

RECORDING REQUESTED BY, AND
WHEN RECORDED RETURN TO:

Assessor's Block ("A.B.") _____

(Space above this line reserved for Recorder's use only)

EASEMENT AGREEMENT

This Easement Agreement ("**Agreement**") is made on _____, 20__ by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**"), and _____, a _____ limited liability company ("**Grantee**").

RECITALS

- A. City owns that certain real property in San Francisco, California, as more particularly described in attached Exhibit A (the "**Burdened Property**") which is maintained and managed by the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body organized and existing under the laws of the State of California, commonly known as the Office of Community Investment and Infrastructure (the "**OCII**") pursuant to a ground lease dated as of November 16, 2001 (as amended, the "**Ground Lease**"), as contemplated by the Mission Bay North and Mission Bay South Owner Participation Agreements.
- B. Open Space Development Parcels are added to the Premises that is subject to the Ground Lease incrementally, as improvements upon such parcels are completed and the preceding leasehold interest over same (under the Catellus Lease as defined in Recital E of the Ground Lease) is terminated. The open space improvements on the Burdened Property are completed and were accepted by City pursuant to Ordinance No. _____, and the Burdened Property was added to the Premises under the Ground Lease on _____, 2023, the date upon which the City and the Successor Agency initialed and dated a written legal description of said portion of the Premises and attached such description to the Ground Lease as part of Exhibit B thereof.
- C. OCII became the successor to the Redevelopment Agency of the City and County of San Francisco (the "**Former Agency**") pursuant to the Ground Lease when the Former Agency was dissolved on February 1, 2012 under the Redevelopment Dissolution Law, California Health and Safety Code Sections 34170 et seq. On December 7, 2015, the California Department of Finance approved OCII's Long-Range Property Management Plan, which proposes the early termination of the Ground Lease in phases.

- D. Once the Ground Lease terminates, City anticipates that the Burdened Property, together with the other portions of the Premises that are subject to the Ground Lease but not within the jurisdiction of the Port of San Francisco, will be placed under the jurisdiction of City's Department of Real Estate and maintained and managed by City's Recreation and Park Department.
- E. Grantee owns that certain real property adjacent to the Burdened Property, as more particularly described in attached Exhibit B (the "**Benefitted Property**").
- F. *[insert background and context of why this particular easement is necessary]*

AGREEMENT

NOW, THEREFORE, City and Grantee agree as follows:

1. **Grant and Nature of Easement.** City grants to Grantee a non-exclusive perpetual, and appurtenant easement to (a) to operate, maintain, repair, remove, and replace an eight inch (8") underground water supply line from the Benefitted Property to a hydrant within Mission Bay, Park P3, which park is located along the southern boundary of Mission Creek between Third Street and Fourth Street, together with an above ground hydrant, thrust block and a valve . as further described on Exhibit C (collectively, "**Fire Suppression Facilities**"), and for no other purpose whatsoever (collectively, the "**Easement**") in, across, and through the portion of the Burdened Property described and depicted in attached Exhibit D (the "**Easement Area**"). The Easement Area is a portion of the Burdened Property. The conditions and covenants contained in this Agreement will run with the land, burden the Easement Area and be binding on and benefit City and Grantee and their respective agents, successors and assigns unless terminated, provided that the obligations of each of Grantee's successor and assign pursuant to this Agreement will be joint and several. The Easement is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, leases and licenses, easements, and rights of way pertaining to the Burdened Property, whether or not of record. The use of the word "grant" will not imply any warranty on the part of City with respect to the Easement or the Easement Area.

