delivers possession of the Premises; subject to this Lease becoming effective pursuant to Section 4.2 below. The Term of this Lease shall end on the expiration date specified in the Basic Lease Information, unless sooner terminated pursuant to the provisions of this Lease. The dates on which the Term commences and terminates pursuant hereto are referred to respectively as the "Commencement Date" and the "Expiration Date." Effective on the Commencement Date, this Lease shall supplant and supercede: (i) the 173-acre agricultural lease between City, as lessor, and Pacific Nurseries of California, Inc. and Tenant, as lessee, dated as of December 10, 1991, as amended ("Lease One"); and (ii) the 69-acre portion of the 204-acre lease between City, as lessor, and Tenant, as successor to G. Armanino & Son, as lessee, dated as of June 20, 1985 ("Lease Two"), which is included as part of the Premises in this Lease. Upon the Commencement Date, Lease One shall terminate and Lease Two shall be deemed amended to

exclude the 69-acre parcel that is part of this Lease, provided, however, in the event that this Lease is declared invalid and unenforceable for any reason other than Tenant's default, Lease Two shall be automatically revised to include the 69-acre parcel. By approving this Lease, City's Board of Supervisors and Mayor authorize the PUC to execute an amendment to Lease Two reflecting the above terms.

4.2 Effective Date. This Lease shall become effective on the later of (i) the date which is thirty (30) days after the City's Mayor approves this Lease and the City's Board of Supervisors passes a resolution, in its sole and absolute discretion, approving this Lease and authorizing the City's execution hereof, and (ii) the date on which the Parties hereto have duly executed and delivered this Lease (the "Effective Date").

4.3 Quarrying Activities.

(a) Notwithstanding the above Commencement Date, Tenant shall not begin quarrying activities on the Premises until: (i) Tenant has fulfilled all pre-disturbance mitigation and other conditions set forth in the Approved Plans and Permits, as certified by the appropriate governmental entities; (ii) Tenant has prepared, to City's satisfaction, a detailed landscaping and phasing plan for the Premises; (iii) Tenant has obtained a surface mining permit from the Alameda County Planning Department, which permit shall be subject to City's approval and shall remain valid throughout the Term. Tenant shall complete the above requirements on or before December 31, 2006 (the "Quarry Date"), subject to any Force Majeure Delay. Tenant's agreement to begin quarrying on the Premises within thirty (30) days following the Quarry Date is a material inducement to City's agreement to enter into this Lease, and Tenant's failure to fulfill the above requirements on or before the Quarry Date, subject to any Force Majeure Delay, shall be an Event of Default hereunder. Upon the commencement of mining, Tenant agrees to continue mining without interruption for the remainder of the Term, subject only to Force Majeure Delays.

(b) Tenant agrees to complete the mining of Pits F2 and F3 in accordance with the Sunol Valley Quarry Phasing Plan attached as Exhibit B, and to complete the mining of Pit F2 by the end of calendar year 2005 and Pit F3 by the end of calendar year 2006, subject to Force Majeure Delays. Tenant shall not commence mining on the Premises before completing Pits F2 and F3; provided, Tenant shall perform all necessary pre-mining preparatory activities while completing Pits F2 and F3. Tenant's agreement to complete such mining is a material inducement to Landlord's willingness to enter into this Lease, and Tenant understands that Landlord would not be willing to enter into this Lease without such agreement by Tenant.

(c) Tenant covenants and agrees that it shall apply to Alameda County Planning Department for, and shall use its' best efforts to obtain with reasonable promptness, an amendment to SMP 24 and 32 to permit mining of the Premises to a depth of two hundred feet (200'), and for appropriate environmental review under the California Environmental Quality Act for such increased depth.

(d) Tenant agrees that it shall mine the Premises before proceeding with active quarrying activities on Tenant's other property west of Alameda Creek, including but not limited to the property covered by Surface Mining Permit 24, unless such mining is necessary for Tenant's storage of silt from the Premises. Tenant shall mine the Premises in accordance with Alternative E, and restore the Premises (by backfilling ¼ mile around the Temple) to the footprint in Alternative F, of the Sunol Valley Resources Management Element of the Alameda Watershed Management Plan. Tenant shall maintain and update not less than annually detailed maps showing the extent of Tenant's operations on the Premises and the depth of mined excavation to date. Tenant shall also prepare and submit to Landlord an annual mining plan at the start of each Lease Year describing Tenant's contemplated activities for the coming Lease Year.

4.4 Early Termination. Notwithstanding anything in this Lease to the contrary, this Lease shall terminate upon Tenant's completion of its quarrying activity and reclamation work, as permitted and described in the Approved Plans and Permits and this Lease, but in no event later than the Expiration Date.

5. RENT

5.1 Base Rent. Tenant shall pay to City during the Term of this Lease, beginning on the Commencement Date, the annual Base Rent specified in the Basic Lease Information (the "Base Rent"). The Base Rent shall be payable in annual installments of One Hundred Thousand dollars (\$100,000) on the Commencement Date and each anniversary thereafter for a total of twenty (20) Base Rent payments. All payments of Base Rent and other sums due and owing hereunder shall be made to the San Francisco Public Utilities Commission, c/o Finance Bureau, 1155 Market Street, 8th Floor, San Francisco, California 94103 (Reference SFPUC lease number), or such other place as City may designate in writing.

5.2 Percentage Rent. In addition to the Base Rent, Tenant shall pay to City Percentage Rent per the following terms and conditions:

(a) **Royalty Rate.** Tenant shall pay to City, as Percentage Rent, a sum equal to the Royalty Rate on all aggregate and materials extracted from the Premises and sold by

Tenant on a monthly basis (each such month, a "Percentage Rent Period"). The Royalty Rate on the Commencement Date shall be 10.5% of the Sales Price, times the aggregate and material, including overburden, extracted from the Premises and measured in tons. The Sales Price shall be the average of (i) the average price per ton charged by Tenant for sand, and (ii) the average price per ton charged by Tenant for gravel, during the applicable Percentage Rent Period. Tenant shall compute such sum for each Percentage Rent Period on or before the tenth (10th) day of the calendar month immediately following the close of each Percentage Rent Period, and Tenant shall pay such amount to City on or before the fifteenth (15th) day of the calendar month immediately following the close the Percentage Rent Period. Any transaction on an installment basis, including without limitation any transaction involving the extension of credit, shall be treated as a sale at the time of the transaction, irrespective of the time of payment or when title passes. Any sale to an Affiliate of Tenant shall be included in the calculation of total tonnage of aggregate sold by Tenant.

(b) **Reports.** Tenant shall furnish to City a statement of Tenant's Gross Revenues for the applicable Percentage Rent Period with each payment of Percentage Rent, and an annual statement of Gross Revenues within twenty (20) days after the end of each Lease Year. Such statements shall include a statement showing weights and values of the materials produced from the Premises during the applicable Percentage Rent Period and shall be in a form acceptable to City. Each statement shall be signed and certified to be correct by Tenant or its authorized representative, and, if Tenant is a corporation, the statement shall be signed and certified to be correct by a duly authorized officer of Tenant. Tenant shall keep at the Premises or at its offices located within Alameda County complete and accurate books of account, records, receipts and other pertinent data, in accordance with good accounting practices and in a form approved by City, showing its Gross Revenues books and records of its mining, weighing, sampling, testing and shipping activities. Such books of account, records, cash receipts and other pertinent data shall be kept for a period six (6) years after the end of each Lease Year. The receipt by City of any statement, or any payment of Percentage Rent for any period, shall not bind City as to the correctness of the statement or payment. Tenant shall weigh all product from the Premises using scales approved by Landlord. Tenant shall cause such scales to be tested for accuracy and corrected at Tenant's expense by an independent licensed weight master not less than once per year. Such weight master shall certify the results of such testing to Landlord.

(c) **Inspection and Audit.** City shall be entitled at any time and from time to time during the Term and within three (3) years after the Expiration Date or other termination of this Lease, to inspect, examine, copy and audit all of Tenant's books of account, records, cash receipts, tax returns and underlying tax preparation documents, financial statements and other pertinent data. The primary purpose of such examination is to enable City to ascertain, clearly and accurately, Tenant's Gross Revenues and to verify that the form and method of Tenant's record keeping provide adequate and proper control and check of all such revenues. Tenant shall

cooperate fully with City and City's Agents in making the examination. City shall also be entitled, at City's option, to cause an independent audit to be performed by a certified public accountant designated by City. The audit shall be limited to the determination of Gross Revenues and shall be conducted during usual business hours at the Premises. If the audit shows that there is a deficiency in the payment of any Percentage Rent, then Tenant shall immediately upon notice pay the deficiency to City, together with interest thereon at the default interest rate, set forth in Section 5.5 below. City shall pay the costs of the audit unless the audit shows that Tenant understated Gross Revenues by more than two percent (2%), in which case Tenant shall pay all costs of the audit.

(d) **Efforts to Maximize Revenue.** Subject to the express terms and conditions of this Lease, Tenant shall use its best efforts to maximize the production of Gross Revenues from the Premises.

(e) **Minimum Payment.** In addition to the Base Rent and Percentage Rent, Tenant agrees to pay to Landlord Two Million Dollars (\$2,000,000) in the event that Tenant terminates this Lease before the Quarry Date or Landlord terminates this Lease before the Quarry Date as a result of an Event of Default.

(f) **Adjustment Dates.** City reserves the right to review and adjust the Royalty Rate on the fifth anniversary (5th) of the Commencement Date and each fifth (5th) anniversary thereafter (each, an "Adjustment Date"). Any increase in the Royalty Rate shall be fair, as reasonably determined by City in accordance with fair market value at the applicable Adjustment Date.

5.3 Rent Offset. At City's request, Tenant shall deliver to City aggregate, including sand, road base, drain rock and other mined materials or products, from Tenant's mining on the Premises to the extent Tenant has not previously committed such aggregate to another customer. Tenant shall receive a credit against the next payment(s) of Percentage Rent in the amount of the rate then being charged by Tenant for such aggregate. If Tenant charges different rates to different customers, City shall be charged the cheapest rate that Tenant charges to its most valued customers. Upon City's request, Tenant shall notify City of the availability of the requested aggregate and the price of the aggregate. Upon City's written agreement as to the price, Tenant shall deliver the aggregate and receive the above-specified credit against Percentage Rent.

5.4 Late Charge. If Tenant fails to pay any Rent within five (5) days after the date the same is due and payable, such unpaid amount will be subject to a late payment charge in each instance equal to the greater of (i) fifty dollars (\$50), or (ii) six percent (6%) of the unpaid amount. The late payment charge has been agreed upon by City and Tenant, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that City will incur as a

result of any such failure by Tenant, the actual costs thereof being extremely difficult if not impossible to determine. The late payment charge constitutes liquidated damages to compensate City for its damages resulting from such failure to pay and Tenant shall promptly pay such charge to City together with such unpaid amount.

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

5.6 Net Lease. This Lease is a "net lease." Accordingly, Tenant shall pay to City the Base Rent, Percentage Rent, Additional Charges and any other payments hereunder free of any charges, assessments or deductions of any kind, without prior demand and without abatement, counterclaim or setoff (except as set forth in Section 5.3 above). Under no circumstances, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties, shall City be expected or required to make any payment of any kind whatsoever with respect to Tenant's use or occupancy of the Premises and any permitted Improvements or with respect to this Lease, except as may otherwise be expressly set forth herein. Without limiting the foregoing, Tenant shall be solely responsible for paying each item of cost or expense of every kind and nature whatsoever, the payment of which City would otherwise be or become liable by reason of its estate or interests in the Premises and any Improvements, any rights or interests of City in or under this Lease, or the ownership, leasing, operation, management, maintenance, repair, rebuilding, remodeling, renovation, use or occupancy of the Premises, any permitted Improvements, or any portion thereof. Except as may be specifically and expressly provided otherwise in this Lease, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its liability to pay all of the sums required by any of the provisions of this Lease, or shall otherwise relieve Tenant from any of its obligations under this Lease, or shall give Tenant any right to terminate this Lease in whole or in part. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease or to receive any abatement, diminution, reduction or suspension of payment of such sums, on account of any such occurrence or situation.

