

AGREEMENT FOR THE TRANSFER OF CITY OWNED PERSONAL PROPERTY

(Civic Center, San Francisco)

THIS AGREEMENT FOR THE TRANSFER OF CITY OWNED PERSONAL PROPERTY (this “***Agreement***”) dated for reference purposes only as of April _____, 2024, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“***City***”), and ENERGY CENTER SAN FRANCISCO LLC, a Delaware limited liability company (“***ECSF***” or “***Buyer***”).

THIS AGREEMENT IS MADE WITH REFERENCE TO THE FOLLOWING FACTS AND CIRCUMSTANCES:

RECITALS

A. City owns the steam distribution system encircling Civic Center (“***Steam Loop***”) in the City and County of San Francisco. The Steam Loop serves the Bill Graham Civic Auditorium, 101 Grove Street, San Francisco City Hall and the San Francisco County Civil Courthouse (collectively the “***Steam Loop Buildings***”) and consists of approximately 3,100 feet of steam and condensate piping, 17 utility vaults and laterals to the Steam Loop Buildings, as depicted on **Exhibit A**, attached hereto and further described in **Section 4**.

B. ECSF owns and operates 12 miles of district heating steam distribution and condensate return piping in San Francisco for the sale and distribution of steam to various facilities. Approximately 180 San Francisco steam customers are served by ECSF. Excluding the Steam Loop Buildings, all ECSF customers receive steam at the property boundary metered by ECSF. The California Public Utility Commission regulates and approves ECSF’s tariff. As of the date hereof, the Steam Loop is connected to ECSF’s distribution network and the City purchases steam from ECSF for heating the Steam Loop Buildings.

C. City and Buyer agree that it would be mutually beneficial: (i) for ownership and operational responsibility for the Steam Loop to be transferred from City to Buyer; (ii) for City to grant Buyer easements that will allow Buyer to continue to operate and maintain the Steam Loop in its current location for those areas where the Steam Loop is outside of the public right of way (“***ROW***”), and thus not within the jurisdiction of ECSF’s Franchise (as defined below), such as for those portions that are located in the Civic Center Garage under the jurisdiction of the San Francisco Recreation and Parks District (the “***Civic Center Garage Easement***”) and in the Power House located at 302 Larkin Street (the “***Power House Easement***” and collectively with the Civic Center Garage Easement referred to herein as the “***Easements***”); (iii) for City to pay Buyer for Buyer to cause to be performed the Agreed Upon Repair Work (as described in **Section 4** of this Agreement) to bring the Steam Loop back to good condition; (iv) for Buyer to be solely responsible for future replacements, repairs and maintenance of the Steam Loop; and (v) for Buyer to continue to operate and maintain the Steam Loop, and sell steam to City and City to purchase steam from Buyer for the Steam Loop Buildings for at least five (5) years following the Closing Date per a separate Steam Services Agreement (as defined below).

D. The Real Estate Division recommends approval of this transfer and granting of the Power House Easement and the Recreation and Parks Commission recommends the transfer and

granting of the Civic Center Garage Easement necessary for Buyer to operate the Steam Loop on City property and in the ROW pursuant to Buyer's franchise agreement attached hereto as **Exhibit B** ("***Franchise***").

E. This Agreement is a sole source transfer as ECSF is the only steam provider in San Francisco and the Steam Loop is already connected to ECSF's existing distribution network. A competitive solicitation process would be impractical and futile as no other bidder could provide steam to the Steam Loop Buildings and thus, Buyer is the only potential purchaser of the Steam Loop.

F. Buyer desires to accept title to the Steam Loop on the Closing Date described herein and City desires to transfer title to the Steam Loop and grant the Easements and pay the Repair Amount (as defined below) to Buyer on the terms and conditions set forth hereinbelow.

ACCORDINGLY, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Buyer hereby agree as follows:

1. SALE AND PURCHASE.

1.1 Included in Transfer. Subject to the terms, covenants and conditions set forth herein, City agrees to transfer to Buyer, and Buyer agrees to accept from City, City's title and interest in and to the Steam Loop.

1.2 Excluded from Transfer. Subject to the terms, covenants and conditions set forth herein, the interests transferred herein are personal property only and no real property interests of City are part of the transfer contemplated herein and are specifically excluded from this Agreement and shall remain the exclusive property of City subsequent to transfer of the Steam Loop to Buyer.

2. PURCHASE PRICE; REPAIR AMOUNT. The total consideration for the City's agreement to transfer title to the Steam Loop, to grant the Easements and pay the Repair Amount is the total payment by Buyer of One Dollar (\$1.00) plus Buyer's covenants regarding the Steam Loop contained herein. The payment of One Dollar and the covenants contained in this Agreement constitute the "***Purchase Price.***"

2.1 At or before the Closing, Buyer shall deposit the monetary portion of the Purchase Price into escrow with Chicago Title Company (the "***Title Company***"). At the Closing (as defined below), the monetary portion of the Purchase Price shall be paid to City.

2.2 At Closing, City shall deposit in escrow with the Title Company the sum of Three Million One Hundred Thousand Dollars (\$3,100,000.00) ("***Repair Amount***") to be used by Buyer to complete the Agreed Upon Repair Work as defined in Section 4.1. At the Closing (as defined below), the Repair Amount shall be paid to Buyer.

2.3 All sums payable hereunder shall be paid in immediately available funds of lawful money of the United States of America.

3. TRANSFER TERMS.

3.1 Buyer's Independent Investigation. Subject to the terms and conditions herein, Buyer represents and warrants to City that, to the best of Buyer's knowledge and as of the date of this Agreement, Buyer has performed a diligent and thorough inspection and investigation of the systems within the Steam Loop shown on Exhibit A, either independently or through agents of Buyer's choosing, and has further investigated the following matters:

(a) The zoning and other legal status of the Steam Loop, including, without limitation, the compliance of the Steam Loop or its operation with any applicable codes, laws, regulations, statutes, ordinances and private or public covenants, conditions and restrictions, and all governmental and other legal requirements such as taxes, assessments, and use permit requirements.

(b) The quality, nature and adequacy of the Steam Loop, and the presence or absence of any asbestos in, on or about the aforesaid vaults within the Steam Loop.

3.2 Steam Loop Disclosures.

(a) California law requires sellers to disclose to buyers the presence or potential presence of certain Hazardous Materials (as defined below). Accordingly, Buyer is hereby advised that the Steam Loop is not suitable for human occupation. The Steam Loop and/or the surrounding Easements area may contain Hazardous Materials such as, but not limited to, asbestos, gasoline, diesel and other vehicle fluids, vehicle exhaust, office maintenance fluids, tobacco smoke, methane and building materials containing chemicals, such as formaldehyde.

(b) According to the United States Geological Survey, roughly one-quarter of the San Francisco Bay region may be exposed to liquefaction. More information about the potential areas of liquefaction may be found at <http://geomaps.wr.usgs.gov/sfgeo/liquefaction/susceptibility.htm>

3.3 "As-Is" Purchase.

(a) EXCEPT FOR THE EXCLUDED CLAIMS (INCLUDING WITHOUT LIMITATION, CLAIMS INDEMNIFIED BY CITY HEREIN) AND AS SPECIFIED IN THE AGREED UPON REPAIR WORK DESCRIBED IN SECTION 4 BELOW, BUYER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT CITY IS SELLING AND BUYER IS PURCHASING CITY'S INTEREST IN THE STEAM LOOP ON AN "AS-IS WITH ALL FAULTS" BASIS. BUYER IS RELYING SOLELY ON ITS INDEPENDENT INVESTIGATION AND NOT ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM CITY OR ITS AGENTS AS TO ANY MATTERS CONCERNING THE STEAM LOOP, ITS SUITABILITY FOR BUYER'S INTENDED USES OR ANY OF THE STEAM LOOP'S CONDITIONS. EXCEPT AS EXPRESSLY SET FORTH HEREIN, CITY DOES NOT GUARANTEE THE LEGAL, PHYSICAL, GEOLOGICAL, ENVIRONMENTAL OR OTHER CONDITIONS OF THE STEAM LOOP, NOR DOES IT ASSUME ANY RESPONSIBILITY FOR THE COMPLIANCE OF THE STEAM LOOP OR ITS USE WITH ANY STATUTE, ORDINANCE OR REGULATION. EXCEPT AS EXPRESSLY SET FORTH HEREIN, IT IS BUYER'S SOLE RESPONSIBILITY TO DETERMINE ALL BUILDING, PLANNING, ZONING AND OTHER

REGULATIONS RELATING TO THE STEAM LOOP AND THE USES TO WHICH IT MAY BE PUT.

(b) **Release of City.** Subject to the Excluded Claims (including, without limitation, claims indemnified by the City herein), as part of its agreement to purchase the Steam Loop in its “As-Is With All Faults” condition, Buyer, on behalf of itself and its successors and assigns, waives any right to recover from, and forever releases and discharges, City, its officers, employees, agents, contractors and representatives, and their respective heirs, successors, legal representatives and assigns, from any and all demands, claims, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs or expenses whatsoever (including, without limitation, attorneys’ fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with (i) Buyer’s and its Agents and customer’s past, present and future use of the Steam Loop, (ii) the presence of any Hazardous Material in, on, under, above or about the Steam Loop and (iii) any federal, state, local or administrative law, rule, regulation, order or requirement applicable to the Hazardous Materials, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“**CERCLA**”, also commonly known as the “**Superfund**” law), as amended by Superfund Amendments and Reauthorization Act of 1986 (“**SARA**”) (42 U.S.C. Sections 9601-9657), the Resource Conservation and Recovery Act of 1976, as amended by the Solid Waste and Disposal Act of 1984 (collectively, “**RCRA**”) (42 U.S.C. Sections 6901-6987), the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 (collectively the “**Clean Water Act**”) (33 U.S.C. Section 1251 et seq.), the Toxic Substances Control Act (“**TSCA**”) (15 U.S.C. Sections 2601-2629), Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.), the Carpenter-Presley-Tanner Hazardous Substance Account Law (commonly known as the “**California Superfund**” law) (California Health and Safety Code Sections 78000 et seq.), Hazardous Waste Control Act (California Health and Safety Code Section 25100 et seq.), Hazardous Materials Release Response Plans and Inventory Law (commonly known as the “**Business Plan Law**”) (California Health and Safety Code Section 25500 et seq.), Porter-Cologne Water Quality Control Act (California Water Code Section 13000 et seq.), Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as “**Proposition 65**”) (California Health and Safety Code Section 25249.5 et seq.). As used in this Agreement, “**Hazardous Material**” shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is now or hereafter 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.