2. **Use of Easement Area.** Grantee will, at its sole cost, operate, maintain, repair, and replace the Fire Suppression Facilities in the Easement Area (i) in a first-class manner and in accordance with all laws, regulations, and regulatory requirements including, but not limited to, the Risk Management Plan approved by the Regional Water Quality Control Board approved for the San Francisco Bay Region in May 1999 (the "**RMP**"), and (ii) in a good, clean, safe, secure, and sanitary condition. Grantee acknowledges that the Burdened Property is public open space, will not enter upon or utilize the Burdened Property outside of the Easement Area in connection with the Easement unless strictly necessary, and will use best efforts to minimize interference with the public's enjoyment of the Burdened Property at all times. City will not be responsible for and Grantee releases City from responsibility for any damage to Grantee's Fire Suppression Facilities caused by the weight of regular maintenance vehicles, or by members of the public, or for any damage to subsurface Fire Suppression Facilities that are not clearly marked caused by

any City or City contractor, machinery, equipment, excavation, grading, or other ground disturbance.

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

a. **Improvements.** Except as otherwise expressly provided herein, Grantee will not construct or place any temporary or permanent structures or improvements in, on, under or about the Easement Area, nor will Grantee make any alterations or additions to any existing structures or improvements on the Easement Area, unless Grantee first obtains City's prior written consent, which City may condition or withhold in its reasonable discretion.

b. **Limits on Surface Facilities.** Grantee's use of the surface of the Easement Area for facilities (rather than Grantee's Use during work in the Easement Area by or for Grantee) will be limited to the fire hydrant and valve cover as described on Exhibit C.

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

d. **Nuisances.** Grantee will not conduct any activities on or about the Easement Area that constitute waste, nuisance or unreasonable annoyance to City, to the owners or occupants of neighboring property or to the public, or that are not consistent with residential uses (including, without limitation, emission of objectionable odors, noises or lights).

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

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

4. **Rights Reserved to City.** Notwithstanding anything to the contrary in this Agreement, City reserves and retains all of the following rights relating to the Easement Area: (i) all water, timber, mineral and oil rights of any kind; (ii) all rights to use, operate, maintain, repair, enlarge, modify, expand, replace and reconstruct any of the City's facilities; (iii) the right to grant future easements and rights of way over, across, under, in and on the Easement Area as City determines, provided the easements and rights of way do not unreasonably interfere with Grantee's rights under this Agreement; (iv) the right to maintain or install telecommunication

facilities or other City facilities or property; (v) the right to allow public access and use in and around the Easement Area as part of a public open space, and (v) the right to use the Easement Area in any way that is not inconsistent with Grantee's rights under the Easement and this Agreement.

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

a. **SFRPD and SFFD Approval.** Permittee will install the Fire Suppression Facilities and any other improvements in the Easement Area in accordance with plans and specifications approved in advance and in writing by SFRPD and by the San Francisco Fire Department ("SFFD").

b. **Regulatory Permits and Approvals.** Before beginning any work in the Easement Area, Grantee will obtain all permits, licenses and approvals of all regulatory agencies and other third parties that are required to complete the work (collectively, "**approvals**"). Promptly on receipt of such approvals, Grantee will deliver copies of them to City. Grantee recognizes and agrees that no approval by City for purposes of Grantee's work under this Agreement will be deemed to constitute an approval of any federal, state or local regulatory authority with jurisdiction (including the San Francisco Public Utilities Commission, the Department of Building Inspection, RPD, or SFFD), and nothing in this Agreement will limit Grantee's obligation to obtain all necessary regulatory approvals, at Grantee's sole cost.

c. **Exercise of Due Care.** Grantee will use, and will cause its agents, employees, officers, contractors, subcontractors, and representatives ("**Agents**," and when used in reference to City, the term "**Agents**" includes City's commissions, departments, boards and members), to use, due care at all times to avoid any damage or harm to City's property, including but not limited to pathways and vegetation. Under no circumstances will Grantee damage, harm, or take any rare, threatened, or endangered species on or about the Easement Area.

d. **Operations Plan.** Before commencing initial installation of the Fire Suppression Facilities, Grantee will obtain City approval of an operations plan ("**Operations Plan**"). The Operations Plan must detail sound operational standards, specifications, and requirements, including but not limited to the types and frequency of routine maintenance and inspection activities. Grantee will update the Operations Plan as needed, but will not seek changes more than once yearly. City will have forty-five (45) days to review and require changes to, or to approve, an updated Operations Plan. The Operations Plan will also describe activities known as "**Routine Maintenance and Inspection**" which are planned activities that take place more than twice yearly. The failure of Grantee to prepare or City to approve an Operations Plan will not relieve Grantee of its obligation to maintain the Fire Suppression Facilities at all times in a well-functioning, safe, attractive, and lawful condition, to timely perform maintenance, and to repair all damage to Fire Suppression Facilities and any damage to the Easement Area caused by Grantee or its Agents.