6. TAXES, ASSESSMENTS AND OTHER EXPENSES

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

(a) **Payment Responsibility.** Tenant shall pay any and all real and personal property taxes, general and special assessments, excises, licenses, permit fees and other charges and impositions of every description levied on or assessed against the Premises, any Improvements, Tenant's Personal Property, the leasehold estate or any subleasehold estate, or Tenant's use of the Premises or any Improvements. Tenant shall make all such payments directly to the charging authority when due and payable and at least ten (10) days prior to delinquency, subject to Tenant's right to contest the validity of such charge pursuant to subsection (c) below. However, with respect to real property taxes and assessments levied on or assessed against the Premises for which City receives the tax bill directly from the taxing authority, Tenant shall reimburse City for payment of such sums within thirty (30) days following City's demand therefor.

(b) **Taxability of Possessory Interest.** Without limiting the foregoing, Tenant recognizes and agrees that this Lease may create a possessory interest subject to property taxation and that Tenant may be subject to the payment of property taxes levied on such interest. Tenant further acknowledges that any Sublease or transfer permitted under this Lease may constitute a change in ownership within the meaning of the California Revenue and Taxation Code, and therefore may result in a reassessment of any possessory interest created hereunder in accordance with applicable Law.

(c) **No Liens.** Tenant shall not allow or suffer a lien for any taxes payable by Tenant hereunder to be imposed upon the Premises or upon any equipment or other property located thereon without promptly discharging the same. Tenant may have a reasonable opportunity to contest the validity of any such taxes provided Tenant, before commencement of any proceeding or contest, furnishes to City a surety bond issued by a surety company qualified to do business in California and acceptable to City's Controller. The amount of such bond shall be equal to one hundred twenty five percent (125%) of the amount of taxes in dispute and shall be in such form as approved by the City Attorney of City. The bond shall insure payment of any judgment that may be rendered should Tenant be unsuccessful in any such contest. Tenant shall Indemnify City, the other Indemnified Parties, and the Premises from and against any Losses arising out of any proceeding or contest or any failure to pay any charges provided for hereunder. The foregoing Indemnity shall not be limited by the amount of the bond.

(d) **Reporting Requirement.** Tenant agrees to provide such information as City may request to enable City to comply with any tax reporting requirements applicable to this Lease.

6.2 **Other Expenses.** Tenant shall be responsible for any and all other charges, costs and expenses related to its use, occupancy, operation or enjoyment of the Premises or any Improvements permitted thereon, including, without limitation, the cost of any utilities or services necessary for Tenant's use. Tenant shall be solely responsible for any and all costs which may be incurred for the relocation or removal of any and all water transmission pipelines, aqueduct or overhead power transmission lines located on the Premises, if relocation or removal is necessitated by Tenant's use or occupancy of the Premises or Tenant otherwise requests such relocation or removal.

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

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

7.1 **Tenant's Permitted Use.** Tenant may use the Premises and any Improvements allowed hereunder only for the use specified in the Basic Lease Information and in the Approved Plans and Permits and for no other purpose. Any construction, alterations, and improvements to the Premises which are not contemplated by the Approved Plans and Permits and which shall be permanent in nature shall, at all times, be subject to the approval of the City, acting through the General Manager. Plans for such work must be submitted to and approved by the General Manager in writing before commencing the work. City's intention, following completion of the mining and reclamation required under approved plans and permits and the terms of this Lease, as set forth in Sunol Valley Quarry Phasing Plan attached hereto as Exhibit B, is to use the Premises for water storage, and City would not lease the Premises to Tenant if Tenant's use of the Premises did not further this goal. Tenant shall use the Premises and perform all excavation and other work permitted hereunder in keeping with City's future use of the Premises, and shall perform such work in such a manner so as to realize water storage at the Premises at the earliest possible date in accordance with the approved phasing program set forth in the Sunol Valley Quarry Phasing Plan attached hereto as Exhibit B. The quarrying operations conducted by Tenant on the Premises shall be operated by Tenant in such a manner and to such extent as to meet all reasonable demands for the sale of quarry products.

7.2 **Covenants Regarding Use.** All matters provided for in this Section shall be in accordance with the direction of, and to the satisfaction of, the General Manager. As a material inducement to City to enter into this Lease, Tenant covenants with City as follows:

(a) **No Unlawful Uses or Nuisances.** Tenant shall not use or occupy any of the Premises or any Improvements, or permit the use or occupancy thereof, in any unlawful

manner or for any illegal purpose. Except as contemplated by or permitted by the Approved Plans and Permits, Tenant shall not permit to be carried on any offensive, immoral, noisy or hazardous use of the Premises or any use in violation of the conditions of any certificate of occupancy, permit, recorded document, or other restriction relating to the Premises. Tenant shall take all precautions to eliminate immediately any nuisances or hazards relating to its activities on or about the Premises or any Improvements permitted hereunder.

(b) **Covenant Against Waste.** Except as expressly contemplated by or permitted by the Approved Plans and Permits, Tenant shall not cause or permit any waste, damage or injury to the Premises.

(c) **Covenant Prohibiting Disposal of Silt.** Except as approved by the SFPUC in writing or as set forth in any of the Approved Plans and Permits, there shall be no disposal of silt on the Premises.

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

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

(f) **Covenant to Protect SFPUC Facilities.** At all times during the Term of this Lease, Tenant shall take reasonable steps to protect the SFPUC Facilities located on the

Premises from any damage, injury or disturbance. If Tenant or any of its Agents or Invitees damages, injures or disturbs any of the SFPUC Facilities, or any portion of the SFPUC Facilities (including monuments), located on the Premises, Tenant shall immediately notify City of that occurrence. City may, without limiting any of its other rights hereunder, take all action it deems proper to repair such damage (including relocation of monuments) at Tenant's sole expense. City may adopt from time to time such reasonable rules and regulations with regard to Tenant's facilities and operations hereunder as City may determine is necessary or appropriate to protect City's interests and to ensure that City's intended use of the Premises as a reservoir will be achieved. Upon receipt of notice of such rules and regulations, Tenant shall comply with all such rules and regulations.

(g) **Covenant to Protect Water Courses.** Tenant shall not cause or permit any flooding on adjacent land, nor engage in any activity that causes any pollution or change, disturbance, fill, alteration or impairment to the bed, bank or channel of Alameda Creek, nor shall Tenant discharge any wash water into Alameda Creek. Tenant will not be permitted to pump water from Alameda Creek for quarry operations but shall purchase such water from the City, although it is expected that Tenant will pond and recycle in accordance with the Rules and Regulations governing water service to consumers as adopted by the SFPUC.

(h) **Recycled Water and Water Supply.** Except for water obtained through its dewatering procedures on the Premises, Tenant shall purchase any water it uses on the Premises from City at City's standard rates for customers and uses such as Tenant's, and Tenant shall, whenever possible and to the extent available, recycle water that it uses in its quarrying operations or use such water for the landscaping on the Premises. City reserves the right to substitute recycled water for potable water used by Tenant for industrial or mining purposes. Notwithstanding anything to the contrary herein, City shall have the right to take any surplus water generated by Tenant's dewatering activities and use such water for storage or for potable or nonpotable purposes.

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

(j) **Covenant to Monitor Water Quality.** City shall have the right to monitor water quality in and about the Premises at its sole cost and expense provided, however, that Tenant shall monitor the water quality of any water that Tenant discharges into Alameda Creek. Tenant shall provide to Landlord copies of any reports or data generated by Tenant's testing of water quality, or any other test results or reports by Tenant relating to the Premises.

(k) **Covenant Against Dumping.** Tenant shall not cause or permit the dumping or other disposal on, under or about the Premises of landfill, refuse, Hazardous Materials or other materials that could pose a hazard to the human health or safety, wildlife, or the environment.

(l) **Covenant to Protect Trees or Other Native Vegetation/Erosion.** Tenant shall not engage in or permit the cutting, removal, or destruction of trees or any other native vegetation on the Premises in violation of the Approved Plans and Permits without the prior written approval of the General Manager. Tenant shall at its cost install culverts, drain ditches and control barriers promptly wherever and whenever, in the opinion of the General Manager, it becomes necessary to limit damage from erosion.

(m) **No Tree Planting.** Tenant shall not plant any trees on the Premises, nor shall Tenant plant any other vegetation on the Premises except as otherwise expressly provided for in the Approved Plans and Permits or in plans and specifications or permits approved by the City.

(n) **Covenant Against Hunting or Fishing.** Tenant shall not engage in or permit any hunting, trapping or fishing on or about the Premises, except for hunting or trapping for the purpose of controlling predators or problem animals by the appropriate use of selective control techniques approved in advance by the General Manager and provided such hunting and trapping is done in strict accordance with all applicable Laws. Whenever possible, all measures used for such control shall be limited in their application to the specific problem animals. Tenant shall not use poison bait, cyanide guns, traps or other similar non-selective control techniques. In no event may Tenant use any prophylactic predator control measures.

(o) **Covenant Against Use of Chemical Herbicides and Pesticides.** Tenant shall not cause or permit the application of biocides, defoliants, chemical fertilizers, pesticides or other agrichemicals. This Lease shall be subject to, and Tenant agrees to comply with, the San Francisco Integrated Pest Management Program set forth in Chapter 39 of the City's Administrative Code.

(p) **Weed Control.** Tenant shall not introduce any noxious weeds on or about the Premises, and Tenant shall control and eliminate any and all noxious weeds located in or on the Premises.

(q) **Maintenance of Roads and Watercourses.** Except as contemplated by or permitted by the Approved Plans and Permits, Tenant shall keep all roads on the Premises open as same now exist and are used, except as approved by City in writing, and shall not interfere with travel on said roads by City's officers, employees and agents who shall have the right to enter upon and pass through or across the Premises or any part thereof at any and all times. Tenant shall maintain and keep in good repair all roads and water courses located in or on the Premises, and shall at no time, in violation of the Approved Plans and Permits, cause dust or other detrimental factors affecting the agricultural and pasture lands and livestock in the adjacent area. Tenant shall promptly and satisfactorily repair, or cause to be repaired, any damage to roads located on the Premises or other City property caused by operation thereon of its vehicles, or by vehicles of its customers hauling gravel or quarry products from Premises.

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

(s) **No Off-Road Vehicles.** Tenant shall not use or permit the use of off-road vehicles on any portion of the Premises except on existing roads and except to the extent necessary and appropriate in accordance with Tenant's quarrying activities.

(t) **Restrictions on Heavy Equipment and Vehicles.** To prevent damage to City's underground pipelines, Tenant shall strictly adhere to the following restrictions when using vehicles and equipment within twenty feet (20') of City's pipelines:

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

(ii) The effects of vehicle and equipment loads to the pipe must not exceed the effects of the "AASHO Standard H-10 Loading." H-10 loading is defined as loading caused by a two-axle truck with a gross weight of ten tons (20,000 lbs.), axles fourteen feet (14')

apart, and rear axle carrying 8-tons (16,000 lbs.). Tenant shall be responsible to provide City adequate evidence that Tenant's equipment and vehicles meet the foregoing requirements.

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

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

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

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

7.3 **Commingling.** Tenant may commingle mined product from the Premises with mined product from other property, provided Tenant shall calculate or weigh the product from the Premises prior to commingling.