In connection with the foregoing release, Buyer expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH 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 TO HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

BY PLACING ITS INITIALS BELOW, BUYER SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THE VALIDITY OF THE RELEASES MADE ABOVE AND THE FACT THAT BUYER WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THE ABOVE RELEASES.

INITIALS: BUYER: _____

3.4 Excluded Claims. AS USED IN THIS AGREEMENT, “**EXCLUDED CLAIMS**” SHALL MEAN (I) ANY BREACH OF ANY EXPRESS REPRESENTATION, WARRANTY OR COVENANT OF CITY CONTAINED IN THIS AGREEMENT OR THE BILL OF SALE, (II) ANY CLAIMS ARISING FROM CITY’S FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, (III) ANY TORT CLAIMS FOR PERSONAL INJURIES OR PROPERTY DAMAGE ARISING FROM EVENTS THAT OCCURRED PRIOR TO CLOSING, AND (IV) CITY’S INDEMNIFICATION OBLIGATIONS HEREIN.

4. AGREED UPON REPAIR WORK.

4.1 Within thirty (30) days of Closing (“**Work Commencement Date**”), Buyer shall, and hereby covenants to, commence and/or shall cause the commencement of the construction, furnishing, and installation of those repairs and improvements to the Steam Loop set forth on **Schedule 4**, attached hereto and incorporated herein by reference, and any modifications thereto which the Buyer, in its reasonable discretion, deems necessary to complete such repairs and improvements (collectively, the “**Agreed Upon Repair Work**”). Buyer shall, at Buyer’s expense, install meters at the Steam Loop Buildings as described and as shown in **Schedule 4**. Notwithstanding anything else herein to the contrary, City shall cooperate in good faith with and take all allowable reasonable action to facilitate Buyer’s efforts to complete the Agreed Upon Repair Work as soon as possible. The Repair Amount is inclusive of all aspects of the Agreed Upon Repair Work, including but not limited to, planning, design, permitting and construction. Unless agreed to in a writing signed by City and Buyer, under no circumstances shall City be obligated to pay Buyer sums in excess of the Repair Amount for the Agreed Upon Repair Work.

4.2 Subject to Force Majeure and as otherwise set forth herein, Buyer shall Complete each phase of the Agreed Upon Repair Work (each a “**Phase**”) by the dates indicated in **Schedule 4** (each a “**Phase Completion Date**”); provided however, that (subject to Force Majeure and as otherwise set forth herein) the Agreed Upon Repair Work for all Phases shall be complete no later than nine (9) months from the Work Commencement Date (the “**Outside Completion Date**”). In the event Buyer does not Complete any Phase of the Agreed Upon Repair Work by the respective Phase Completion Date or has not Completed all Agreed Upon Repair Work by the Outside Completion Date, subject to Force Majeure and as otherwise set forth herein, Buyer shall pay the City, as City’s sole and exclusive remedy, Two Hundred Dollars (\$200) per day as liquidated damages until Completion has been achieved for the respective Phase (“**City LDs**”). Without limitation of the foregoing, each Phase Completion Date and/or the Outside Completion Date shall be extended on a day for day basis due to delays caused by any inspections or other required City actions regarding the Agreed Upon Repair Work, including without limitation any requirements for Discretionary Permits or Approvals not otherwise in the ordinary course of business. As used in this Section, “**Discretionary Permits or Approvals**” are those permits or approvals, the issuance

of which requires the exercise of judgment or deliberation by the issuing entity. Discretionary Permits or Approvals do not include those permits or approvals, the issuance of which involves only a determination of conformity with applicable statutes, ordinances, regulations, or other fixed standards or objective measurements. Any requirement for the Agreed Upon Repair Work to comply with CEQA constitutes a Discretionary Permit or Approval.

4.3 As used in this Agreement, “*Complete*” shall mean satisfaction of the actions and items for each Phase set forth in the Agreed Upon Work (other than punch list or other immaterial items) and the provision of Steam from the Steam Loop. Buyer shall provide written notice of same to the City within ten (10) business days.

4.4 THE PARTIES HAVE AGREED THAT CITY’S ACTUAL DAMAGES IN THE EVENT OF A BUYER’S FAILURE TO COMPLETE THE AGREED UPON REPAIR WORK BY EACH PHASE COMPLETION DATE AND/OR THE OUTSIDE COMPLETION DATE WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. AFTER NEGOTIATION, THE PARTIES HAVE AGREED THAT, CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, THE AMOUNT OF THE CITY LDS IS A REASONABLE ESTIMATE OF THE DAMAGES THAT THE CITY WOULD INCUR IN THE EVENT OF BUYER’S DEFAULT PURSUANT TO THIS SECTION. IF BUYER DEFAULTS IN ITS OBLIGATION TO COMPLETE THE AGREED UPON REPAIR WORK PURSUANT TO THIS SECTION, PROVIDED THAT THE CITY IS NOT THEN IN DEFAULT UNDER THIS AGREEMENT, THE CITY LDS SHALL BE PAID TO THE CITY AS LIQUIDATED DAMAGES AND SHALL BE THE SOLE AND EXCLUSIVE REMEDY AVAILABLE TO THE CITY FOR SUCH FAILURE. PROVIDED HOWEVER, THAT THIS PROVISION WILL NOT LIMIT CITY’S RIGHT TO RECEIVE REIMBURSEMENT FOR ATTORNEYS’ FEES NOR CITY’S RIGHTS TO BUYER’S EXPRESS INDEMNITY OBLIGATIONS UNDER THIS AGREEMENT.

5. Force Majeure. Notwithstanding any other provision of this Agreement, Buyer’s performance of obligations under this Agreement (other than monetary obligations) shall be excused, and any other time periods set forth herein shall continue and be extended for a like period of time, while such party is hindered or prevented, in whole or in part, from complying with any term, covenant, condition or provision of this Agreement, by any event of Force Majeure. For purposes of this Agreement, “*Force Majeure*” means inclement weather, fire, earthquake, flood, tornado or other acts of God and natural disasters; strikes or labor disputes; war, civil strife or other violence; any law, order, proclamation, regulation, ordinance, action, demand or requirement of any government agency (including without limitation, the City), or any other act or condition beyond the reasonable control of Buyer.

6. POST-CLOSING OBLIGATIONS.

6.1 Sale/Purchase of Steam. Subject to the terms and conditions of the Steam Services Agreement attached hereto as **Exhibit D** (the “SSA”), the parties hereto shall enter into the SSA and, pursuant thereto, Buyer shall continue to sell steam to the City for its heating and hot water needs at the Steam Loop Buildings and City shall continue to purchase steam for its heating and hot water needs at the Steam Loop Buildings for a period of not less than five (5) years from the

Closing Date. Buyer acknowledges and agrees that City's purchase of steam for the Steam Loop Buildings shall not be considered a new service for any purpose under the SSA and ECSF's tariff. If there are any conflicting terms, rights, duties or obligations of the parties between the SSA and this Agreement, this Agreement shall prevail.

6.2 Operation and Maintenance.

(a) On and after the Closing Date, Buyer shall be solely responsible for the operation, maintenance, repair and replacement of the Steam Loop and any and all sections thereof. For purposes of this Agreement, the Steam Loop shall include the Steam Loop itself (as shown in **Exhibit A**) and all laterals up to and including the ECSF meters (as more particularly described in **Schedule 4**). City shall retain ownership and responsibility for piping inside its buildings and up to, but not including, the ECSF meters, steam supply and condensate return isolation valves. ECSF will operate and maintain the Steam Loop in accordance with Buyer's Franchise and prudent industry operating and maintenance standards.

(b) "***Prudent industry operating and maintenance standards***" means those practices, methods and acts engaged in or approved by a significant portion of the United States' district energy industry pertaining to a pipeline similar to the Steam Loop during the relevant time period or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time a decision is made, could have been expected to accomplish the desired result consistent with good business practices, reliability, safety and expedition. "***Prudent industry operating and maintenance standards***" is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts having due regard for, among other things, manufacturers' warranties and the requirements of any governmental authority of competent jurisdiction.

(c) Buyer agrees that the condition of the Steam Loop will not be a basis for suspending or terminating steam services to the Steam Loop Buildings after the Closing Date. Buyer also agrees that the condition of City's steam facilities, appliances or other equipment for receiving or using steam services ("***Customer Facilities***") will not be a basis for suspending or terminating services to the Steam Loop Buildings after the Closing Date. City will repair the Customer Facilities when appropriations for such repairs are made.

7. CONDITIONS PRECEDENT.

7.1 City's Conditions Precedent. The following are conditions precedent to City's obligation to sell the Steam Loop to Buyer ("***City's Conditions Precedent***"), each of which is for the exclusive benefit of City. City may, at any time or times before the Closing, waive one or more of the following conditions, without affecting its rights and remedies with respect to the remaining conditions:

(a) Buyer shall have performed all of its obligations hereunder and all of Buyer's representations and warranties shall be true and correct as of the date this Agreement is executed by the parties hereto and the Closing Date.

(b) A resolution or ordinance approving and authorizing the transactions contemplated hereby and finding that the public interest or necessity demands or will not be

inconvenienced by the transfer of the Steam Loop, shall have been adopted by the City's Board of Supervisors and Mayor, in their respective sole and absolute discretion, and duly enacted.

(c) Title Company shall have agreed to be the real estate reporting person for the Closing in compliance with the Reporting Requirements (as defined in Section 8.5 below).