e. **Notice of Planned and Emergency Work.**

i. **Planned Work.** For planned work in the Easement Area that goes beyond Routine Maintenance and Inspection (as detailed in the Operations Plan), Grantee will

provide City at least sixty (60) days' notice. The notice will include plans and specifications or a work plan, as applicable. City's consent will be required prior to Grantee commencing work in the Easement Area.

ii. **Emergency Work.** Grantee will notify SFRPD's Director of Operations of emergency work in the Easement Area as soon as possible, and prior to commencing work unless an immediate response is required to prevent physical harm to persons entering the Burdened Property (in which case Grantee will notify as soon as reasonably practicable under the circumstances). In case of an emergency requiring an immediate response, Grantee will provide notice via telephone or email. Emergency work also includes any work that must be completed on less than thirty (30) days' prior notice to (1) prevent damage to persons or the Burdened Property, (2) prevent flooding within the Burdened Property, or (3) maintain compliance with this Agreement and any laws due to unforeseen circumstances.

6. **Relocation.** If Grantee's use of the Easement Area is incompatible with later improvements to the Burdened Property, Grantee will relocate the Fire Suppression Facilities at its cost. If City is reasonably able to provide a relocated easement area within the Burdened Property, City and Grantee will amend this Agreement to provide for the new location. Otherwise, Grantee will relocate the Fire Suppression Facilities outside of the Burdened Property and the Easement will terminate in accordance with Section 9 (Termination).

7. **Dangerous Conditions.** If Grantee's use of the Easement Area creates or exacerbates a dangerous condition on the Burdened Property, Grantee will cure the dangerous condition within one (1) day after notice from the City (which notice may be verbal) or Grantee's actual knowledge of the dangerous condition, whichever is sooner; provided, however, if the nature of the dangerous condition will require more than one (1) day to remedy, Grantee will have secured the area or taken such other measures as necessary to protect the public from harm within one (1) day and commenced and prosecuted to completion a cure immediately thereafter. Unless it is an emergency under Section 19 below, if Grantee has not (a) completed the work within one (1) day (if possible, in accordance with this section), (b) secured the area and taken measures to protect the public within one (1) day (if the work will take longer than one day to complete) and commenced a cure within two (2) days, or (c) otherwise diligently prosecuted the work, City has the right (but not the obligation) to cure the condition at Grantee's expense. Grantee will reimburse City for its costs within thirty (30) days after receipt of an invoice.

8. **Fire Suppression Facilities Removal.** Within thirty (30) days after any replacement of any Fire Suppression Facilities, or within ninety (90) days after cessation of use of any Fire Suppression Facilities, Grantee will decommission or remove such Fire Suppression Facilities in accordance with standard utility practice. At such time, Grantee will repair, at its cost, any damage to the Easement Area caused by the decommissioning or removal and restore the Easement Area to its previous condition, including plantings and landscaping. Grantee's obligations under this Section will survive any termination of the Easement.

9. **Termination.** The Easement, rights and privileges conferred to Grantee pursuant to this Agreement will continue in perpetuity unless alternative Fire Suppression Facilities are provided to the Benefitted Property. On termination of the Easement, the Easement, together

with the rights and privileges evidenced by this Agreement, will terminate immediately. Grantee will execute and deliver a quitclaim deed to City within thirty (30) days following City's request.