8. IMPROVEMENTS

8.1 **Construction of Improvements.** Except as contemplated by or permitted by the Approved Plans and Permits, Tenant shall not construct or install any Improvements nor make or permit any Alterations in, to or about the Premises, without City's prior written consent in each instance, which consent shall be through its General Manager and which shall not unreasonably be withheld. The reasonableness of the General Manager's actions shall be considered in light of the City's future use of the Premises and adjacent property for water storage and public recreational uses. Subject to the General Manager's consent as provided above, any permitted

Improvements or Alterations shall be done at Tenant's sole expense (i) in strict accordance with plans and specifications approved in advance by City in writing, (ii) by duly licensed and bonded contractors or mechanics approved by City, (iii) in a good and professional manner, (iv) in strict compliance with all Laws and approved permits, and (v) subject to all other conditions that City may reasonably impose, including, without limitation, provision of such completion security as is acceptable to City. In no event shall the construction or installation of any such Improvements or the making of any Alterations impair the use or operation of the SFPUC Facilities, or any portion thereof, or City's access thereto. Prior to the commencement of any work on the Premises to construct any permitted Improvements or make any permitted Alterations, Tenant, at its sole expense, shall procure all required permits and approvals and shall promptly upon receipt deliver copies of all such documents to City. No material change from the plans and specifications approved by City may be made without City's prior consent. City and its Agents shall have the right to inspect the course of such construction at all times. Upon completion of such Improvements or Alterations, Tenant shall furnish City with a complete set of final as-built plans and specifications. Tenant shall pay to City an administrative fee equal to City's actual costs in reviewing the plans and specifications and preparing any documentation relative to any consent hereunder.

8.2 Ownership of Improvements. Any Improvements or Alterations constructed on or affixed to the Premises by or on behalf of Tenant pursuant to the terms and limitations of Section 8.1 above shall be and remain City's property. Upon the Expiration Date or any earlier termination hereof, Tenant shall surrender all such Improvements and Alterations without any further action by either party, without any obligation by City to pay any compensation therefor to Tenant and without the necessity of any deed from Tenant to City. However, in the event that City, at its sole option and without limiting any of the provisions of Section 8.1 above, requires as a condition to approval of any such Improvements or Alterations that Tenant remove such Alterations or Improvements from the Premises upon the expiration or termination of this Lease, Tenant shall do so in accordance with the provisions of Section 21.1 hereof.

8.3 Tenant's Personal Property. All furniture, furnishings and articles of movable personal property and equipment installed in or around the Premises by or for the account of Tenant that can be removed without structural or other material damage to the Premises (all of which are herein called "Tenant's Personal Property") shall be and remain the property of Tenant and may be removed by it subject to the provisions of Section 21.1 hereof. At least ten (10) days prior to delinquency, Tenant shall pay all taxes levied or assessed upon Tenant's Personal Property and, upon request, shall deliver to City satisfactory evidence of such payment.

9. REPAIRS AND MAINTENANCE

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

9.2 Utilities. City has no responsibility or liability of any kind with respect to any utilities that may be on or about the Premises. Tenant has the sole responsibility to locate such utilities and protect them from damage. Tenant shall make all arrangements directly with the utility companies for, and shall pay for, any and all utilities and services furnished to or used by it, including, without limitation, gas, electricity, water, sewage, telephone service and trash collection, and for all deposits, connection and installation charges; provided, Tenant agrees that it shall purchase all water and electricity necessary for its operations from City unless and to the extent City is unwilling or unable to provide same to Tenant. The Parties agree that any and all utility improvements shall be subject to the provisions of Section 8.1 and that such improvements shall be deemed part of City's real property, and not personal property or trade fixtures of Tenant. During the Term, Tenant shall repair and maintain any and all utility systems and improvements located on or within the Premises (except for the SFPUC Facilities) in good operating condition. City shall not be liable for any failure or interruption of any utility service furnished to the Premises, and no such failure or interruption shall entitle Tenant to any abatement in Rent or to terminate this Lease.

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

9.4 No Right to Repair and Deduct. Tenant expressly waives the benefit of any existing or future Law or judicial or administrative decision that would otherwise permit Tenant to make repairs or replacements at City's expense, or to terminate this Lease because of City's

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

10. LIENS

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

11. COMPLIANCE WITH LAWS

11.1 Compliance with Laws. Tenant shall promptly, at its sole expense, maintain the Premises, any Improvements permitted hereunder and Tenant's use and operations thereon in strict compliance at all times with all present and future Laws, whether foreseen or unforeseen, ordinary as well as extraordinary. Such Laws shall include, without limitation, all Laws relating to health, sanitation and safety (including, without limitation, applicable regulations of the Alameda County Health Department, the policies and directives of the SFPUC or its successor,

and California Health and Safety Code §§ 4450 and 4458), disabled accessibility including, without limitation, the Americans with Disabilities Act, 42 U.S.C.S. §§ 12101 et seq. and Title 24 of the California Code of Regulations, all present and future Environmental Laws, and the Surface Mining Control and Reclamation Act of 1977 and any state and local ordinances enacted pursuant thereto. The parties acknowledge and agree that Tenant's obligation to comply with all Laws as provided herein is a material part of the bargained-for consideration under this Lease. Tenant's obligation under this Section shall include, without limitation, the responsibility of Tenant to make substantial or structural repairs and alterations to the Premises (including any Improvements), regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term hereof, the relative benefit of the repairs to Tenant or City, the degree to which the curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the parties contemplated the particular Law involved, and whether the Law involved is related to Tenant's particular use of the Premises. Without limiting Section 5.6 hereof, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its obligations hereunder, or shall give Tenant any right to terminate this Lease in whole or in part or to otherwise seek redress against City. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel City to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

11.2 Regulatory Approvals.

(a) **Responsible Party.** Tenant understands and agrees that Tenant's use of the Premises may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises, including, without limitation, the County of Alameda, California Department of Fish & Game, California Division of Mines & Geology, California Regional Water Quality Control Board, U.S. Army Corps of Engineers, and others. Tenant shall be solely responsible for obtaining any and all such regulatory approvals. Tenant shall not seek any regulatory approval without first obtaining the written consent of the SFPUC. Tenant shall bear all costs associated with applying for, obtaining and maintaining any necessary or appropriate regulatory approvals and shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval. Any fines or penalties levied as a result of Tenant's failure to comply with the terms and conditions of any regulatory approval shall be immediately paid and discharged by Tenant, and City shall have no liability, monetary or otherwise, for any such fines or penalties. Tenant shall Indemnify City and the other Indemnified Parties against all Losses arising in connection with Tenant's failure to obtain or comply with the terms and conditions of any regulatory approval.

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

11.3 Compliance with City's Risk Management Requirements. Tenant shall not do anything, or permit anything to be done, in or about the Premises or any Improvements permitted hereunder that would create any unusual fire risk, and shall take commercially reasonable steps to protect City from any potential premises liability. Tenant shall faithfully observe, at its expense, any and all reasonable requirements of City's Risk Manager with respect thereto and with the requirements of any policies of public liability, fire or other policies of insurance at any time in force with respect to the Premises and any Improvements as required hereunder.

11.4 Reports and Communications. (a) Within forty-five (45) days following the expiration of each Lease Year, Tenant shall submit to City a report detailing progress of excavation work and compliance with Approved Plans and Permits, as well as any other information reasonably requested by City. Each annual report shall certify compliance with all Laws, and include a map showing current progress of mining and reclamation activities. (b) Tenant shall promptly provide to City copies of any and all environmental, physical, geotechnical or other similar reports in Tenant's possession relating to the Premises. Tenant represents and warrants that it has delivered to City all such existing reports in Tenant's possession or control. (c) Tenant shall copy City on all communications to any governmental or regulatory entity relating to quarrying activities on or about the Premises, and shall forward to City, within ten (10) days following receipt, a copy of all communications received from any governmental or regulatory entity relating to quarrying activities on or about the Premises.

12. FINANCING; ENCUMBRANCES; SUBORDINATION

12.1 Encumbrance of Landlord's Fee Interest. The following provisions shall apply notwithstanding anything to the contrary contained in this Lease.

(a) **Encumbrance by City.** To the extent permitted by applicable Law, City may at any time sell or otherwise transfer or encumber its fee estate in any portion of the Premises provided that (i) any such sale or Encumbrance shall be subject and subordinate to all of the terms of this Lease and the leasehold estate created hereby, (ii) the right of possession of Tenant to the Premises shall not be affected or disturbed by any such sale or Encumbrance, or by

the exercise of any rights or remedies by any purchaser or Encumbrancer arising out of any instrument reflecting such sale or Encumbrance so long as no Event of Default or Unmatured Event of Default is outstanding hereunder.

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

(c) **Leasehold Encumbrances.** Without limiting Article 15 hereof, Tenant shall not Encumber this Lease, or assign or pledge assignment of the same as security for any debt, without first obtaining the written consent of City, which City may give or withhold in its sole discretion.

13. DAMAGE OR DESTRUCTION

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

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

14. EMINENT DOMAIN

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

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

14.3 Partial Taking; Election to Terminate.

(a) If a Taking of any portion (but less than all) of the Premises occurs, then this Lease shall terminate in its entirety if the partial Taking renders the remaining portion of the Premises untenable or unsuitable for continued use by Tenant and Tenant elects to terminate; otherwise this Lease shall continue in full force and effect.

(b) Either Party electing to terminate under the provisions of this Article 14 shall do so by giving written notice to the other Party before or within thirty (30) days after the Date of Taking, and thereafter this Lease shall terminate upon the later of the thirtieth day after such written notice is given or the Date of Taking.

(c) **Rent; Award.** Upon termination of this Lease pursuant to an election under Section 14.3(a) above, then: (i) Tenant's obligation to pay Rent shall continue up until the date of termination, and thereafter shall cease, except that Rent shall be reduced as hereinafter provided for any period during which this Lease continues in effect after the Date of Taking, and (ii) City shall be entitled to the Award in connection with the value of its interest in the Premises excluding any portion of the Award made for the value of Tenant's interest in the leasehold estate created by this Lease, and Tenant shall have no claim against City for the value of any unexpired term of this Lease (provided Tenant make a separate claim for compensation), and (iii) Tenant shall be entitled to pursue and obtain an Award from the condemning authority for the value of its interest in the leasehold estate. In addition, Tenant shall receive any Award made specifically to Tenant, for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's Personal Property.

(d) **Partial Taking; Continuation of Lease.** If a partial Taking of the Premises occurs and this Lease is not terminated in its entirety under Section 14.3 above, then this Lease shall terminate as to the portion of the Premises so taken, but shall remain in full force and effect as to the portion not taken, and the rights and obligations of the Parties shall be as follows: (i) there shall be no reduction in Base Rent; (ii) City shall be entitled to the Award in connection with its interest in the Premise, excluding any portion of the Award made for the value of the Tenant's interest in the leasehold estate created by this Lease; and (iii) Tenant shall make any necessary changes to the Approved Plans and Permits to accommodate such Taking, subject to City's prior written approval which shall not be unreasonably withheld or delayed. Tenant shall be entitled to pursue and obtain an Award from the condemning authority for the value of its interest in the leasehold estate created by this Lease, provided, Tenant shall have no claim against City for the value of any unexpired Term of this Lease. In addition, Tenant shall retain any Award made specifically to Tenant for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's Personal Property.

14.4 Temporary Takings. Notwithstanding anything to contrary in this Section, if a Taking occurs with respect to all or any part of the Premises for a limited period of time not in excess of three hundred sixty-five (365) consecutive days, this Lease shall remain unaffected thereby, and Tenant shall continue to pay Rent and to perform all of the terms, conditions and covenants of this Lease. In the event of such temporary Taking, Tenant shall be entitled to receive that portion of any Award representing compensation for the use or occupancy of the Premises during the Term up to the total Rent owing by Tenant for the period of the Taking, and City shall be entitled to receive that portion of any Award attributable to the Percentage Rent City would have received but for the Taking. City shall be entitled to receive a portion of the Award related to its fee and leasehold interests in the Premises, including any loss of revenue.