7.2 Buyer's Conditions Precedent. Buyer's obligation to purchase the Steam Loop is conditioned upon the satisfaction of each of the following conditions ("***Buyer's Conditions Precedent***"), and together with City's Conditions Precedent, the "***Conditions Precedent***"), each of which is for the exclusive benefit of Buyer. Buyer may, at any time or times before the Closing, waive one or more of the following conditions, without affecting its rights and remedies with respect to the remaining conditions:

(a) City shall have performed all of its obligations hereunder and all of City's representations and warranties shall be true and correct as of the date this Agreement is executed by the parties hereto and the Closing Date.

(b) Title Company shall have agreed to be the real estate reporting person for the Closing in compliance with the Reporting Requirements (as defined in Section 8.5 below).

7.3 Failure of Conditions Precedent. Each of the Conditions Precedent are intended solely for the benefit of the respective party. If any Conditions Precedent are not satisfied as provided above, the respective party may, at its option, terminate this Agreement. Upon any such termination, neither party shall have any further rights or obligations hereunder except as expressly provided herein.

8. ESCROW AND CLOSING.

8.1 Escrow. Within five (5) business days after the parties hereto execute this Agreement and all final, unappealable approvals and consents have been obtained by the City in connection with this Agreement, Buyer and City shall deposit an executed counterpart of this Agreement with the Title Company, and this instrument shall serve as the instructions to the Title Company as the escrow holder for consummation of the transfer contemplated hereby. City and Buyer agree to execute such supplementary escrow instructions as may be appropriate to enable the Title Company to comply with the terms of this Agreement; provided, however, in the event of any conflict between the provisions of this Agreement and any supplementary escrow instructions, the terms of this Agreement shall control.

8.2 Closing Date. The consummation of the purchase and sale of the Steam Loop (the "***Closing***") shall occur on the date that is ten (10) business days following the deposit of this Agreement with Title Company as set forth in Section 8.1 or such other date agreed upon by the Parties in their reasonable discretion (the "***Closing Date***").

8.3 Deposit of Documents.

(a) At, or before, the Closing, City shall deposit into escrow the following items:

(i) a duly executed counterpart of the Bill of Sale covering the Steam Loop, in the form attached hereto as **Exhibit E (“Bill of Sale”)**; and

(ii) a duly executed and notarized counterpart of the Easements, substantially in the form attached hereto as **Exhibit C**; and,

(iii) the Repair Amount.

(b) At or before the Closing, Buyer shall deposit into escrow the following items:

(i) the monetary portion of the Purchase Price; and

(ii) duly executed counterparts of the Bill of Sale and the Easements (the Easements to be notarized).

(c) City and Buyer shall each deposit such other instruments as are reasonably required by the Title Company or otherwise required to close the escrow and consummate the transfer of the Steam Loop in accordance with the terms hereof.

(d) Upon the authorization of both parties hereto (only to be withheld in the event of a material breach of this Agreement), Title Company shall (i) release the monetary portion of the Purchase Price to City, (ii) release the Repair Amount to Buyer, (iii) release the Bill of Sale to Buyer, and (iv) record the Easements in the Official Records of San Francisco County, California, as per each Party’s instructions.

8.4 Closing Costs. Buyer shall pay any transfer taxes applicable to the sale, and the parties hereto shall equally share all escrow fees and recording charges and any other costs and charges of the escrow for the sale.

8.5 Real Estate Reporting Person. Section 6045(e) of the United States Internal Revenue Code of 1986 and the regulations promulgated thereunder (collectively, the “***Reporting Requirements***”) require that certain information be made to the United States Internal Revenue Service, and a statement to be furnished to City, in connection with the Closing. Buyer and City agree that if the Closing occurs, Title Company will be the party responsible for closing the transaction contemplated in this Agreement and is hereby designated as the real estate reporting person (as defined in the Reporting Requirements) for such transaction. Title Company shall perform all duties required of the real estate reporting person for the Closing under the Reporting Requirements, and Buyer and City shall each timely furnish Title Company with any information reasonably requested by Title Company and necessary for the performance of its duties under the Reporting Requirements with respect to the Closing.

8.6 Prorations. Any property taxes and assessments; water, sewer and utility charges, if any; and any other expenses normal to the operation and maintenance of the Steam Loop, shall all be prorated as of 12:01 a.m. as of the Closing Date, on the basis of a three hundred sixty-five (365) day year.

9. REPRESENTATIONS, WARRANTIES AND COVENANTS.

9.1 Buyer's Representations and Warranties. Subject to the terms and conditions herein, Buyer makes the following representations as of the date of this Agreement, and at all times throughout this Agreement:

(a) Buyer is a Delaware limited liability company duly organized and validly existing and in good standing under the laws of the jurisdiction in which it was formed. Buyer has duly authorized by all necessary action the execution, delivery and performance of this Agreement. Buyer has duly executed and delivered this Agreement, and this Agreement constitutes a legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with the terms hereof, except as enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting creditors' rights and by general principals of equity.

(b) Buyer has not been suspended, disciplined or disbarred by, or prohibited from contracting with, any federal, state or local governmental agency. In the event Buyer has been so suspended, disbarred, disciplined or prohibited from contracting with any governmental agency prior to Closing, it shall immediately notify the City of same and the reasons therefor together with any relevant facts or information requested by City. Any such suspension, debarment, discipline or prohibition may result in the termination or suspension of this Agreement.

(c) To the best of Buyer's knowledge, no document or instrument furnished or to be furnished by the Buyer to the City in connection with this Agreement contains or will contain any untrue statement of material fact or omits or will omit a material fact necessary to make the statements contained therein not misleading, under the circumstances under which any such statement shall have been made.

(d) Notwithstanding anything to the contrary in this Agreement, the foregoing representations and warranties and any and all other representations and warranties of Buyer contained herein or in other agreements or documents executed by Buyer in connection herewith, shall survive the Closing Date for a period of one (1) year.

(e) As used herein, "*to the best of Buyer's knowledge*" shall mean the knowledge of Michael Eurkus or Stephen Sorrentino, without obligation of further investigation. Notwithstanding anything else herein to the contrary, neither Michael Eurkus nor Stephen Sorrentino shall have personal liability under the terms and conditions of this Agreement.

9.2 City's Representations and Warranties. Subject to the terms and conditions herein, City makes the following representations as of the date of this Agreement, and at all times throughout this Agreement:

(a) City is the sole owner of and has good and indefeasible title to the Steam Loop.

(b) Except as set forth on Schedule 9.2(b) herein, there is no litigation, claim or proceeding pending or, to City's knowledge, threatened, involving City and pertaining to the Steam Loop.

(c) City has not received any written notice or information regarding the Steam Loop's failure to comply with or violation of any applicable law, rule, regulation, ordinance or

government directive from any administrative or governmental authority or any restrictive easements or covenants affecting the Steam Loop, including without limitation, any and all environmental laws or laws pertaining to Hazardous Materials.

(d) To City's knowledge, the documents or reports affecting the Steam Loop delivered to Buyer ("**City Materials**") are all of the documents or reports affecting the Steam Loop in City's possession or are unaltered copies of what is in City's possession. Except as expressly set forth herein, City is not warranting the accuracy or completeness of any of the City Materials provided by City to Buyer.

(e) City has not entered into any contracts, agreements or understandings, verbal or written, for the lease, occupancy, sale, transfer, or alienation of any portion of the Steam Loop, or any option, right of refusal, right of first offer or other right relating to any of the foregoing. No part of the Steam Loop has been or shall be alienated, encumbered or transferred in a manner that will be binding on Buyer after the Closing.

(f) Notwithstanding anything to the contrary in this Agreement, the foregoing representations and warranties and any and all other representations and warranties of City contained herein or in other agreements or documents executed by City in connection herewith, shall survive the Closing Date for a period of one (1) year.

10. BROKERS. The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction on behalf of such party and that there are no claims or rights for brokerage commissions or finder's fees on behalf of such party in connection with the transactions contemplated by this Agreement. If any person brings a claim for a commission or finder's fee based on any contact, dealings, or communication with Buyer or City, then the party through whom such person makes a claim shall defend the other party from such claim, and shall indemnify the indemnified party from, and hold the indemnified party harmless against, any and all costs, damages, claims, liabilities, or expenses (including, without limitation, reasonable attorneys' fees and disbursements) that the indemnified party incurs in defending against the claim. The provisions of this Section shall survive the Closing, or, if the purchase and sale is not consummated for any reason, any termination of this Agreement.

11. INDEMNIFICATION. ECSF hereby agrees to indemnify, defend and hold harmless City from and against any and all claims, demands, liabilities, losses, damages, costs and expenses (including without limitation reasonable attorney's fees) arising out of or relating to any act or omission respecting the Steam Loop occurring from and after the Closing Date; provided however that ECSF's obligations under this Section shall not apply to any such act or omission committed by City respecting the Steam Loop occurring from and after the Closing Date or with respect to the Excluded Claims. City hereby agrees to indemnify, defend and hold harmless ECSF (its officers, parent, affiliates, employees and contractors) from and against any and all claims, demands, liabilities, losses, damages, costs and expenses (including without limitation reasonable attorney's fees) arising out of or relating to any act or omission respecting the Steam Loop occurring prior to the Closing Date; provided however, City's obligations under this Section shall not apply to any such act or omission committed by ECSF (its officers, parent, affiliates, employees and contractors) respecting the Steam Loop occurring prior to the Closing Date. The City's indemnification obligations set forth in this Section shall survive the Closing for a period of three

(3) years; provided that said obligation for any claims listed on **Schedule 9.2(b)** shall survive until the final and complete resolution of such claims.

12. GENERAL PROVISIONS.

12.1 Notices. Any notices required or permitted to be given under this Agreement shall be in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, or (c) by U.S. Express Mail or commercial overnight courier that guarantees next day delivery and provides a receipt, and such notices shall be addressed as follows:

CITY:

Real Estate Division
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102
Attn: Director of Property
Re: Steam Loop Transfer

BUYER:

Energy Center San Francisco LLC
14 Mint Plaza, Suite 200
San Francisco, CA 94103
Attn: General Manager
Re: Steam Loop Transfer

with a copy to:

with a copy to:

Deputy City Attorney
Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Re: Steam Loop Transfer

Cox Castle & Nicholson LLP
50 California Street, Suite 3200
San Francisco, CA 94111
Attn: Jake W. Storms, Esq.
Email: jstorms@coxcastle.com
Tel: 415-262-5147

or such other address as either party may from time to time specify in writing to the other party. Any notice shall be deemed given when actually delivered if such delivery is in person, two (2) days after deposit with the U.S. Postal Service if such delivery is by certified or registered mail, and the next business day after deposit with the U.S. Postal Service or with the commercial overnight courier service if such delivery is by overnight mail.