10. **Insurance.**

(a) Grantee will procure and keep in effect at all times during the term of this Agreement, at Grantee's expense, and cause its contractors and subcontractors to maintain at all times during any construction activities on the Easement Area, insurance as follows: (i) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage, including coverages for contractual liability, personal injury, independent contractors, explosion, collapse, and underground (XCU), Broad Form Property Damage, fire legal liability coverage with limits no less than \$1,000,000, Sudden and Accidental Pollution, Products Liability, and Completed Operations; (ii) Business Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage, including coverages for owned, non-owned, and hired automobiles, as applicable, if Grantee uses or causes to be used any vehicles in connection with its use of the Easement Area, and (iii) Workers' Compensation Insurance, including employer's liability coverage with limits of not less than \$1,000,000 each accident.

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

(b) Grantee will provide thirty (30) days' advance written notice to City of cancellation, intended non-renewal, or reduction in coverages, except for non-payment for which no less than ten (10) days' notice will be provided to City. Within one (1) business day of receiving any notice from its insurance provider or broker of intent to cancel or materially reduce, or cancellation, material reduction, or depletion of, its required coverage, Grantee will provide a copy of such notice to City and take prompt action to prevent cancellation, material reduction, or depletion of coverage, reinstate or replenish the cancelled, reduced, or depleted coverage, or obtain the full coverage required by this Section 15 (Insurance) from a different insurer meeting the qualifications of this Section. Notice to City will be mailed to the address(es) for City set forth in Section 12 (Notices).

(c) Prior to commencement of work on the Fire Suppression Facilities, Grantee will deliver to City certificates of insurance and additional insured policy endorsements from insurers

in a form satisfactory to City, evidencing the coverages required by this Agreement, together with complete copies of the policies at City's request. Grantee and its contractors will submit or cause their respective insurance brokers to submit requested information through the Exigis insurance verification program or other management system designated by City or any successor program used by City for verification of Grantee and contractor insurance coverage. If Grantee fails to procure such insurance, or to deliver such policies or certificates, at its option, City may procure the same for the account of Grantee, and Grantee will reimburse City for any costs so paid by City within five (5) business days after delivery to Grantee of bills therefor.

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

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

(f) Upon City's request, Grantee and City will 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 Grantee for risks comparable to those associated with the Easement Area, then, at its reasonable discretion, City may require Grantee to increase the amounts or coverage carried by Grantee hereunder to conform to such general commercial practice.

(g) Grantee's compliance with the provisions of this Section will in no way relieve or decrease Grantee's indemnification or other obligations under this Agreement. Notwithstanding anything to the contrary in this Agreement, this Agreement will terminate immediately, without notice to Grantee, upon the lapse of any required insurance coverage. At its expense, Grantee will be responsible for separately insuring Grantee's personal property.

11. **Liens.** Grantee will keep the Easement Area and all of City's property free from any liens or claims arising out of any work performed, material furnished, or obligations incurred by or for Grantee. If Grantee does not, within five (5) days following the imposition of any such lien or the making of such claim, cause the lien to be released of record by payment or posting of a proper bond or causing the claim to be withdrawn, City will have in addition to all other remedies provided herein and by law or equity the right, but not the obligation, to cause the same to be released by such means as it deems proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by City and all expenses it incurs in connection therewith (including, without limitation, reasonable attorneys' fees) will be payable to City by Grantee on demand. City will have the right at all times to post and keep posted on the Easement Area any notices permitted or required by law or that City deems proper for its protection and protection of the Easement Area and City's property, from mechanics' and materialmen's liens. Notwithstanding the foregoing,

Grantee will have the right, on posting of an adequate bond or other security acceptable to City, to contest any such lien, and in such case City will not seek to satisfy or discharge such lien unless Grantee has failed to do so within ten (10) days after final determination of the validity thereof. Grantee will indemnify City and its Agents against any and all Claims arising out of any such contest.

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

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

14. **No Costs to City.** Grantee will bear all costs or expenses of any kind or nature in connection with its use of the Easement Area, and will keep the Easement Area free and clear of any liens or claims of lien arising out of or in any way connected with its use of the Easement Area.