15. ASSIGNMENT AND SUBLETTING

15.1 Restriction on Assignment and Subletting.

(a) Tenant shall not directly or indirectly (including, without limitation, by merger, acquisition or other transfer of any controlling interest in Tenant), voluntarily or by operation of Law, sell, assign, encumber, pledge or otherwise transfer any part of its leasehold estate hereunder (collectively, "Assignment"), or permit any portion of the Premises to be occupied by anyone other than itself, its Agents, employees or Invitees, or sublet any portion of the Premises (collectively, "Sublease"), without City's prior written consent in each instance. City shall not unreasonably withhold its consent to any such Transfer. In determining whether to consent to a Transfer, City shall consider the proposed tenant's financial ability, mining experience, ability to comply with all of the contracting provisions set forth in this Lease, as well as any other matters permitted by Applicable Law. Tenant understands and agrees that the City is relying on Tenant's financial ability and mining experience in granting this Lease. Any Transfer without City's prior consent shall be voidable at the option of City in its sole discretion and the General Manager shall have the right to immediately terminate this Lease by sending written notice to Tenant.

(b)____Tenant agrees and understands that the intent and purpose of this Lease is to allow for use of the Property as provided in the Basic Lease Information, and not for the purpose of creating an investment in property. Any Transfer of this Lease, including but not to any Transfer to an Affiliate of Tenant, shall be subject to the payment of a transfer fee in the amount of Two Million Dollars (\$2,000,000), as adjusted by Index on the date of the proposed Transfer as compared to Index on the Commencement Date (the "Transfer Fee"), and City may condition any consent to such a Transfer on the receipt of the Transfer Fee. The parties agree that the Transfer Fee is not a penalty, is a material part of the consideration for this Lease, and Landlord would not enter into this Lease without the Transfer Fee.

(c) Any dissolution, merger, consolidation or other reorganization of Tenant, or the sale or other transfer of a controlling percentage of the stock or ownership interest of Tenant, or the sale of fifty percent (50%) or more of the value of the assets of Tenant, shall be deemed a Transfer for purposes of this Lease. The phrase "controlling percentage" shall mean the ownership of, and the right to vote, stock or ownership interests constituting at least fifty percent (50%) of the total combined voting power of all classes of stock or ownership interests that are outstanding. Any such sale, transfer or other conveyance shall be considered on a cumulative basis, such that multiple transactions shall result in a "Transfer" if and when the fifty percent (50%) threshold is met when compared to the stock or ownership interests of Tenant on the Commencement Date. Tenant shall notify City within thirty (30) days following the transfer of any stock in Tenant, or any reorganization or alteration in ownership interests in Tenant. This provision shall be read broadly in a manner so as to prevent Tenant's owners from attempting to transfer ownership or control of the corporation without the payment of the Transfer Fee.

15.2 Permitted Transactions. Notwithstanding anything in Section 15.1 to the contrary, Tenant shall be entitled to Sublease portions of the Premises for nonquarrying activities such as vineyard and/or orchard use, as permitted by or contemplated by the Approved Plans and Permits provided that City's consent shall be obtained thereto, which consent shall not be unreasonably withheld. City shall be entitled to any profit received by Tenant in connection with such subleasing provided, however, that in determining such profits, Tenant shall be able to recoup any reasonable third party expenditures it has incurred with respect to such Sublease.

15.3 Notice of Proposed Transfer. If Tenant desires to enter into an Assignment or a Sublease, including but not limited to any transfer for which Landlord's consent is not required hereunder, then Tenant shall give written notice (a "Notice of Proposed Transfer") to City of its intention to do so. The Notice of Proposed Transfer shall identify the transferee and state the terms and conditions under which Tenant is willing to enter into such proposed Assignment or Sublease, including a copy of the proposed Assignment or Sublease agreement. Tenant shall provide City with financial statements for the proposed transferee, a statement of the proposed transferee's relevant experience, and such additional information regarding the Proposed Transfer as City may reasonably request.

15.4 City's Response. Within twenty (20) business days after City's receipt of the Notice of Proposed Transfer and any such additional information requested by City (the "Response Period"), City shall, by written notice, inform Tenant whether or not it is willing to consent to the Proposed Transfer. If City consents to the Proposed Transfer, then Tenant shall be entitled for a period of ninety (90) days to enter into such Assignment or Sublease with the party

identified in the Notice of Proposed Transfer and on the terms and conditions set forth therein and upon payment of the Transfer Fee.

Notwithstanding the foregoing, if any Event of Default or Unmatured Event of Default by Tenant is outstanding hereunder at the time of Tenant's Notice of Proposed Transfer, then City may elect not to respond to Tenant's Notice and may pursue any rights or remedies it may have hereunder or at Law or in equity.

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

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

15.7 Indemnity for Relocation Benefits. Without limiting Section 15.6, Tenant shall cause any Transferee to expressly waive entitlement to any and all relocation assistance and benefits in connection with this Lease. Tenant shall Indemnify City and the other Indemnified Parties for any and all Losses arising out of any relocation assistance or benefits payable to any Transferee.

16. DEFAULT; REMEDIES

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

(a) **Rent.** Any failure to pay any Rent or other sums as and when due, and the continuation of such failure for a period of five (5) days after the same is; provided, however, if Tenant has failed twice in any twelve (12) month period to pay Rent or other sum as and when due, no such five (5) day cure period shall thereafter be applicable;

(b) **Covenants, Conditions and Representations.** Any failure to perform or comply with any other covenant, condition or representation made under this Lease, including without limitation the failure to obtain and maintain all requisite approvals and permits and the failure to begin quarrying on or before the date set forth in Section 4.3 hereof, provided Tenant shall have a period of fifteen (15) days from the date of written notice from City of such failure within which to cure such default under this Lease, or, if such default is not capable of cure within such 15-day period, Tenant shall have a reasonable period (not to exceed 120 days) to complete such cure if Tenant promptly undertakes action to cure such default within such 15-day period and thereafter diligently prosecutes the same to completion; provided, however, if Tenant has failed to perform the same covenant, condition, or representation twice in any twelve (12) month period, no such fifteen (15) days notice and cure period shall thereafter be applicable.

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

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

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

(a) **Terminate Lease and Recover Damages.** The rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate Tenant's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Base Rent and Additional Charges for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that Tenant proves could be reasonably avoided, as computed

pursuant to subsection (b) of such Section 1951.2. City's efforts to mitigate the damages caused by Tenant's breach of this Lease shall not waive City's rights to recover damages upon termination.

(b) **Continue Lease and Enforce Rights.** The rights and remedies provided by California Civil Code Section 1951.4 (continuation of lease after breach and abandonment), which allows City to continue this Lease in effect and to enforce all of its rights and remedies under this Lease, including the right to recover Rent as it becomes due, for so long as City does not terminate Tenant's right to possession. For purposes hereof, none of the following shall constitute a termination of Tenant's right of possession: acts of maintenance or preservation; efforts to relet the Premises or the appointment of a receiver upon City's initiative to protect its interest under this Lease; or withholding consent to an Assignment or Sublease, or terminating an Assignment or Sublease, if the withholding or termination does not violate the rights of Tenant specified in subdivision (b) of California Civil Code Section 1951.4. If City exercises its remedy under California Civil Code Section 1951.4, City may from time to time sublet the Premises or any part thereof for such term or terms (which may extend beyond the Term) and at such rent and upon such other terms as City in its sole discretion may deem advisable, with the right to make alterations and repairs to the Premises. Upon each such subletting, Tenant shall be immediately liable for payment to City of, in addition to Base Rent and Additional Charges due hereunder, the cost of such subletting and such alterations and repairs incurred by City and the amount, if any, by which the Base Rent and Additional Charges owing hereunder for the period of such subletting (to the extent such period does not exceed the Term) exceeds the amount to be paid as Base Rent and Additional Charges for the Premises for such period pursuant to such subletting. No action taken by City pursuant to this subsection shall be deemed a waiver of any default by Tenant and, notwithstanding any such subletting without termination, City may at any time thereafter elect to terminate this Lease for such previous default.

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

16.3 City's Right to Cure Tenant's Defaults. If Tenant defaults in the performance of any of its obligations under this Lease, then City may at any time thereafter with three (3) days prior oral or written notice (except in the event of an emergency as determined by City), remedy such Event of Default for Tenant's account and at Tenant's expense. Tenant shall pay to City, as Additional Rent, promptly upon demand, all sums expended by City, or other costs, damages, expenses or liabilities incurred by City, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such Event of Default. Tenant's obligations under this Section shall survive the termination of this Lease. Nothing herein shall imply any duty of City

to do any act that Tenant is obligated to perform under any provision of this Lease, and City's cure or attempted cure of Tenant's Event of Default shall not constitute a waiver of Tenant's Event of Default or any rights or remedies of City on account of such Event of Default.

17. WAIVER OF CLAIMS; INDEMNIFICATION

17.1 Waiver of Claims.

(a) Tenant covenants and agrees that City shall not be responsible for or liable to Tenant for, and, to the fullest extent allowed by Law, Tenant hereby waives all rights against City and its Agents and releases City and its Agents from, any and all Losses, including, but not limited to, incidental and consequential damages, relating to any injury, accident or death of any person or loss or damage to any property, in or about the Premises from any cause whatsoever; provided however, nothing herein shall relieve City from liability caused solely and directly by the active negligence or willful misconduct of City or its Agents, but City shall not be liable under any circumstances for any consequential, incidental or punitive damages.

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

(c) As part of Tenant's agreement to accept the Premises in its "As Is" condition as provided herein, and without limiting such agreement and any other waiver contained herein, Tenant on behalf of itself and its successors and assigns, waives its right to recover from, and forever releases and discharges, City and its Agents, and their respective heirs, successors, administrators, personal representatives and assigns, from any and all Losses, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the physical or environmental condition of the

Premises and any related improvements or any Laws or regulation applicable thereto or the suitability of the Premises for Tenant's intended use.

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

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

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

17.2 Tenant's Indemnity. Tenant, on behalf of itself and its successors and assigns, shall Indemnify City and the other Indemnified Parties from and against any and all Losses incurred in connection with or arising directly or indirectly, in whole or in part, out of: (a) any accident, injury to or death of a person, including, without limitation, Agents and Invitees of Tenant, or loss of or damage to property (including, without limitation, the SFPUC Facilities) howsoever or by whomsoever caused, occurring in, on or about the Premises or any other City property; (b) any default by Tenant in the observation or performance of any of the terms, covenants or conditions of this Lease to be observed or performed on Tenant's part; (c) the use, occupancy, conduct or management, or manner of use, occupancy, conduct or management by Tenant, its Agents or Invitees or any person or entity claiming through or under any of them, of the Premises or any Improvements; (d) the condition of the Premises or any Improvements; (e) any construction or other work undertaken by Tenant on or about the Premises or any Improvements whether before or during the Term of this Lease; (f) any acts, omissions or negligence of Tenant, its Agents or Invitees, or of any trespassers, in, on or about the Premises or any Improvements; or (g) City's issuance of this Lease to Tenant, including but not limited to any third party lawsuit challenging the validity or effectiveness of this Lease; all regardless of the active or passive negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on, the Indemnified Parties, except to the extent that such Indemnity is void or otherwise unenforceable under applicable Law in effect on or validly retroactive to the date of this Lease and further except only such Losses as are caused by the active negligence or intentional wrongful acts or omissions of the Indemnified Parties. The foregoing Indemnity shall

include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any Loss. Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend City and the other Indemnified Parties from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Tenant by City and continues at all times thereafter. Tenant's obligations under this Section shall survive the expiration or sooner termination of the Lease.

18. INSURANCE

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

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

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

(i) Claims for personal injury, including, without limitation, bodily injury or property damage, occurring in or upon the Premises, the SFPUC Facilities or the property adjoining the Premises, under a policy of general public liability insurance, with such limits as may reasonably be required by City from time to time, but in any event not less than Ten Million Dollars (\$10,000,000) combined single limit.

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

(iii) Comprehensive automobile liability insurance with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage, including owned and non-owned and hired vehicles, if Tenant uses automobiles in connection with its use of the Premises.