12.2 Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, legal representatives, administrators and assigns. Buyer's rights and obligations hereunder shall not be assignable without the prior written consent of City; provided, however, even if City approves any such proposed assignment, in no event shall Buyer be released of any of its obligations hereunder.

12.3 Amendments. This Agreement may be amended or modified only by a written instrument signed by the Buyer and City.

12.4 Governing Law. This Agreement shall be governed by, subject to, and construed in accordance with the laws of the State of California and City's Charter and Administrative Code. Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the Superior Court for the City and County of San Francisco, and each party agrees to the

exclusive jurisdiction of such court in any such suit, action, or proceeding (excluding bankruptcy matters). The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such court and irrevocably waive and agree not to plead or claim that any suit, action, or proceeding brought in San Francisco Superior Court relating to this Agreement has been brought in an inconvenient forum.

12.5 Merger of Prior Agreements. This Agreement, together with the exhibits hereto, contain any and all representations, warranties and covenants made by Buyer and City and constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are replaced in total by this Agreement together with the exhibits hereto.

12.6 Order of Precedence. If there are any conflicting terms, rights, duties or obligations of the parties between ECSF's tariff and this Agreement, this Agreement shall prevail, subject to applicable law and regulation.

12.7 Parties and Their Agents. The term "Buyer" as used herein shall include the plural as well as the singular. If Buyer consists of more than one (1) individual or entity, then the obligations under this Agreement imposed on Buyer shall be joint and several. As used herein, the term "Agents" when used with respect to either party shall include the agents, employees, officers, contractors and representatives of such party.

12.8 Interpretation of Agreement. The article, section and other headings of this Agreement and the table of contents are for convenience of reference only and shall not affect the meaning or interpretation of any provision contained herein. Whenever the context so requires, the use of the singular shall be deemed to include the plural and vice versa, and each gender reference shall be deemed to include the other and the neuter. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to affect the purposes of the parties and this Agreement.

12.9 Time of Essence. Time is of the essence with respect to the performance of the parties' respective obligations contained herein.

12.10 No Merger. The obligations contained herein shall not merge with the transfer of title to the Steam Loop but shall remain in effect until fulfilled.

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

12.12 Conflicts of Interest. Through its execution of this Agreement, Buyer 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, Buyer shall immediately notify the City.

12.13 Notification of Prohibition on Contributions. Through its execution of this Agreement, Buyer acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from any department of the City 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, from making any campaign contribution 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. Buyer acknowledges that the foregoing restriction applies only 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. Buyer further acknowledges that the (i) prohibition on contributions applies to each Buyer; each member of Buyer's board of directors, and Buyer's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Buyer; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Buyer; 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 parties to the contract and any subcontractor. Additionally, Buyer certifies that Buyer has informed each of the persons described in the preceding sentence of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract and has provided the names of the persons required to be informed to the City department with whom it is contracting.

12.14 Sunshine Ordinance. Buyer understands and agrees that under the City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the California Public Records Act (Gov. Code Section 7920.000 et seq.), affect this Agreement and any and all records, information, and materials submitted to the City hereunder public records subject to public disclosure. Buyer hereby acknowledges that the City may disclose any records, information and materials submitted to the City in connection with this Agreement except for trade secrets or confidential competitive information which may be withheld from disclosure under applicable law.

12.15 Tropical Hardwood and Virgin Redwood Ban. The City and County of San Francisco 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.

12.16 No Recording. Neither this Agreement nor any memorandum or short form thereof may be recorded by Buyer; provided however, the foregoing shall not apply to the Easements, which shall be recorded in the Official Records of San Francisco County, California.

12.17 Effective Date. As used herein, the term “Effective Date” shall mean the date on which the City’s Board of Supervisors and Mayor enact an ordinance or resolution approving and authorizing this Agreement and the transactions contemplated hereby, following execution of this Agreement by both parties.

12.18 Severability. If any provision of this Agreement or the application thereof to any person, entity or circumstance shall be invalid or unenforceable, the remainder of this Agreement, 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 Agreement shall 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.

12.19 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

12.20 Further Assurances. City and Buyer shall execute and deliver such additional documents, instruments, conveyances, and assurances and take such further actions as may be reasonably required to carry out the provisions of this Agreement and give effect to the contemplated transactions and documents to be delivered.

12.21 Attorneys’ Fees. If either party commences an action against the other in connection with this Agreement or a dispute arises under this Agreement, the prevailing party will be entitled to recover from the other reasonable attorneys’ fees and costs. For all purposes under this Agreement, reasonable attorneys’ fees of City will be based on the fees regularly charged by private attorneys in San Francisco with comparable experience in the subject matter area practicing in firms of comparable size as the Office of the City Attorney.

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

12.23 NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, BUYER ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS AGREEMENT UNLESS AND UNTIL A RESOLUTION OF CITY’S BOARD OF SUPERVISORS SHALL HAVE BEEN DULY ENACTED APPROVING THIS AGREEMENT AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON THE DUE ENACTMENT OF SUCH A RESOLUTION, AND THIS AGREEMENT SHALL BE NULL AND VOID IF CITY’S BOARD OF SUPERVISORS AND MAYOR DO NOT APPROVE THIS AGREEMENT IN THEIR RESPECTIVE SOLE DISCRETION. APPROVAL OF THE TRANSACTIONS

CONTEMPLATED HEREBY BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ENACTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

[SIGNATURES ON FOLLOWING PAGE]

The parties have duly executed this Agreement as of the respective dates written below.

CITY:

CITY AND COUNTY OF
SAN FRANCISCO, a municipal corporation

By: _____
ANDRICO Q. PENICK
Director of Property

APPROVED AS TO FORM:

DAVID CHIU, City Attorney

By: _____
NANCY TAYLOR
Deputy City Attorney

ECSF:

ENERGY CENTER SAN FRANCISCO LLC,
a Delaware limited liability company

By: _____
Stephen Sorrentino
Regional General manager-West

EXHIBIT A

STEAM LOOP SITE MAP

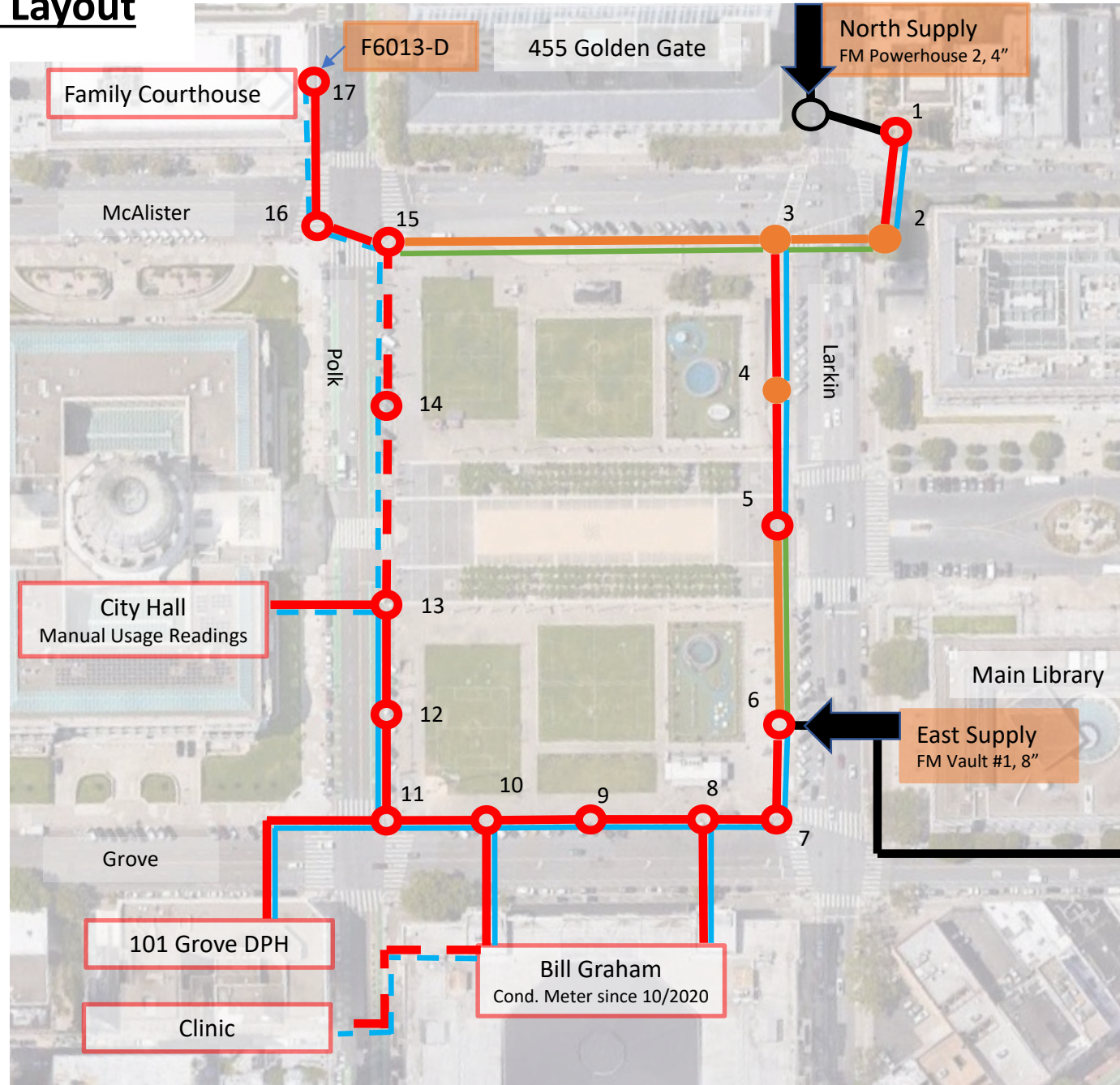
All that certain personal property located in the City and County of San Francisco, State of California, depicted in the Steam Loop Site Map attached.