15. **Grantee's Indemnity.** Grantee will indemnify, defend, and hold harmless ("**Indemnify**") City, including all of its boards, commissions, departments, agencies, and other subdivisions, and all of its and their Agents, and their respective heirs, legal representatives, successors, and assigns (individually and collectively, the "**Indemnified Parties**"), and each of them, from and against all liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties, and expenses, including direct and vicarious liability of every kind (collectively, "**Claims**"), incurred in connection with or arising in whole or in part from: **(a)** any accident, injury to or death of a person (including Grantee's employees), or loss of or damage to property occurring in or about the Easement Area, arising out of the acts, omissions or negligence of Grantee, its Agents or its clients, customers, invitees, guests, licensees, assignees, or tenants ("**Invitees**"); **(b)** any failure or default by Grantee in the observation or performance of any of the terms, covenants, or conditions of this Agreement to be observed or performed on Grantee's part; **(c)** the use or occupancy or manner of use or occupancy of the Easement Area by Grantee, its Agents, Invitees, or any person or entity claiming through or under any of them; **(d)** any construction or other work undertaken by Grantee or its Agents on the Easement Area whether before or during the term of this Agreement; or **(e)** any acts, omissions, or negligence of Grantee, its Agents, or its Invitees, in, on, or about the Easement Area or the Burdened Property, 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 the

foregoing indemnity is void or otherwise unenforceable under applicable law and further except only those Claims as are caused exclusively by the willful misconduct or gross negligence of the Indemnified Parties. The foregoing indemnity includes reasonable fees of attorneys, consultants, and experts and related costs and City's costs of investigating any Claim. Grantee expressly acknowledges that Grantee has an immediate and independent obligation to defend City from any Claim that actually or potentially falls within this indemnity provision even if the allegation is or may be groundless, fraudulent, or false, which obligation arises at the time the Claim is tendered to Grantee by City and continues at all times thereafter.

16. Grantee's Hazardous Materials Acknowledgement and Indemnification.

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

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

c. Soils Investigation: For any soils investigations, Grantee warrants as follows:

i. If any soils investigation involves drilling holes with a diameter that could create a safety hazard for persons, the holes during any drilling operations must be carefully safeguarded and be refilled on the completion of the drilling operations (and compacted to the extent necessary) to the level of the original surface penetrated by the drilling.

ii. The City has no responsibility or liability of any kind or character with respect to any utilities that may be located in or on the Easement Area. Grantee has the sole responsibility to locate the same and to protect them from damage. Grantee will be solely responsible for any damage to utilities or damage resulting from any damaged utilities. Before the start of any work under this Agreement, the Permittee is advised to contact Underground Services Alert for assistance in locating existing utilities at (800) 642-2444. Any utility conduit or pipe encountered in excavations not identified by Underground Services Alert must be brought to the attention of the City immediately.

iii. All soils test data and resulting reports obtained from these activities must be provided to the City upon request and the City may use the data for whatever purposes it deems appropriate, including making it available to others for use in connection with any development. The data, reports, and City use will be without any charge to the City.

iv. Any hole drilled (if not refilled and compacted at the end of each day's operation) and the drilling work area and any equipment left on the Easement Area must be carefully safeguarded and secured after the completion of each day's work.

d. Environmental Indemnification. If Grantee breaches any of its obligations contained in this Section, or, if any act or omission of Grantee, its agents or invitees, results in any Release of Hazardous Material in, on, under or about the Easement Area in violation of any applicable Environmental Laws, then, without limiting Grantee's indemnity contained in Section 15 (Grantee's Indemnity), Grantee shall, on behalf of itself and its successors and assigns, Indemnify the Indemnified Parties, and each of them, from and against all Claims (including, without limitation, damages for decrease in value of the Easement Area or the Burdened Property, the loss or restriction of the use of rentable or usable space or of any amenity of the Easement Area or the Burdened Property, and sums paid in settlement of claims, attorneys' fees, consultants' fees and experts' fees and costs) arising during or after the term of this Easement Agreement and relating to such Release. The foregoing indemnity includes, without limitation, costs incurred in connection with activities undertaken to Investigate and Remediate Hazardous Material and to restore the Easement Area to its prior condition, fines and penalties assessed for the violation of any applicable Environmental Laws, and any natural resource damages. Without limiting the foregoing, if Grantee or any of its agents or invitees, causes or permits the Release of any Hazardous Materials in, on, under or about the Easement Area, Grantee shall immediately and at no expense to City take any and all appropriate actions to return the Easement Area affected thereby to the condition existing prior to such Release and otherwise Investigate and Remediate the Release in accordance with all Environmental Laws. Grantee specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City 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 Grantee by the City and continues at all times thereafter. Grantee shall afford City a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, or other compromise or proceeding involving Hazardous Material.