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

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

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

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

(c) All liability insurance policies provided by Tenant shall be endorsed to provide the following:

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

(ii) That such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Lease, and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions,

injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

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

18.3 Proof of Insurance. Tenant shall deliver to City certificates of insurance in form and with insurers satisfactory to City, evidencing the coverages required hereunder, on or before the Commencement Date, together with complete copies of the policies promptly upon City's request, and Tenant shall provide City with certificates or policies thereafter at least thirty (30) days before the expiration dates of expiring policies. In the event Tenant shall fail to procure such insurance, or to deliver such policies or certificates, City may, at its option, after giving Tenant ten (10) days prior notice, procure the same for the account of Tenant, and the cost thereof shall be paid to City within five (5) days after delivery to Tenant of bills therefor.

18.4 Review of Insurance Requirements. Tenant and City shall periodically review the limits and types of insurance carried pursuant to this Section. If the general commercial practice in the City and County of San Francisco is to carry liability insurance in an amount or coverage materially greater than the amount or coverage then being carried by Tenant with respect to risks comparable to those associated with the Premises, then, at City's option, Tenant shall increase at its sole cost the amounts or coverages carried by Tenant to conform to such general commercial practice.

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

18.6 Lapse of Insurance. Notwithstanding anything to the contrary in this Lease, City may elect, in City's sole and absolute discretion, to terminate this Lease upon the lapse of any required insurance coverage by written notice to Tenant, provided Tenant has been given written notice of such lapse by city, and Tenant has failed within ten (10) business days thereafter to cause such insurance to be reinstated if such insurance is then commercially available.

18.7 Tenant's Personal Property. Tenant shall be responsible, at its expense, for separately insuring Tenant's Personal Property.

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

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

19. ACCESS BY CITY

19.1 Access to Premises by City.

(a) **General Access.** City reserves for itself and its designated Agents, the right to enter the Premises and any portion thereof at all reasonable times, for any of the following purposes:

(i) To determine whether the Premises are in good condition and to inspect the Premises (including, without limitation, soil borings or other Hazardous Material Investigations);

(ii) To determine whether Tenant is in compliance with its obligations hereunder and to cure or attempt to cure any such default in accordance with the provisions of Section 16.3 hereof;

(iii) To serve, post or keep posted any notices required or allowed under any of the provisions of this Lease;

(iv) To do any maintenance or repairs to the Premises that City has the right or the obligation, if any, to perform hereunder upon delivery of not less than five (5) days prior written notice; and

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

(b) **Emergency Access.** In the event of any emergency, as determined by City, City may, at its sole option and without notice, enter the Premises and alter or remove any Improvements or Tenant's Personal Property on or about the Premises, if such alteration or removal is necessary to appropriately respond to the emergency. City shall have the right to use any and all means City considers appropriate to gain access to any portion of the Premises in an emergency. In such case, City shall not be responsible for any damage or injury to any property, to the extent City has not acted unreasonably in light of the circumstances, and any such emergency entry shall not be deemed to be a forcible or unlawful entry onto or a detainer of, the Premises, or an eviction, actual or constructive, of Tenant from the Premises or any portion thereof.

(c) **No Liability.** Unless City shall have behaved unreasonably in light of the circumstances, City shall not be liable, and Tenant hereby waives any claims, for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of City's entry onto the Premises in accordance with this Section 19.

(d) **No Abatement.** Tenant shall not be entitled to any abatement in Rent if City exercises any rights reserved in this Section.

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

19.2 Pipeline and Utility Installations. Without limiting Section 19.1 above, but provided the same does not result in any material disruption to Tenant's use hereunder, City shall have the right at all times, to enter upon the Premises upon forty eight (48) hours advance written or oral notice (except in cases of emergency as determined by City), to use, install, construct, repair, maintain, operate, replace, inspect, and remove SFPUC Facilities or any other public utility facilities. City shall bear the expense of any such activities, unless the need is occasioned by the acts, omissions or negligence of Tenant, its Agents or Invitees. City shall not be responsible for any temporary loss or disruption of Tenant's use of the Premises occasioned by any such facility installations or other activities.

19.3 Roadways. City and its Agents shall have the right to enter upon and pass through and across the Premises on any existing or future roadways and as City otherwise determines necessary or appropriate for purposes of maintaining or using the SFPUC Facilities, provided that City shall use its reasonable good faith efforts to use such roadways in a manner that will, to the extent practicable, minimize any disruption to Tenant's use hereunder.

20. ESTOPPEL CERTIFICATES

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

21. SURRENDER

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

If Tenant fails to surrender the Premises to City on the Expiration Date or earlier termination of the Term as required by this Section, Tenant shall Indemnify City against all

Losses resulting therefrom, including, without limitation, Losses incurred by a succeeding tenant resulting from Tenant's failure to surrender the Premises.

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

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

22. HAZARDOUS MATERIALS

22.1 No Hazardous Materials. Tenant covenants and agrees that neither Tenant nor any of its Agents or Invitees shall cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or any Improvements, except for fuel and petroleum products used in connection with servicing vehicles, machinery, and other equipment located on the Premises. Tenant shall immediately notify City if and when Tenant learns or has reason to believe there has been any Release of Hazardous Material in, on or about the Premises or any Improvements. City may from time to time request Tenant to provide adequate information for City to determine that any Hazardous Material permitted hereunder is being handled in compliance with all applicable Environmental Laws, and Tenant shall promptly provide all such information. Tenant shall promptly deliver to City copies of any reports relating to the existence or absence of any Hazardous Material on or about the Premises, but shall not deliver copies of any such reports to any other person or entity without City's prior written approval. Tenant shall keep all test results and reports strictly confidential, and shall indemnify City from any and all Claims resulting from Tenant's failure to keep any information strictly confidential; provided, Tenant shall not be liable if and to the extent Tenant is required to disclose such information pursuant to a court order or by applicable Law. Without limiting Section 19 hereof, City and its Agents shall have the right to inspect the Premises for Hazardous Material and compliance with the provisions hereof at all reasonable times upon reasonable advance oral or written notice to Tenant (except in the event of an emergency). City shall be responsible for all Remediation and Claims related to Hazardous Materials located on or under the Premises on or prior to the Commencement Date hereof to the extent not caused by Tenant or

its Agents. City may, or may not, decide to remediate any such Hazardous Materials. In the event City decides not to remediate and Tenant cannot mine the Premises as a result thereof, Tenant may terminate this Lease without liability therefor.

22.2 Tenant's Environmental Indemnity. If Tenant breaches any of its obligations contained in Section 22.1 above, or, if any act or omission or negligence of Tenant or any of its Agents or Invitees results in any Release of Hazardous Material in, on, under or about the Premises (including any Improvements thereon) or any other City property, without limiting Tenant's general Indemnity contained in Section 17.2 above, Tenant, on behalf of itself and its successors and assigns, shall Indemnify City and the Indemnified Parties, and each of them, from and against all Hazardous Materials Claims arising during or after the Term of this Lease and relating to such Release. The foregoing Indemnity includes, without limitation, all costs associated with the Investigation and Remediation of Hazardous Material and with the restoration of the Premises or any other City property to its prior condition including, without limitation, fines and penalties imposed by regulatory agencies, natural resource damages and losses, and revegetation of the Premises. Without limiting the foregoing, if Tenant or any of Tenant's Agents or Invitees, causes or permits the Release of any Hazardous Materials in, on, under or about the Premises or any other City property, Tenant shall, immediately, at no expense to City, take any and all appropriate actions to return the Premises or other City property affected thereby to the condition existing prior to such Release and otherwise Investigate and Remediate the Release in accordance with all Environmental Laws. Tenant shall provide City with written notice of and afford City a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, permit, approvals, or other compromise or proceeding involving Hazardous Material.

23. SECURITY DEPOSIT

23.1 Security Deposit. Tenant shall pay to City upon execution of this Lease the sum specified for the security deposit in the Basic Lease Information as security for the faithful performance of all terms, covenants and conditions of this Lease. Tenant agrees that City may (but shall not be required to) apply the security deposit in whole or in part to remedy any damage to the Premises or SFPUC Facilities caused by Tenant, its Agents or Invitees, or any failure of Tenant to perform any other terms, covenants or conditions contained in this Lease, without waiving any of City's other rights and remedies hereunder or at Law or in equity. Should City use any portion of the security deposit to cure any Event of Default by Tenant hereunder, Tenant shall immediately replenish the security deposit to the original amount, and Tenant's failure to do so within five (5) days of City's notice shall constitute a material Event of Default under this Lease. If the Base Rent is increased pursuant to any of the provisions of this Lease, Tenant shall increase the amount of the security deposit accordingly. City's obligations with respect to the

security deposit are solely that of debtor and not trustee. City shall not be required to keep the security deposit separate from its general funds, and Tenant shall not be entitled to any interest on such deposit. The amount of the security deposit shall not be deemed to limit Tenant's liability for the performance of any of its obligations under this Lease.

23.2 Performance Bond; Letter of Credit. In lieu of the security deposit provided in Section 23.1 above, Tenant may deliver to City (i) a valid surety bond in the sum equal to amount specified, issued by a surety company acceptable to City's Controller in such form as approved by the City Attorney of City or (ii) a "clean" (i.e. unconditional), irrevocable letter of credit issued by a financial institution acceptable to the SFPUC General Manager and in form approved by the City Attorney with an original term of no less than one year and automatic extensions through the end of the Term of this Lease and thirty (30) days thereafter. Tenant shall keep such surety bond or letter of credit, at its expense, in full force and effect until the sixtieth day after the Expiration Date or other termination hereof, to insure, the faithful performance by Tenant of all of the covenants, terms and conditions of this Lease. Such bond or letter of credit shall provide thirty (30) days' prior written notice to City of cancellation or material change thereof. In the event of any nonextension of the letter of credit or bond, Tenant shall replace such security with another form permitted hereunder at least ten (10) days prior to expiration and if Tenant fails to do so City shall be entitled to present its written demand for payment of the entire face amount of such letter of credit or bond and to hold the funds so obtained as the Security Deposit required hereunder. Any unused portion of the funds so obtained by City shall be returned to Tenant upon replacement of the letter of credit or deposit of cash security in the full amount required hereunder.

24. GENERAL PROVISIONS

24.1 Notices. Except as otherwise expressly provided in this Lease, any notice given hereunder shall be effective only if in writing and given by delivering the notice in person, or by sending it first-class mail or certified mail with a return receipt requested or reliable commercial overnight courier, return receipt requested, with postage prepaid, to: (a) Tenant (i) at Tenant's address set forth in the Basic Lease Information, if sent prior to Tenant's taking possession of the Premises, or (ii) at the Premises if sent on or subsequent to Tenant's taking possession of the Premises, or (iii) at any place where Tenant or any Agent of Tenant may be found if sent subsequent to Tenant's vacating, abandoning or surrendering the Premises; or (b) City at City's address set forth in the Basic Lease Information; or (c) to such other address as either City or Tenant may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Section at least ten (10) days prior to the effective date of such change. Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first-class or certified mail, one day after the date it is made if sent by commercial overnight courier, or upon the date personal delivery is made, and any refusal

by either Party to accept the attempted delivery of any notice, if such attempted delivery is in compliance with this Section 24.1 and applicable Laws, shall be deemed receipt of such notice. For convenience of the Parties, copies of notices may also be given by telefacsimile to the telefacsimile number set forth in the Basic Lease Information or such other number as may be provided from time to time; however, neither party may give official or binding notice by telefacsimile. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a telefacsimile copy of the notice.

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

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

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

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

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

24.7 Successors and Assigns. Subject to the provisions of Article 15 hereof relating to Assignment and Subletting, the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of City and Tenant and, except as otherwise provided herein, their personal representatives and successors and assigns; provided, however, that upon any sale, assignment or transfer by City (or by any subsequent landlord) of its interest in the Premises, including any transfer by operation of Law, City (or any subsequent landlord) shall be relieved from all subsequent obligations and liabilities arising under this Lease subsequent to such sale, assignment or transfer, provided that, in each such case, the transferee expressly assumes, for the benefit of Tenant, all of the obligations of Landlord hereunder.