[PLEASE SEE ATTACHED]

Schematic Steam Loop Layout

San Francisco Civic Center

4/8/2021



Key

- Steam Supply (ClearWay Energy)
- Steam Pipe (good condition)
- Steam Pipe (unknown condition)
- Steam Pipe (not active)
- Condensate (good condition)
- Condensate (unknown condition)
- Condensate (not active)
- Manhole (good condition)
- Manhole (unknown condition)
- Manhole (ClearWay Energy)

Bldg using steam

Utility Meter

EXHIBIT B

FRANCHISE AGREEMENT

[PLEASE SEE ATTACHED]

OTHER OFFICES
LOS ANGELES
LONG BEACH, CA
NEWPORT BEACH, CA
PALO ALTO, CA
SACRAMENTO, CA
NEW YORK
WASHINGTON, DC
MILAN
GUSSELOOF
LONDON
BEIJING
TOKYO

APPROVED OFFICES
BRUSSELS
BERLIN
MUNICH
RENN
JEDDAH
NYADH
BAHRAIN
JAKARTTA
BANGKOK

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
GRAHAM & JAMES
ONE MARITIME PLAZA
THIRD FLOOR
SAN FRANCISCO, CALIFORNIA 94111
TELEPHONE (415) 954-0200
FACSIMILE (415) 391-2493

93 JUL -2 PM 4:40

BY *KG*

TELEX M.C.I. 67888 GJ SFO - W. U. 24042 CHALORAY SFO

IN ASSOCIATION WITH
DEACONS
HONG KONG

SLY AND WEIGALL
SYDNEY - MELBOURNE
BRISBANE - PERTH - CANBERRA

July 2, 1993

WRITER'S DIRECT DIAL NUMBER

(415) 954-0258

Clerk of the Board of Supervisors
The City and County of San Francisco
City Hall, Room 235
San Francisco, California 94102

Re: Ordinance No. 129-23

Dear Sir:

In April 1993 the Board of Supervisors passed and the Mayor signed Ordinance No. 124-93 approving the transfer of the steam franchise under Ordinance No. 418-75 from Pacific Gas and Electric Company to San Francisco Thermal, Limited Partnership.

Section 2 of Ordinance No. 124-93 indicates that the transfer will become effective when a copy of the steam conduit and franchise sale agreement, as approved by the California Public Utilities Commission, is filed with the Clerk of the Board of Supervisors.

Enclosed for filing is an executed copy of the Asset Purchase Agreement By and Between Pacific Gas and Electric Company and San Francisco Thermal, Limited Partnership, dated as of October 14, 1992, an Amendment thereto, dated as of June 18, 1993, and a copy of California Public Utilities Commission Decision 93-06-038, dated June 3, 1993, approving the sale and transfer of the steam heating facilities to San Francisco Thermal, Limited Partnership.

Very truly yours,

Peter W. Hanschen

Peter W. Hanschen
of
GRAHAM & JAMES

PWH:o

cc: Mr. Carl Avers
Peter Baumgartner, Esq.

Enclosure
Our File: 29177.1

PWH12F.P50

[Transfer of Steam Franchise]

APPROVING TRANSFER OF THE STEAM FRANCHISE AUTHORIZED BY THE BOARD OF SUPERVISORS UNDER ORDINANCE NO. 418-75 FROM THE PACIFIC GAS AND ELECTRIC COMPANY TO SAN FRANCISCO THERMAL, L.P.

Be it ordained by the People of the City and County of San Francisco:

Section 1. The purpose of this ordinance is to authorize the transfer of a franchise granted for the purposes of providing steam and heat to customers through conduits placed in city streets. The San Francisco Board of Supervisors, by enacting Ordinance No. 418-75 (the Steam Franchise Ordinance), authorized the Pacific Gas and Electric Company to construct, install, maintain and operate underground steam conduits in streets, alleys and other public places. The Pacific Gas and Electric Company has entered into an agreement transferring its steam conduits to San Francisco Thermal, L.P. This agreement is subject to the approval of the California Public Utilities Commission. In addition, section 3 of the Steam Franchise Ordinance provides that the franchise may be transferred to another entity only with the approval of the Board of Supervisors.

Section 2. In accordance with section 3 of the Steam Franchise Ordinance, transfer of this steam franchise by the Pacific Gas and Electric Company to San Francisco Thermal, L.P., is hereby approved. This transfer shall become effective upon the filing of

2295P

BOARD OF SUPERVISORS

PAGE NO. 1
03/02/93

the steam conduit and franchise sale agreement, as approved by the California Public Utilities Commission, with the Clerk of the Board of Supervisors.

Section 3. Except as modified by this ordinance, all terms and conditions of Ordinance No. 418-75 shall continue in full force and effect.

APPROVED AS TO FORM:

LOUISE H. REMME, City Attorney

By:

Deputy City Attorney

Board of Supervisors, San Francisco

Passed for Second Reading

April 12, 1993

Ayes: Supervisors Alloto Bierman
Conroy Hallinan Kaufman Kennedy
Maher Migden Shelley

Absent: Supervisors Achtenberg
Hsieh

Finally Passed

April 19, 1993

Ayes: Supervisors Achtenberg Alloto
Bierman Conroy Hallinan Hsieh
Kaufman Kennedy Migden

Absent: Supervisors Maher Shelley

I hereby certify that the foregoing ordinance was finally passed by the Board of Supervisors of the City and County of San Francisco

APR 29 1993

Date Approved

Clerk

Mayor

File No.
186-93-1

1 [Transfer of Steam Franchise]

2 APPROVING TRANSFER OF THE STEAM FRANCHISE AUTHORIZED BY THE BOARD OF
3 SUPERVISORS UNDER ORDINANCE NO. 418-75 FROM THE PACIFIC GAS AND
4 ELECTRIC COMPANY TO SAN FRANCISCO THERMAL, L.P.

6 Be it ordained by the People of the City and County of San Francisco:

8 Section 1. The purpose of this ordinance is to authorize the
9 transfer of a franchise granted for the purposes of providing steam
10 and heat to customers through conduits placed in city streets. The
11 San Francisco Board of Supervisors, by enacting Ordinance No. 418-75
12 (the Steam Franchise Ordinance), authorized the Pacific Gas and
13 Electric Company to construct, install, maintain and operate
14 underground steam conduits in streets, alleys and other public
15 places. The Pacific Gas and Electric Company has entered into an
16 agreement transferring its steam conduits to San Francisco Thermal,
17 L.P. This agreement is subject to the approval of the California
18 Public Utilities Commission. In addition, section 8 of the Steam
19 Franchise Ordinance provides that the franchise may be transferred
20 to another entity only with the approval of the Board of Supervisors.

22 Section 2. In accordance with section 8 of the Steam
23 Franchise Ordinance, transfer of this steam franchise by the Pacific
24 Gas and Electric Company to San Francisco Thermal, L.P., is hereby
25 approved. This transfer shall become effective upon the filing of

2295P

BOARD OF SUPERVISORS

PAGE NO. 1
03/07/93

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2 California Public Utilities Commission, with the Clerk of the Board
3 of Supervisors.

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6 and conditions of Ordinance No. 418-75 shall continue in full force
7 and effect.

9 APPROVED AS TO FORM:

10 LOUISE H. RENNE, City Attorney

12 By: 
Deputy City Attorney

Board of Supervisors, San Francisco

Passed for Second Reading

April 12, 1993

Ayes: Supervisors Alioto Bierman
Conroy Hallinan Kaufman Kennedy
Maher Migden Shelley

Absent: Supervisors Achtenberg
Haish

§ Finally Passed

§ April 19, 1993

§ Ayes: Supervisors Achtenberg Alioto
§ Bierman Conroy Hallinan Haish
§ Kaufman Kennedy Migden

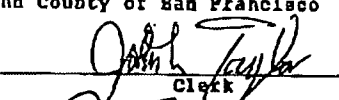
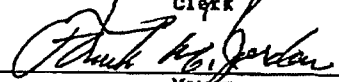
§ Absent: Supervisors Maher Shelley

I hereby certify that the foregoing ordinance
was finally passed by the Board of Supervisors
of the City and County of San Francisco

APR 29 1993

Date Approved

File No.
186-93-1


Clerk

Mayor

Z Y O 1 3 2 0 5 2 4

6-C

35

FILE NO. 367-75ORDINANCE NO. 418-75

STEAM FRANCHISE ORDINANCE

Ordinance Granting to Pacific Gas and Electric Company a Franchise to Install, Maintain and Operate Underground Steam Pipe Conduits in Order to Carry Steam and/or Steam Condensate for Heating and All Other Purposes in the Streets, Alleys and Other Public Places Within the City and County of San Francisco.

Be it ordained by the People of the City and County of San Francisco:

Section 1. The Board of Supervisors of the City and County of San Francisco does hereby determine and declare that the public interest, conveniences and necessity of the City and County of San Francisco and its inhabitants require that the City and County of San Francisco grant to Grantee the franchise to install, construct, maintain and operate underground steam pipe conduits in order to carry steam and/or steam condensate for heating and all other purposes in the streets, alleys and other public places within the City and County of San Francisco.

Section 2. Whenever in this ordinance the words or phrases hereinafter in this section defined are used, they shall have the respective meanings assigned to them in the following definitions unless, in the given instance the context wherein they are used shall clearly import a different meaning:

A. The word "Grantee" shall mean Pacific Gas and Electric Company and its lawful successors or assigns:

B. The words "City and County" shall mean the City and County of San Francisco, a municipal corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form; and shall include annexed territory.

C. The word "street, alley or other public place" shall mean any public street, highway, alley or other public place under the

1 jurisdiction of the City and County of San Francisco now or hereafter
2 dedicated within the City and County of San Francisco.