For purposes of this Section, the following terms are defined as:

“Environmental Laws” means any present or future federal, state, or local laws or policies relating to Hazardous Material (including its use, handling, transportation, production, disposal, discharge, Release, clean-up, or storage and including the RMP) or to human health and safety, industrial hygiene, or environmental conditions in, on, under, or about the Easement Area, including soil, air, and groundwater conditions.

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

authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes any material or substance defined as a “hazardous substance,” “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. Section 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 Easement Area, any alterations to be constructed on the Easement Area by or on behalf of Grantee, or are naturally occurring substances on, in, or about the Easement Area; and petroleum, including crude oil or any crude-oil fraction, and natural gas or natural gas liquids.

“**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 any portion of the Easement Area or any alterations or that have been, are being, or threaten to be Released into the environment. Investigation shall include preparation of site history reports and sampling and analysis of environmental conditions in, on, under, or about the Easement Area or any improvements.

“**Release**” when used with respect to Hazardous Material means any actual or imminent spilling, leaking, migrating, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any existing improvements or any alterations constructed by or on behalf of Grantee, or in, on, under, or about any portion of the Easement Area.

“**Remediation**” when used with reference to Hazardous Material means any activities undertaken to clean up, remove, contain, treat, stabilize, monitor, or otherwise control any Hazardous Material located in, on, under, or about the Easement Area or that have been, are being, or threaten to be Released into the environment. Remediate includes 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.

17. **Survival of Indemnities.** Termination of this Agreement will not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Agreement, nor will it affect any provision of this Agreement that expressly states it will survive termination hereof.

18. **Waiver of Claims.**

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

b. Grantee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, the Indemnified

Parties under any present or future laws, statutes, or regulations, with respect to Claims arising out of: (i) the physical or environmental condition of the Easement Area or any law or regulation applicable thereto or the suitability of the Easement Area for Grantee's intended use; (ii) any and all Claims for relocation benefits or assistance from City under federal and state relocation assistance laws, (iii) any and all Claims for consequential and incidental damages (including without limitation, lost profits), and covenants not to sue for such damages, and (iv) any and all Claims for any interference with the uses conducted by Grantee pursuant to this Agreement, regardless of the cause, except to the extent caused by the willful misconduct or gross negligence of City.

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

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

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

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

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

If to City, to:

Recreation and Park Department
City and County of San Francisco

Attn: Director of _____
Re: _____
501 Stanyan Street
San Francisco, CA 94117

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

If to Grantee, to: _____

with a copy to: _____

Attn: _____

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

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

23. **Non-Discrimination.** Grantee will not, in the operation and use of the Easement Area, discriminate against any employee of, any City employee working with Grantee, or applicant for employment with Grantee, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person’s race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of those protected classes, or in retaliation for opposition to discrimination against those classes. Grantee does not as of the date of this Agreement and will not, in any of its operations in San Francisco, on real property owned by

City, or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits, or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of the employees, where the domestic partnership has been registered with a governmental entity under state or local law authorizing the registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code..

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

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

26. **Taxes.**

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

b. Grantee agrees to pay taxes of any kind, including possessory interest taxes, if any, that may be lawfully assessed on the interest created by the Easement and to pay any other taxes (including transfer taxes), excises, licenses, permit charges or assessments based on Grantee's usage of the Easement Area that may be imposed on Grantee by applicable law. Grantee will pay all of such charges when they become due and payable and before delinquency.

c. Grantee agrees not to allow or suffer a lien for any such taxes to be imposed on the Easement Area or on any equipment or property located thereon without promptly

discharging the same, provided that Grantee, if so desiring, may have reasonable opportunity to contest the validity of the same.