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

by the indemnified party in defending against the same. The provisions of this Section shall survive the expiration or any sooner termination of this Lease.

24.9 Severability. If any provision of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Lease shall be valid and be enforceable to the fullest extent permitted by Law.

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

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

24.12 Attorneys' Fees. In the event that either City or Tenant fails to perform any of its obligations under this Lease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Lease, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Lease, reasonable fees of attorneys of City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

24.13 Holding Over. Any holding over after the expiration of the Term with the express consent of City shall be construed to automatically extend the Term of this Lease on a month-to-month basis at a Base Rent and Percentage Rent/Royalty equal to one hundred fifty percent (150%) of the Base Rent and Percentage Rent/Royalty payable by Tenant hereunder prior to such expiration, together with an amount estimated by City for the monthly Additional

Charges payable under this Lease, and shall otherwise be on the terms and conditions herein specified so far as applicable (except for those pertaining to the Term, including any Extension Options, or any other Tenant options hereunder). Any holding over without City's consent shall constitute a default by Tenant and entitle City to exercise any or all of its remedies as provided herein, notwithstanding that City may elect to accept one or more payments of Rent, and whether or not such amounts are at the holdover rate specified above or the rate in effect at the end of the Term of the Lease.

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

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

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

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

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

right in favor of Tenant, with regard to any future sale or other disposition of the Premises, or any portion thereof.

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

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

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

24.22 Non-Discrimination in City Contracts and Benefits Ordinance.

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

(b) **Sublease and Other Subcontracts.** Tenant shall include in all Subleases and other contracts relating to the Premises a non-discrimination clause applicable to such Subtenant or other contractor in substantially the form of subsection (a) above. In addition, Tenant shall incorporate by reference in all subleases and other contracts the provisions of Section 12B.2(a), 12B.2(C)-(C), and 12C.3 of the San Francisco Administrative Code and shall require all subtenants and other contractors to comply with such provisions. Tenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

(c) **Non-Discrimination in Benefits.** Tenant does not as of the date of this Lease and will not during the Term, in any of its operations in San Francisco, the Premises, or where work is being performed for the City elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as

well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

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

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

24.23 No Relocation Assistance; Waiver of Claims. Tenant acknowledges that it will not be a displaced person at the time this Lease is terminated or expires by its own terms, and Tenant fully RELEASES, WAIVES, AND DISCHARGES forever any and all claims, demands, rights, and causes of action (including, without limitation, consequential and incidental damages) against, and covenants not to sue, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any Laws, including, without limitation, any and all claims for relocation benefits or assistance from City under federal or state relocation assistance laws (including, but not limited to, California Government Code Section 7260 et seq.), except as otherwise specifically provided in this Lease with respect to a Taking.

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

24.25 Conflicts of Interest. Tenant states that it is familiar with the provisions of Section C8.105 and 8.106 of the San Francisco Charter and certifies that it knows of no facts which would constitute a violation of such provisions. Tenant further certifies that it has made a complete disclosure to the SFPUC of all facts bearing upon any possible interest, direct or indirect, which Tenant believes any member of the SFPUC, or other office or employee of the City and County of San Francisco, presently has or will have in this Lease or in the performance thereof. Willful failure to make such disclosure, if any, shall constitute a material default hereunder.

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

24.27 Tropical Hardwood and Virgin Redwood Ban. The City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product. Except as expressly permitted by the application of Sections 12I.3.b and 12I.4.b of the San Francisco Administrative Code, Tenant shall not permit any construction with the use of tropical hardwoods; tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Tenant fails to comply in good faith with any of the provisions of Section 12I of the San Francisco Administrative Code, Tenant shall be liable for liquidated damages for each violation in any amount equal to Tenant's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

24.28 Pesticide Ordinance. Tenant shall not cause or permit the application of biocides, defoliants, chemical fertilizers, pesticides or other agrichemicals. Tenant shall comply with the provisions of Section 39.9 of Chapter 39 of the San Francisco Administrative Code (the "Pesticide Ordinance") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (iii) require Tenant to submit to the SFPUC an integrated pest management ("IPM") plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the terms of this Lease, (b) describes the steps Tenant will take to meet the City's IPM Policy described in Section 39.1 of the Pesticide Ordinance, and (c) identifies, by name, title, address and telephone number, an individual to act as the Tenant's primary IPM contact person with the City. Nothing herein shall prevent Tenant, through the SFPUC, from seeking a determination from the Commission on the Environment that it is exempt from complying with certain portions of the Pesticide Ordinance as provided in Section 39.8 thereof.

24.29 EIC Forms.

(a) Tenant shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty (30) days following the date on which this Lease becomes effective (unless Tenant has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Tenant; and (c) annually between January 1 and January 31 of each calendar year during the term of this Lease.

(b) Failure to comply with any requirement contained in subparagraph (a) above shall constitute a material breach by Tenant of the terms of this Lease. If within thirty (30) days after Tenant receives written notice of such a breach, Tenant fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Tenant fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Lease or under applicable law.

(c) Any Subcontract entered into by Tenant shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this Section.

(d) Capitalized terms used in this Section and not defined in this Lease shall have the meanings assigned to such terms in Section 120 of the San Francisco Administrative Code.

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

24.31 False Claims. Pursuant to San Francisco Administrative Code Section 6.57, any contractor who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A contractor who submits a false claim shall also be liable to the City for the cost, including attorney's fees, of a civil action brought to recover any of those penalties or damages and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. A contractor will be deemed to have submitted a false claim to the City if the contractor: (a) knowingly presents or causes to be presented to any

officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses or causes to be made or used a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the City; (e) is beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of then false claim.

24.32 Mitigation Measures. Tenant shall perform, at its sole cost, all of the mitigation measures identified in the Approved Plans and Permits and any environmental documents or instruments relating thereto, including but not limited to the CEQA findings adopted by the SFPUC in connection with the Alameda County Watershed Management Plan, as they relate to the Premises and Tenant's mining and other activities hereunder. In addition and without limiting the foregoing, Tenant shall perform the additional mitigation measures identified on Exhibit D attached hereto. Without limiting the City's rights and remedies under this Lease for the failure to perform any mitigation measure, the City will monitor and enforce implementation of the mitigation measures as appropriate and necessary.

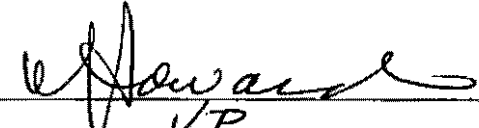
24.33 Counterparts. This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

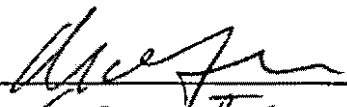
NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, TENANT ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY HERETO UNLESS AND UNTIL A RESOLUTION OF CITY'S BOARD OF SUPERVISORS SHALL HAVE BEEN DULY ENACTED APPROVING THIS LEASE AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY, WHICH RESOLUTION SHALL THEN BE DULY APPROVED BY THE CITY'S MAYOR. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON ENACTMENT OF SUCH A RESOLUTION AND THE APPROVAL THEREOF BY THE MAYOR, AND THIS LEASE SHALL BE NULL AND VOID UNLESS CITY'S MAYOR AND THE BOARD OF SUPERVISORS APPROVE THIS LEASE, IN THEIR RESPECTIVE SOLE AND ABSOLUTE DISCRETION, AND IN ACCORDANCE WITH ALL APPLICABLE LAWS. APPROVAL OF THIS LEASE BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH ORDINANCE WILL BE ENACTED, NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

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

TENANT:

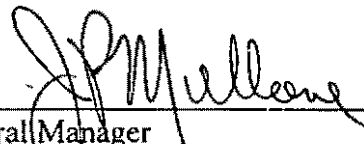
MISSION VALLEY ROCK COMPANY,
a California corporation

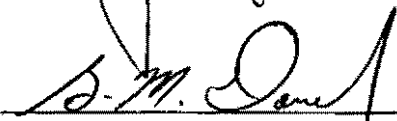
By: 
Its: VP

By: 
Its: Secretary

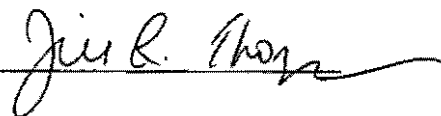
CITY:

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


General Manager


Commercial Land Manager

APPROVED BY
PUBLIC UTILITIES COMMISSION
PURSUANT TO RESOLUTION NO. 00-0230
ADOPTED September 26, 2000


Secretary

APPROVED BY BOARD OF
SUPERVISORS BY RESOLUTION
NO. 1000-00 DATED 11-23-00

APPROVED AS TO FORM:
LOUISE H. RENNE, City Attorney


By 
Deputy City Attorney

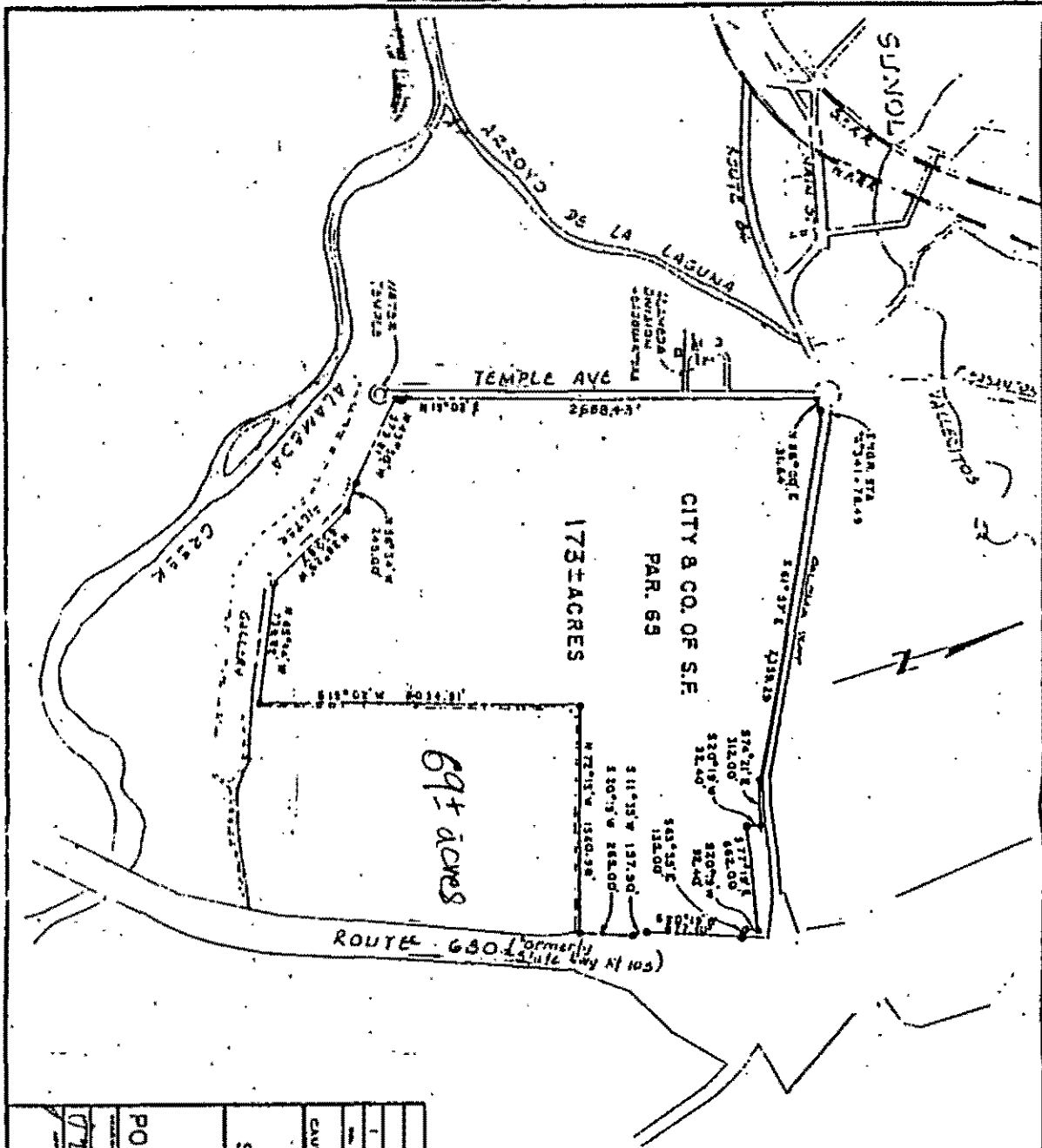
EXHIBIT A

Real Property Description

A portion of Parcel 65, Alameda County Lands, in Sunol, as shown on San Francisco Water Department Drawing No. C-1038-2, consisting of approximately 242 acres.