3 D. The phrase "steam pipe conduits" shall mean pipes, pipe-
4 lines, mains, services, traps, meters, gauges, regulators, valves,
5 conduits, vents, vaults, manholes, appliances, attachments, appurten-
6 ances and, without limitation of the foregoing, any other property
7 located or to be located in or below the streets, alleys or other
8 public places of the City and County of San Francisco, and used or
9 useful in transmitting and carrying steam and/or steam condensate, in-
10 cluding such steam pipe conduits installed or operated by the Grantee
11 before the effective date of this franchise.

12 E. The phrase "install, construct, maintain and operate" shall
13 mean to construct, erect, install, lay, operate, maintain, use, repair
14 or replace.

15 Section 3. There is hereby granted to the Grantee the franchise
16 to install, construct, maintain and operate steam pipe conduits for
17 heating and all other purposes in the streets, alleys and other public
18 places within the City and County of San Francisco.

19 Section 4. This franchise hereby granted shall be and continue
20 in full force until, with the consent of the Public Utilities Commis-
21 sion of the State of California, or other lawful authority having jur-
22 isdiction in the premises, it shall be voluntarily surrendered or
23 abandoned by the Grantee, or until the City and County by agreement
24 shall purchase or through eminent domain shall condemn and acquire all
25 property actually used and useful in the exercise of said franchise
26 and situated within the territorial limits of the City and County, or
27 until it shall be forfeited for noncompliance with its terms by the
28 Grantee.

29 Section 5. This franchise is granted upon the following terms,
30 and subject to the following conditions:

Z Y J 1 3 2 0 6 2 6

1 A. The franchise herein granted is upon the express condition
2 that the Grantee, as consideration therefor and as compensation for
3 the use of the City streets, shall pay annually to the City during
4 the term of the franchise a sum equal to two percent (2%) of the gross
5 annual receipts of the Grantee arising from the use, operation, or
6 possession of the franchise, such percentage to commence to accrue on
7 the date the ordinance granting the franchise becomes effective. The
8 Grantee shall file with the Clerk of the Board of Supervisors, within
9 three (3) months of the expiration of each calendar year, following
10 the date of granting hereof and during the life of said franchise, a
11 duly verified statement showing in detail the gross receipts of
12 Grantee during the preceding calendar year, arising from the use,
13 operation or possession of the franchise. Grantee shall pay the City
14 and County of San Francisco within three (3) months and fifteen (15)
15 days after the expiration of the calendar year, in lawful money of
16 the United States of America, the aforesaid percentage of its gross
17 receipts for such calendar year, covered by the above mentioned state-
18 ment. The Grantee shall keep its accounts in such form as to enable
19 the City, or its duly authorized representatives, to ascertain and
20 check the amounts due the City under said franchise.

21 B. The Grantee shall at all times make and keep in the City and
22 County of San Francisco full and complete plans, maps and records show-
23 ing the exact locations of all steam pipe conduits installed, con-
24 structed, maintained or operated pursuant to this franchise.

25 C. The Grantee shall (1) construct, install and maintain all
26 pipes and appurtenances in conformity with all the lawful ordinances,
27 rules and regulations heretofore or hereafter adopted by the Board of
28 Supervisors, or other legislative body of the City, in the exercise of
29 the police powers of the City; (2) pay to the City on demand the cost
30 of all repairs to public property made necessary by any of the

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1 operations of the Grantee; (3) remove or relocate without expense to
2 the City any facilities installed, used and maintained under the
3 franchise hereby granted, if and when made necessary by any lawful
4 change of grade, alignment or width of any street, or by any work to
5 be performed for municipal purposes.

6 D. The Grantee may charge for steam and/or steam condensate
7 furnished by it within the limits of the City under the franchise
8 hereby granted such rates only as shall be fixed in accordance with
9 laws now in force or hereafter enacted.

10 E. The Grantee shall indemnify and save harmless the
11 City, its boards, commissions, officers, agents and employees, and any
12 and all other public agencies, and their members, officers, agents and
13 employees, and any and all other public agencies, and their members,
14 officers, agents and employees, against any and all liabilities for
15 injury to or death of any person or any injury to any property caused
16 by the Grantee, its officers, agents or employees in the construction,
17 operation or maintenance of its property, or arising out of the exer-
18 cise of any right or privilege under this franchise.

19 F. Within ten (10) days after the passage and taking effect of
20 this ordinance, the Grantee shall file with the Clerk of the Board of
21 Supervisors a written acceptance of the franchise hereby granted and
22 an agreement to comply with the terms thereof.

23 Section 6. The franchise hereby granted shall not in any way
24 or to any extent impair or affect the right of the City to acquire the
25 property of the Grantee either by purchase or through the exercise of
26 the right of eminent domain, and nothing herein contained shall be
27 construed to contract away or to modify or to abridge the City's
28 right to exercise the power of eminent domain.

29 Section 7. If the Grantee shall fail, neglect or refuse to
30 comply with any of the provisions or conditions prescribed in the

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franchise hereby granted, and shall not within thirty (30) days, or such additional time as may be allowed by the Board of Supervisors or other legislative body of the City, after written demand for compliance therewith, begin the work of compliance, or after such beginning, shall not prosecute the same with due diligence to completion, the City may sue in its own name in the manner provided by law without the necessity of resorting to proceedings in quo warranto for the forfeiture of the franchise hereby granted.

Section 8. This franchise shall not be transferred except with the approval of the Board of Supervisors expressed by ordinance.

Section 9. Upon the acceptance of the franchise hereby granted, the Grantee shall stand discharged from any and all claims of the City for the use of the streets by Grantee prior to the taking effect of said franchise.

Section 10. This franchise shall not become effective until sixty (60) days after its passage.

APPROVED AS TO FORM:

THOMAS M. O'CONNOR
City Attorney

By /s/ JOHN A. ETCHEVERS
Deputy City Attorney
JOHN A. ETCHEVERS

EXHIBIT C

FORM OF EASEMENT AGREEMENTS

[PLEASE SEE ATTACHED]

RECORDING REQUESTED BY, AND
WHEN RECORDED RETURN TO:

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

and

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

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

EASEMENT AGREEMENT
Access and Utility Easement

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

RECITALS

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

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

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

AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12. **Insurance.**

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

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

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

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

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

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

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

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

13. **Liens.** Grantee will keep the Easement Area and all of City's property free from any liens or claims arising out of any work performed, material furnished, or obligations incurred by or for Grantee. If Grantee does not, within five (5) calendar days following the imposition of any such lien or the making of such claim, cause the lien to be released of record by payment or posting of a proper bond or causing the claim to be withdrawn, City will have in addition to all other remedies provided herein and by law or equity the right, but not the obligation, to cause the same to be released by such means as City deems proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by City and all expenses it incurs in connection therewith (including,

without limitation, reasonable attorneys' fees) will be payable to City by Grantee on demand. City will have the right at all times to post and keep posted on the Easement Area any notices permitted or required by law or that City deems proper for its protection and protection of the Easement Area and City's property, from mechanics' and materialmen's liens. Notwithstanding the foregoing, Grantee will have the right, on posting of an adequate bond or other security acceptable to City, to contest any such lien, and in such case, City will not seek to satisfy or discharge such lien unless Grantee has failed to do so within ten (10) calendar days after final determination of the validity thereof. Grantee will indemnify City and its Agents against any and all Claims arising out of any such contest.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20. Survival of Indemnities. Termination of this Agreement will not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Agreement, nor will it affect any provision of this Agreement that expressly states it will survive termination hereof. Unless otherwise expressly set forth herein, all such obligations shall survive the expiration or earlier termination of this Agreement for a period of three (3) years.

21. Waiver of Claims.

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

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

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

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

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

Grantee acknowledges that the releases contained herein includes all known and unknown, direct and indirect, disclosed and undisclosed, and anticipated and unanticipated claims. Grantee realizes and acknowledges that it has entered into this Agreement in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained in this Agreement will survive any termination of this Agreement. Notwithstanding anything to the contrary set forth in this Section, the foregoing waivers and releases are not intended to and do not cover (i) any claims arising from a breach any City representations or warranties set forth in this Agreement or (ii) any other breach by City of an express covenant, indemnity or warranty of City under this Agreement, or (iii) any fraud, criminal activity, or intentional misrepresentation by City, or (iv) any claims for personal injury or property damage arising from the negligence or willful misconduct of City and/or City's Agents and/or Invitees.

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

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

If to City, to:

San Francisco Municipal Transportation Agency

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

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

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

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

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

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

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

26. **Non-Discrimination.** Grantee will not, in the operation and use of the Easement Area, discriminate against any employee of, any City employee working with Grantee, or applicant for employment with Grantee, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations,

on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of those protected classes, or in retaliation for opposition to discrimination against those classes. Grantee does not as of the date of this Agreement and will not, in any of its operations in San Francisco, on real property owned by City, or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits, or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of the employees, where the domestic partnership has been registered with a governmental entity under state or local law authorizing the registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

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

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

29. **Taxes.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[SIGNATURES ON THE FOLLOWING PAGE]

Accepted and Agreed:

ECSF:

ENERGY CENTER SAN FRANCISCO LLC
a Delaware limited liability company

By: _____
Stephen Sorrentino
Regional General Manager

CITY:

CITY AND COUNTY OF SAN
FRANCISCO,
a municipal corporation

By: _____
Andrico Q. Penick
Director of Property

APPROVED AS TO FORM:

DAVID CHIU
City Attorney

By: _____
Nancy Taylor
Deputy City Attorney

NOTARY ACKNOWLEDGMENT

CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC

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

State of California)

County of San Francisco)

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

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

WITNESS my hand and official seal.