27. **No Tobacco or Alcoholic Beverage Advertising.** Grantee acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on the Easement Area, including the placement of the name of a company producing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. In addition, Grantee agrees that no Sales, Manufacture, or Distribution of Tobacco Products (as such capitalized terms are defined in San Francisco Health Code Section 19K.1) is allowed on the Easement Area and such prohibition must be included in all other agreements allowing use of the Easement Area. Grantee agrees that no advertising of alcoholic beverages is allowed on the Easement Area, including the placement of the name of a company producing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product.

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

a. Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or “**IPM Ordinance**”) describes an integrated pest management (“**IPM**”) policy to be implemented by all City departments. Grantee may not use or apply or allow the use or application of any pesticides on the Easement Area or contract with any party to provide pest abatement or control services to the Easement Area

b. If Grantee or Grantee’s contractor would apply pesticides to outdoor areas at the Easement Area, Grantee will first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation (“**CDPR**”) and the pesticide application will be made only by or under the supervision of a person holding a valid, CDPR-issued Qualified Applicator certificate or Qualified Applicator license. City’s current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website, <http://sfenvironment.org/ipm>.

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

30. **Notification of Prohibition on Contributions.** Through its execution of this Agreement, Grantee acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with City for the selling or leasing of any land or building to or from any department of City from making any campaign contribution whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, to (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the

termination of negotiations for such contract or twelve (12) months after the date the contract is approved, if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$100,000 or more. Grantee acknowledges that (i) the prohibition on contributions applies to Grantee; each member of Grantee's board of directors, and Grantee's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Grantee; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Grantee; and (ii) within thirty (30) days of the submission of a proposal for the contract, the City department with whom Grantee is contracting is obligated to submit to the Ethics Commission the names of the parties to the contract and any subcontractor. Additionally, Grantee certifies that it has informed each of the persons described in Section 1.126 of the limitation on contributions imposed by Section 1.126, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

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

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, GRANTEE ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS AGREEMENT UNLESS AND UNTIL RESOLUTIONS OF ANY REQUIRED CITY COMMISSION AND CITY'S BOARD OF SUPERVISORS ARE DULY ADOPTED APPROVING THIS AGREEMENT AND AUTHORIZING THE TRANSACTION CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON ENACTMENT OF SUCH RESOLUTIONS, AND THIS AGREEMENT WILL BE NULL AND VOID IF THE [*SAN FRANCISCO RECREATION AND PARK COMMISSION*], BOARD OF

City Draft November 17, 2022

SUPERVISORS AND MAYOR DO NOT APPROVE THIS AGREEMENT, EACH IN THEIR RESPECTIVE SOLE DISCRETION.

[Continued]

DRAFT

Accepted and Agreed:

_____,
a _____

By: _____
Name: _____
Title: _____

CITY:

CITY AND COUNTY OF SAN
FRANCISCO,
a municipal corporation

By: _____
Andrico Q. Penick
Director of Property

RECOMMENDED:

By: _____
Philip Ginsburg
General Manager
Recreation and Park Department

APPROVED AS TO FORM:

DAVID CHIU
City Attorney

By: _____
Elizabeth A. Dietrich
Deputy City Attorney

NOTARY ACKNOWLEDGMENT

CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC

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

State of California)

County of San Francisco)

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

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

WITNESS my hand and official seal.

Signature: _____ (Seal)

CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC

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

State of California)

County of San Francisco)

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

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

WITNESS my hand and official seal.

Signature: _____ (Seal)

EXHIBIT A

Description of Benefitted Property

DRAFT

EXHIBIT B

Description of Burdened Property

DRAFT

EXHIBIT C

Description and Depiction of Easement Area

DRAFT

EXHIBIT D

Legal Description of Easement Area

DRAFT