EXHIBIT A-1

Diagram Showing Premises



SCALE: 1" = 660'

NO.	DATE	REVISIONS
1	7-21-11	REVISION 1 - CORRECTED

CUSTOMER CHECK WITH TRACKING TO SEE IF YOU HAVE LATEST REVISION

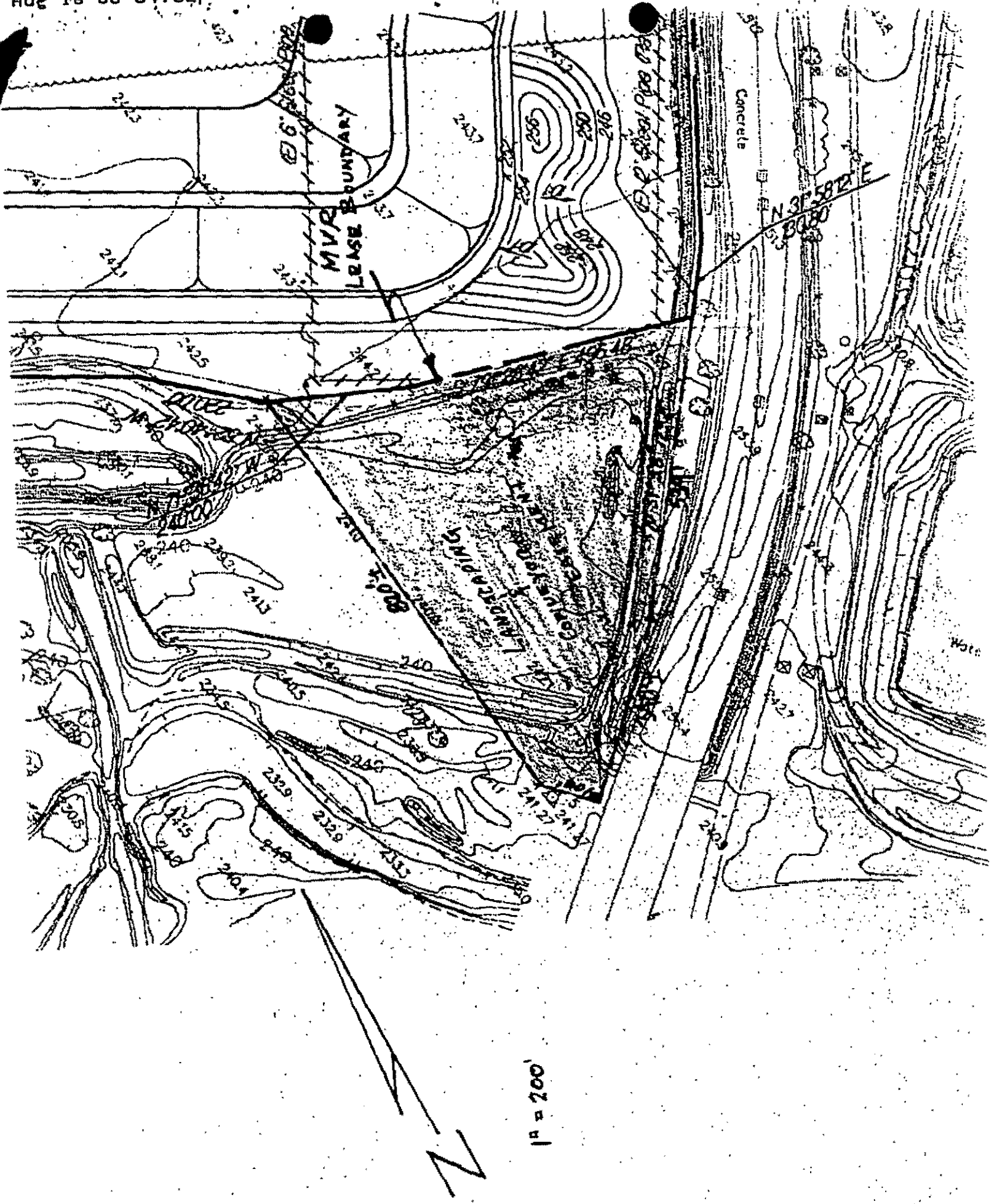
CITY AND COUNTY OF SAN FRANCISCO
PUBLIC UTILITIES COMMISSION
SAN FRANCISCO WATER DEPARTMENT

AREA TO BE LEASED
PORTION PAR. 65 ALAMEDA CO

DATE	BY	NO.
7-21-11	[Signature]	5,1991
DATE	BY	NO.
5-11-09	[Signature]	5,1991

EXHIBIT A-2

Diagram Showing Location of Conveyor Belt



N

1" = 200'

EXHIBIT B

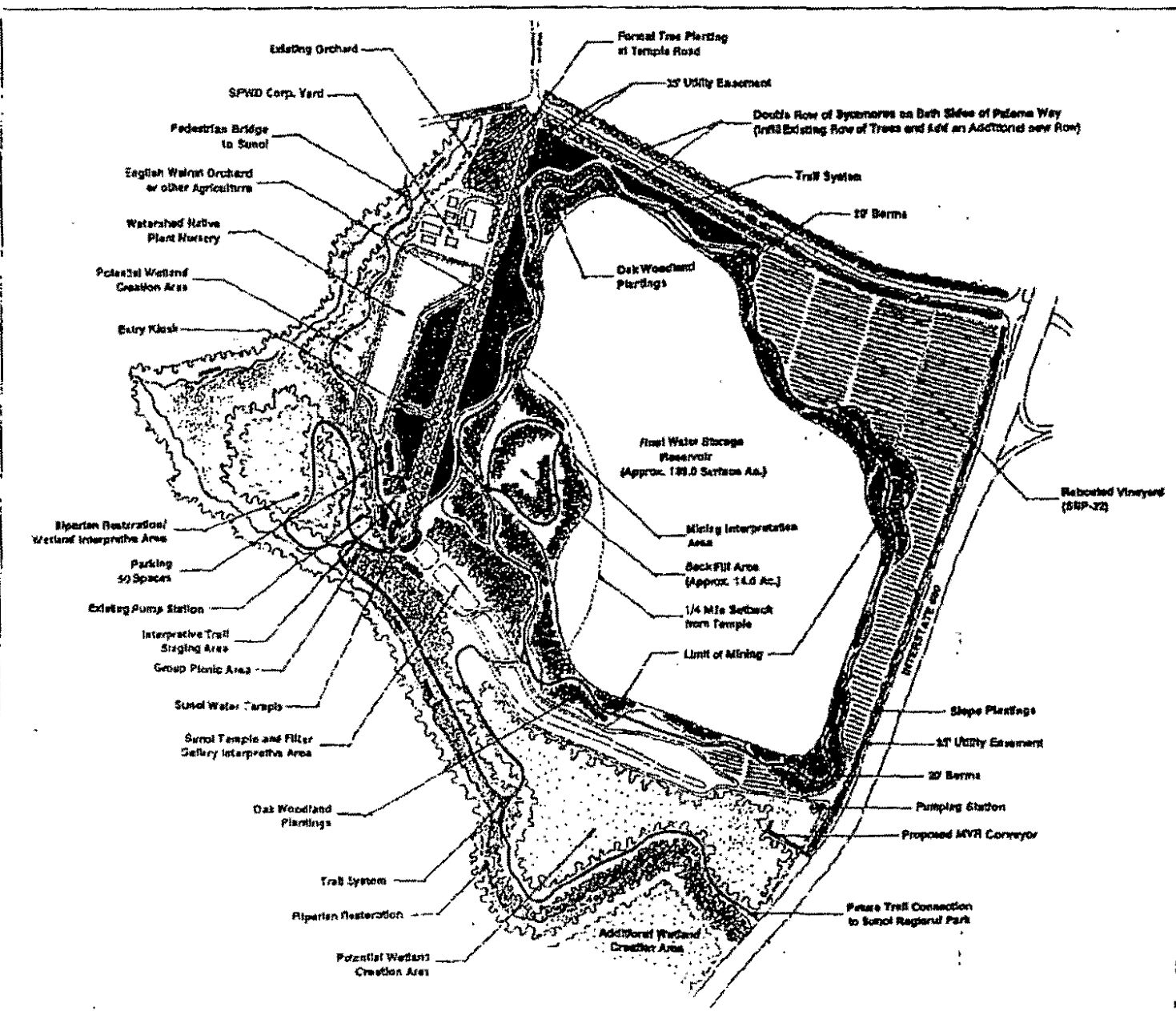
Sunol Valley Quarry Phasing Plan

EXHIBIT C

Landscape and Recreation Plan

Landscape and Recreation Plan to be approved by the SFPUC and Alameda County and generally in accordance with the following:










1. The landscape plans prepared by Gates and Associates under Project File "Cover.DWG" and dated January 2000.
2. The Preliminary Sunol Landscape and Recreation Plan prepared by EDAW, Inc. and dated June 25, 1999, as it relates to the Premises.



**PRELIMINARY
SUNOL
LANDSCAPE
AND
RECREATION
PLAN**

PROPOSED PLAN

LEGEND

-  Formal Tree Planting at Temple Drive
-  English Walnut Orchard or Other Agriculture
-  Watershed Native Plant Nursery
-  Potential Wetland Creation Area
-  Bipartisan Restoration/Wetland Interpretive Area
-  Oak Woodland Planting Area
-  Sunol Temple & Other Gallery Interpretive Area
-  Vineyard Planting Area
-  Existing Orchard

JULY 25, 1989

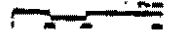


EXHIBIT D

ADDITIONAL MITIGATION MEASURES

Tenant shall comply, at no cost to City, with all mitigation measures relative to all activities of Tenant and its Agents under this Lease that are now or hereafter contained in: (i) the Approved Plans and Permits, including but not limited to SMP-29 and SMP-32; (ii) the environmental review documents relating to any of the Approved Plans and Permits; and (iii) any Applicable Law.

Without limiting the foregoing, Tenant recognizes and agrees that Tenant shall also comply, at no cost to the City, with the following additional mitigation measures

1. Tenant shall follow U.S. Fish and Wildlife Survey protocol for the Alameda whipsnake critical habitat designation. Protocols for the protection of the Alameda whipsnake have not yet been finalized. However, at a minimum, Tenant shall prepare pre-construction surveys, and will involve walking parallel transects 25 to 50 feet apart across the entire site. If found, snakes shall be released into appropriate nearby habitat. The area of disturbance in any mining operation within designated critical habitat will be enclosed in snake-proof fencing.

2. Tenant shall have surveys conducted by a qualified biologist, subject to the City's reasonable approval, within storage pit ponds and other basins that store water at proposed mining and reclamation areas on an annual basis. Surveys will be completed for all life cycle stages of the California red-legged frog (e.g. egg masses, tadpole, juveniles, adults) and California tiger salamander. If no California red-legged frogs or California tiger salamanders are detected during these surveys, then mining operations shall continue within the survey area. If adult red-legged frogs or tadpoles or California tiger salamanders are found within specific bodies of water undergoing mining or reclamation, mining and reclamation shall cease in the specific pit or pond or other basins where the frogs and salamanders have been found. The frogs or salamanders would immediately be moved passively, or captured and moved, to suitable upstream sites by a biologist with the appropriate permits. Mining and reclamation may continue upon satisfactory completion of the work by the biologist.