Signature: _____ (Seal)

CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC

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

State of California)

County of San Francisco)

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

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

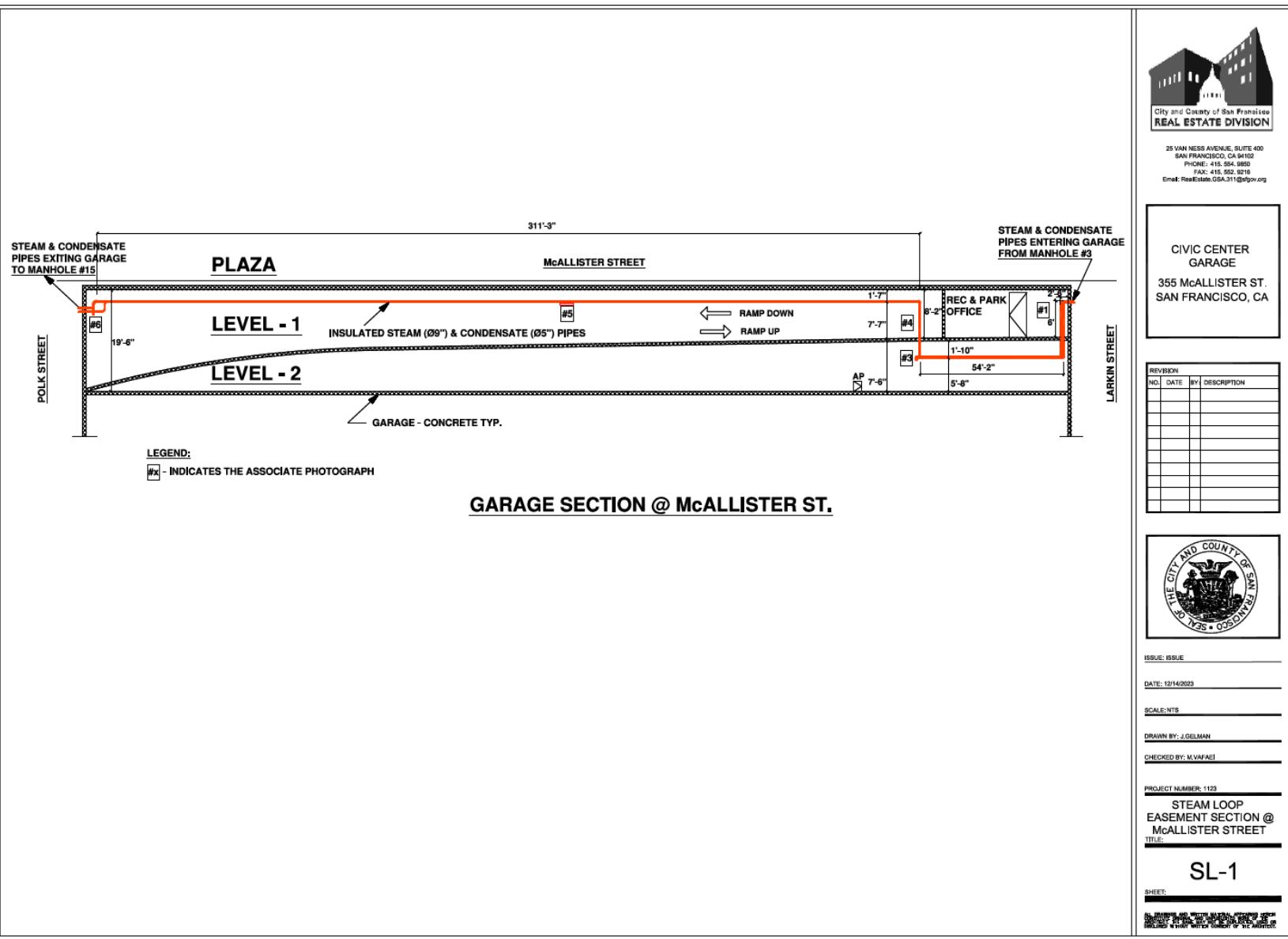
WITNESS my hand and official seal.

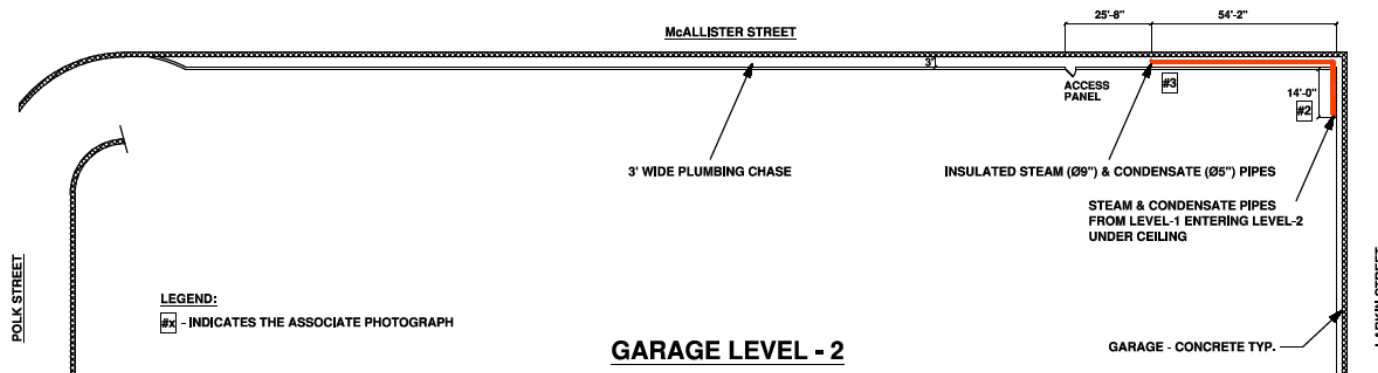
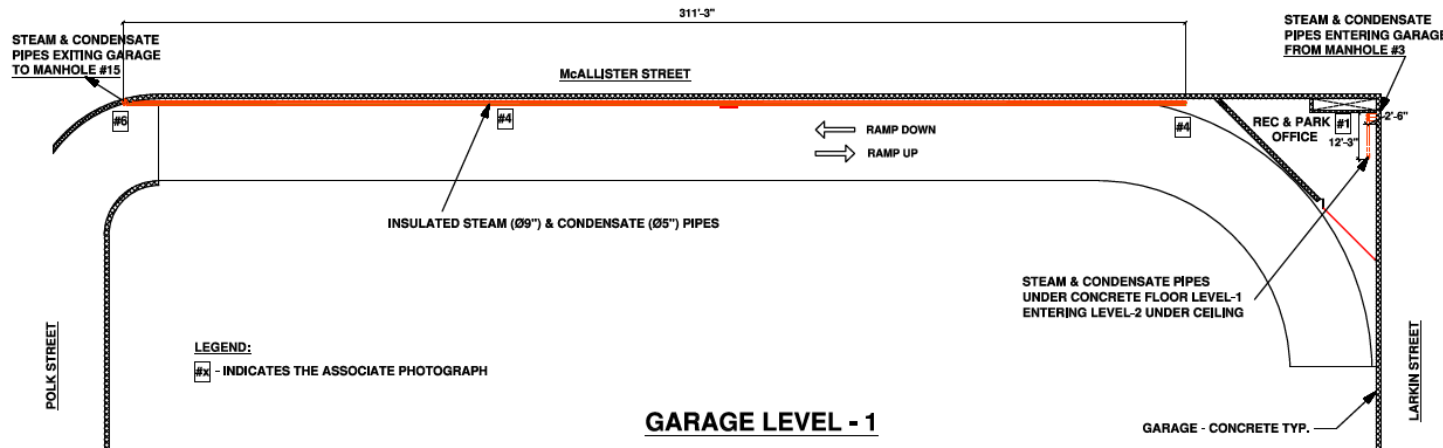
Signature: _____ (Seal)

EXHIBIT A

EASEMENT AREA-PIPELINE AREA

[SEE ATTACHED]

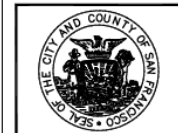




25 VAN NESS AVENUE, SUITE 400
SAN FRANCISCO, CA 94102
PHONE: 415.554.1850
FAX: 415.552.3219
Email: RealEstate.GSA.311@sf.gov

CIVIC CENTER
GARAGE
355 McALLISTER ST.
SAN FRANCISCO, CA

REVISION			
NO.	DATE	BY	DESCRIPTION



ISSUE: ISSUE

DATE: 12/14/2023

SCALE: NTS

DRAWN BY: J. GELMAN

CHECKED BY: M. VAFAEI

PROJECT NUMBER: 1123

STEAM LOOP
EASEMENT PLANS @
McALLISTER STREET
TITLE:

SL-2

SHEET:

ALL RIGHTS ARE RESERVED BY THE CITY AND COUNTY OF SAN FRANCISCO. NO PART OF THIS DOCUMENT MAY BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT PERMISSION IN WRITING FROM THE CITY AND COUNTY OF SAN FRANCISCO.

EXHIBIT D

FORM OF STEAM SERVICES AGREEMENT

[PLEASE SEE ATTACHED]

ENERGY CENTER SAN FRANCISCO LLC

**AGREEMENT FOR STEAM DISTRIBUTION FACILITIES
AND FOR STEAM SERVICE**

1. SFPUC Power Enterprise 525 Golden Gate Ave. Floor 7 SF CA 94102 ("Customer"), hereby agrees to purchase from ENERGY CENTER SAN FRANCISCO LLC ("Energy Center SF"), and Energy Center SF agrees to sell and deliver to Customer, all of the steam, up to but not exceeding a maximum rate of flow of 16,000 pounds per hour, required for the Customer's use. This purchase and sale shall be made in accordance with and subject to Energy Center SF's applicable rates and rules established from time to time by Energy Center SF and included in its Tariff Schedules Applicable to Steam Service on file with the Public Utilities Commission of the State of California ("Tariff Rules").
2. Customer hereby selects Energy Center SF's Schedule No. S-1, General Service, a copy of which is attached hereto and made a part hereof, as the schedule of rates and charges to be applicable to all steam service rendered hereunder, except as specifically provided in this Agreement. The Schedule No. S-1 is subject to change under procedures set by the Public Utilities Commission of the State of California.
3. Customer shall pay Energy Center SF monthly for said steam service at any established office of Energy Center SF. Customer agrees to use Energy Center SF steam as its exclusive source of hot water heating for all requirements originally connected pursuant to this agreement for the period agreement.
4. Delivery of steam hereunder by Energy Center SF will be at the point where pipes owned or leased by or under license to Customer contact Energy Center SF's pipes, and such steam shall be metered at such location or locations on Customer's side of said point of delivery as shall be satisfactory to Energy Center SF.
5. In order to furnish steam service hereunder, Energy Center SF will install, own, operate, and maintain service pipe, shutoff valve, and metering equipment.