3. Tenant shall maintain the area surrounding storage pit ponds and other basins that store water clear of vegetation, except as expressly set forth to the contrary in the Approved Plans and Permits.

4. Tenant shall implement mitigation measure D-3, a-d of the Mission Valley Rock Company Surface Mining Permit and Reclamation Plan SMP 32, Final Environmental Impact Report, which avoids or minimizes impacts to wildlife. Mitigation measures b and c shall be applied to proposed mining and reclamation operations south of I-680 as well. These measures include the following:

a) Tenant shall incorporate revised landscaping and buffering plans to include a hay/grain field over the majority of the buffer (approximately 100 acres), with the possible exception of the I-680 frontage and the landscape berms and hillocks.

b) Tenant shall conduct winter and spring surveys to confirm or deny the presence of California tiger salamanders and burrowing owls. If the species are present, additional off-site habitat should be preserved and/or enhanced at a 1:1 ratio (1 acre preserved for 1 acre developed). On-site habitat shall include the project setbacks with the exception of the vineyard north of I-680. Off-site habitat will be identified in coordination with the California Department of Fish and Game (CDFG) and the SFPUC.

c) Tenant shall conduct preconstruction surveys for burrowing owls within each module prior to each state of topsoil disturbance and overburden removal to confirm or deny the presence of the species. If present, the species may be moved through passive relocation per approved CDFG procedures. This would include creating an artificial burrow complex and closing off each pair's den.

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 00-0230

WHEREAS, The City and County of San Francisco owns certain real property under the jurisdiction of the San Francisco Public Utilities Commission in Alameda County; and

WHEREAS, Mission Valley Rock Co., has requested to enter into an agreement for the operation and maintenance of a sand and gravel quarry; and

WHEREAS, Alameda County has completed environmental review for the proposed quarry under the California Environmental Quality Act (CEQA), as detailed in the findings appended hereto as Attachment A; now, therefore, be it

RESOLVED, That this Commission makes and adopts the attached findings under CEQA appended to this resolution as Attachment A; and be it

FURTHER RESOLVED, That this Commission hereby approves the terms and conditions and authorizes the execution of that certain lease of approximately 242 acres of land in Sunol, Alameda County, to Mission Valley Rock Company for the purpose of the operation and maintenance of a quarry, incidental vineyard and orchard uses and other contemplated uses, in addition to the use of a non-exclusive license under I-680 for ingress and egress purposes and for the transportation of quarried materials, as set forth in the Lease; the Lease shall (a) commence on the date of final approval by the Board of Supervisors and Mayor and expire on October 31, 2040, (b) include an annual base rent of \$100,000 per year for the first twenty (20) years, and (c) include a percentage rent equal to 10.5% of the average sales price per ton charged by the Tenant for sand and gravel, with adjustments to the percentage rate on the fifth (5th) anniversary and every five (5) years thereafter; and be it

FURTHER RESOLVED, That the SFPUC approves this lease due to the revenue benefits to the City's retail water rate payers and the additional water storage for the SFPUC; and be it

FURTHER RESOLVED, That all actions authorized by this resolution and heretofore taken by any City official in connection with such Agreement are hereby ratified, approved and confirmed by this Commission; and be it

FURTHER RESOLVED, That the General Manager of Public Utilities is hereby authorized and directed to execute the Lease and perform all of the City's obligations thereunder, following approval by the Board of Supervisors and Mayor.

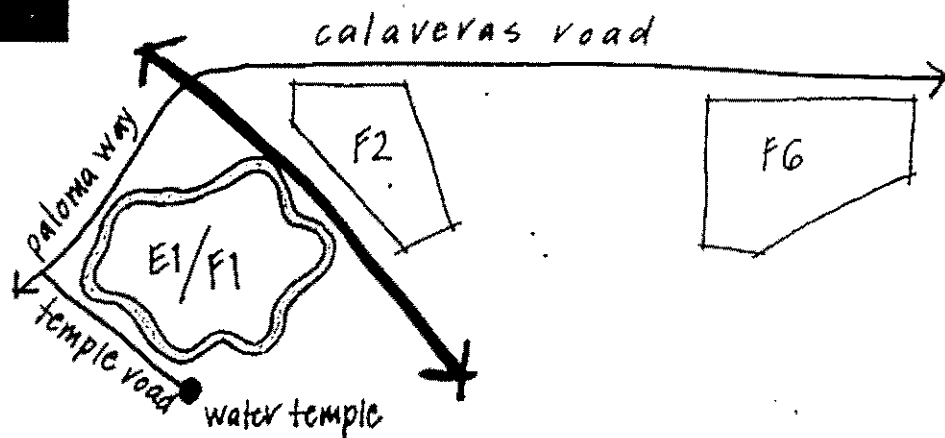
I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of SEP 26 2000

Jill R. Thapso

Secretary, Public Utilities Commission

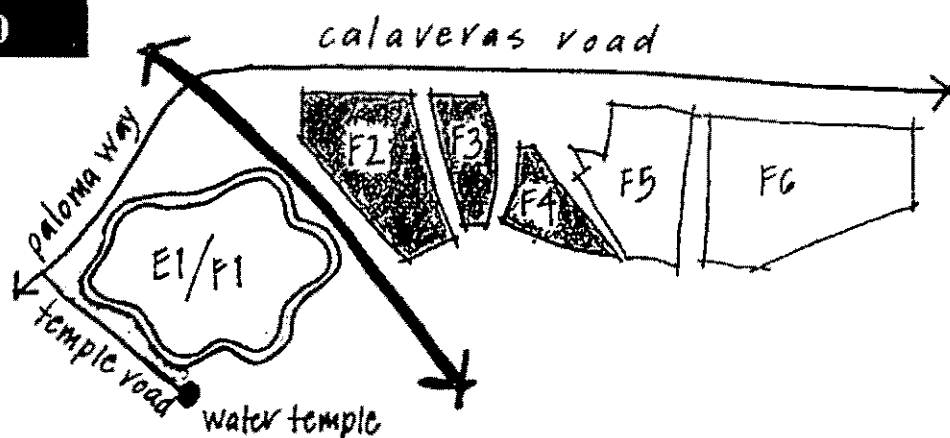
SUNOL VALLEY RESOURCES MANAGEMENT PLAN
SUNOL VALLEY PHASING DIAGRAM: MINING AND WATER STORAGE
NORTH OF I-680: PIT E1 RESTORED TO PIT F1 / SOUTH OF I-680: ALTERNATIVE F

1997



Active Mining Permanent Berm

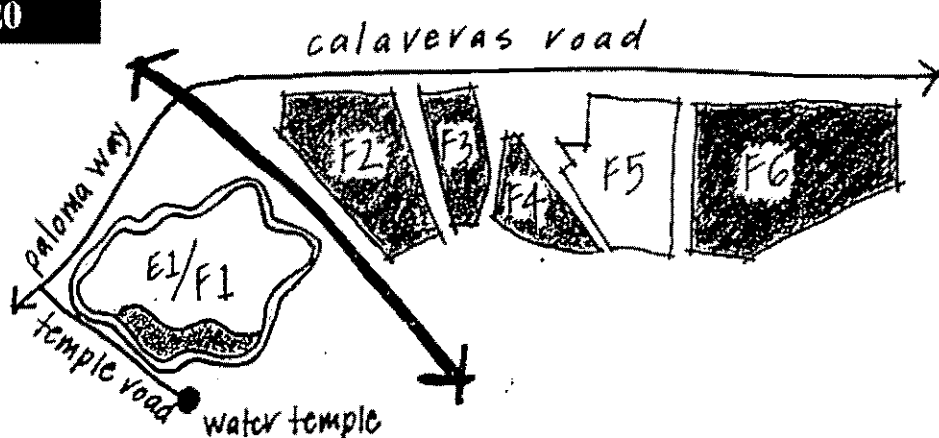
2010



Active Mining Water Storage Permanent Landscaped Berm

Completed Pits	F2	F3	F4
Approximate Year Completed	2003	2006	1996
Approximate Usable Storage (AF)	10,300	2,800	2,800
Approximate Year 2010 Total Usable Storage:	15,900 AF		

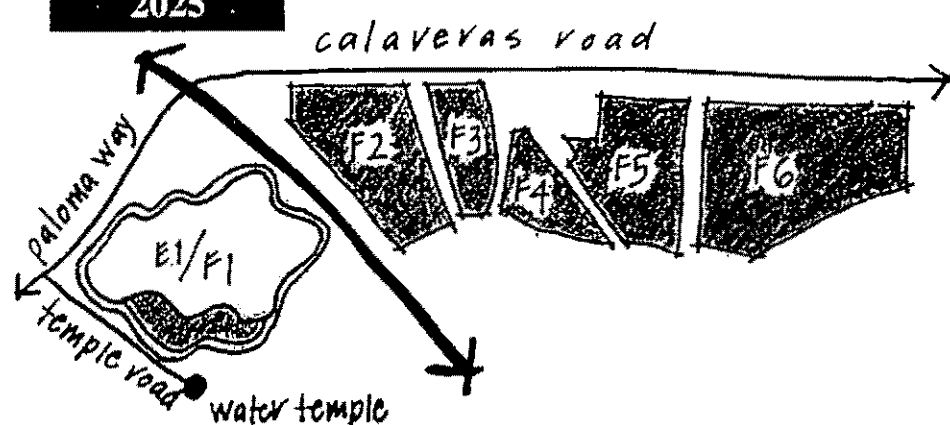
2020



Active Mining Water Storage Permanent Landscaped Berm Restored Landscaped Backfill

Completed Pits	F2	F3	F4	F6
Approximate Year Completed	2003	2006	1996	2013
Approximate Usable Storage (AF)	10,300	2,800	2,800	19,400
Approximate Year 2020 Total Usable Storage:	35,300 AF			

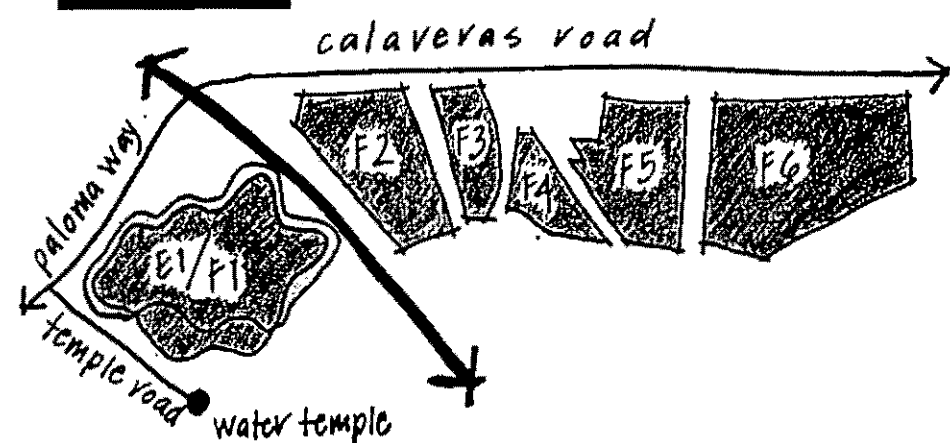
2025



Active Mining Water Storage Permanent Landscaped Berm Restored Landscaped Backfill

Completed Pits	F2	F3	F4	F5	F6
Approximate Year Completed	2003	2006	1996	2021	2013
Approximate Usable Storage (AF)	10,300	2,800	2,800	11,800	19,400
Approximate Year 2025 Total Usable Storage:	47,100 AF				

2035



Water Storage Permanent Landscaped Berm Restored Landscaped Backfill

Completed Pits	E1/F1	F2	F3	F4	F5	F6
Approximate Year Completed	2035	2003	2006	1996	2021	2013
Approximate Usable Storage (AF)	16,100	10,300	2,800	2,800	11,800	19,400
Approximate Year 2050 Total Usable Storage:	63,200 AF					

FIGURE 13