NRG ENERGY CENTER SAN FRANCISCO LLC

**AGREEMENT FOR STEAM DISTRIBUTION FACILITIES
AND FOR STEAM SERVICE**

(Continued)

6. In the event Customer chooses to discontinue steam service prior to the completion of the term of this agreement, Customer agrees to pay Energy Center SF its share of the cost of service connection remaining based on the number of completed years of steam service provided in accordance with Table 1, below.

Table 1	
Whole Years of Completed Steam Service	Balance Remaining of Customer Share of Cost of Service Connection
0	
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	0

7. Energy Center SF shall not be responsible for any delay in the installation of said facilities resulting from shortage of labor or materials, strikes, labor disturbances, war, riot, weather conditions, governmental rule, regulation or order, including orders or judgments of any court, the prosecution to completion, including appeals, of any condemnation suit which Energy Center SF may deem necessary in order to obtain rights of way, act of God, or any cause or condition beyond the control of Energy Center SF.
8. Customer may, with Energy Center SF's written consent, assign this Agreement, subject to the assignee agreeing, in writing, to perform all of Customer's obligations hereunder for the duration of this Agreement.

ENERGY CENTER SAN FRANCISCO LLC

**AGREEMENT FOR STEAM DISTRIBUTION FACILITIES
AND FOR STEAM SERVICE**

(Continued)

9. This agreement shall become effective on the date hereof and shall remain in force for an initial term of 5 year(s) from and after (a) the date of first delivery of steam service hereunder as recorded in Energy Center SF's records, or (b) six (6) months subsequent to the date Energy Center SF is ready to supply steam service from the hereinabove- described facilities as such date is determined by Energy Center SF, whichever date shall be the earlier, and shall continue thereafter from year to year unless terminated by either party at the end of said initial term or any subsequent contract year by giving the other party ninety (90) days advance written notice of termination.
10. Customer hereby grants to Energy Center SF for the term of this agreement and any extensions or renewals hereof, the right to install, replace, maintain and use on Customer's property, facilities required to furnish steam service hereunder, together with the right of ingress to and egress from and across said property for the aforesaid purposes and for reading, testing, inspecting, and adjusting Energy Center SF's meters.
11. Customer shall indemnify Energy Center SF, its officers, agents, and employees against all loss, damage, expense and liability to third parties for injury to or death of persons or injury to property, arising out of or resulting from the construction, ownership, operation, or maintenance of, or by failure of, any of the Customer's works, equipment or facilities used in connection with this agreement. Upon the request of Energy Center SF, the Customer shall defend any action, claim or suit asserting a claim covered by this indemnity. The Customer shall pay all costs that may be incurred by Energy Center SF in enforcing this indemnity, including reasonable attorneys' fees.
12. All notices hereunder (other than notices designated for delivery to operating personnel, which shall be made in any manner reasonable under the circumstances) shall be sufficient if personally delivered or sent by registered or certified mail postage prepaid, courier service, or telecopy (followed by mail) addressed:

If to Energy Center SF:

Energy Center San Francisco L.L.C. 14
Mint Plaza, Suite 200
San Francisco, CA 94103
Attention: General Manager

If to Customer:

SFPUC Power Enterprise
525 Golden Gate Ave
San Francisco, CA. 94102
Attention Angie Lee

Energy Center SF and Customer by like notice may designate any further or different address or addresses to which notices shall be sent.

ENERGY CENTER SAN FRANCISCO LLC

**AGREEMENT FOR STEAM DISTRIBUTION FACILITIES
AND FOR STEAM SERVICE**

(Continued)

13. If any clause, provision or section of this agreement is ruled invalid by any controlling authority, the invalidity of such clause, provision or section shall not affect any of the remaining provisions hereof.
14. This agreement and any exhibits attached hereto and incorporated herein by reference constitute the entire agreement between the parties with respect to the matters contained herein. All prior agreements with respect thereto are superseded hereby and each party confirms that it is not relying on any representations or warranties of the other party except as specifically set forth herein.
15. No amendment or modification to this agreement shall be binding unless in writing and duly executed by both parties.
16. This agreement shall at all times be subject to such changes or modifications by the Public Utilities Commission of the State of California as said Commission may, from time to time, direct in the exercise of its jurisdiction.
17. This agreement shall be governed by the laws of the State of California.

SFPUC Power Enterprise and ENERGY CENTER SAN FRANCISCO LLC

By _____

Angie Lee

Mailing Address:
525 Golden Gate Ave
San Francisco, CA 94102

By _____

Mike Eurkus

Title: General Manager

Mailing Address:

Energy Center, SF LLC 14
Mint Plaza Suite 200 San
Francisco CA 94103

EXHIBIT E

FORM OF BILL OF SALE

BILL OF SALE

For good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“*City*”), does hereby sell, transfer and convey to ENERGY CENTER SAN FRANCISCO LLC, a Delaware limited liability company (“*ECSF*” or “*Buyer*”), the personal property described in the attached Schedule 1 and used in connection with the operation of that certain real property located at Civic Center bounded to the North by McAllister Street, to the East by Larkin Street, to the South by Grove Street and to the West by Dr. Carlton B. Goodlett Street, San Francisco, California.

WITHOUT LIMITING ANY OF THE PROVISIONS OF THE AGREEMENT OF PURCHASE AND SALE BETWEEN CITY AND BUYER, BUYER ACKNOWLEDGES AND AGREES THAT CITY IS SELLING AND BUYER IS PURCHASING SUCH PERSONAL PROPERTY ON AN “AS-IS WITH ALL FAULTS” BASIS AND THAT BUYER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM CITY, ITS AGENTS, EMPLOYEES OR OFFICERS, AS TO ANY MATTERS CONCERNING SUCH PERSONAL PROPERTY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THE AGREEMENT FOR THE TRANSFER OF CITY OWNED PERSONAL PROPERTY BETWEEN CITY AND BUYER INCLUDING THE EXCLUDED CLAIMS AS SET FORTH THEREIN.

Executed as of this _____ day of _____, 202____.

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
ANDRICO Q. PENICK
Director of Property

APPROVED AS TO FORM:

DAVID CHIU
City Attorney

By: _____
NANCY TAYLOR
Deputy City Attorney

SCHEDULE 4
AGREED UPON REPAIR WORK

PHASE 1:
Vault #3 to #4

PHASE 1 COMPLETION DATE: Three (3) Months From Work Commencement Date.

PHASE 1 AGREED UPON REPAIR WORK:

- Excavate approximately 60' of trench.
- Abate all asbestos relating to this Phase.
- Remove existing 6" steam line and 3" condensate line.
- Install new 6" steam line using schedule 40 seamless, domestic pipe and new 3" condensate line using schedule 80 seamless, domestic pipe.
- All piping to be installed per ASME power piping code B-31-1. All welds to be per ASME Section 9 boiler and pressure vessel compliance. All welds to be performed by certified, stamped welders.
- Insulate both pipes with 2" thick foam glass wrapped with waterproof pit wrap.
- Both pipes to be encased in a 4 sack concrete structure.
- Trench will be backfilled and compacted per SFDPW compliance.
- Surface will be restored per SFDPW compliance.

PHASE 2:
Vault # 13 to City Hall

PHASE 2 COMPLETION DATE: Six (6) Months From Work Commencement Date.

PHASE 2 AGREED UPON REPAIR WORK:

- Excavate approximately 110' of trench.
- Abate all asbestos relating to this Phase.
- Remove existing 3" steam line and 2 1/2" condensate line.
- Install new 3" steam line using schedule 40 seamless, domestic pipe and new 2 1/2" condensate line using schedule 80 seamless, domestic pipe.
- All piping to be installed per ASME power piping code B-31-1. All welds to be per ASME Section 9 boiler and pressure vessel compliance. All welds to be performed by certified, stamped welders.
- Insulate both pipes with 2" thick foam glass wrapped with waterproof pit wrap.
- Both pipes to be encased in a 4 sack concrete structure.
- Trench will be backfilled and compacted per SFDPW compliance.
- Surface will be restored per SFDPW compliance.
- Provided however, the following actions shall be completed within thirty (30) days of the Work Commencement Date subject to the terms and conditions of this Agreement.
 - Excavate 20' of trench West of Vault 13.
 - -Isolate City Hall (approximately 3 days) Can be done over weekend.
 - -Abate concrete and asbestos
 - -Perform temporary patch on leaking pipe.
 - -Re-energize City Hall.
 - Make the necessary repairs within the vaults with active steam leaks.

PHASE 3:
Vault #13 to #15

PHASE 3 COMPLETION DATE: Nine (9) Months From Work Commencement Date.

PHASE 3 AGREED UPON REPAIR WORK:

- Excavate approximately 390' of trench.
- Abate all asbestos relating to this Phase.
- Remove existing 6" steam line and 2 1/2" condensate line.
- Install new 6" steam line using schedule 40 seamless, domestic pipe and new 2 1/2" condensate line using schedule 80 seamless, domestic pipe.
- All piping to be installed per ASME power piping code B-31-1. All welds to be per ASME Section 9 boiler and pressure vessel compliance. All welds to be performed by certified, stamped welders.
- Insulate both pipes with 2" thick foam glass wrapped with waterproof pit wrap.
- Both pipes to be encased in a 4 sack concrete structure.
- Trench will be backfilled and compacted per SFDPW compliance.
- Surface will be restored per SFDPW compliance.
- Replace all piping and valves in vaults #13, #14, and #15 using 150# cast steel rated main valves, spiral wound gaskets, B-7 studs, and all #1000 psi rated fittings.

**FACILITY BOUNDARY AND METER INSTALLATIONS AT STEAM LOOP
BUILDINGS**

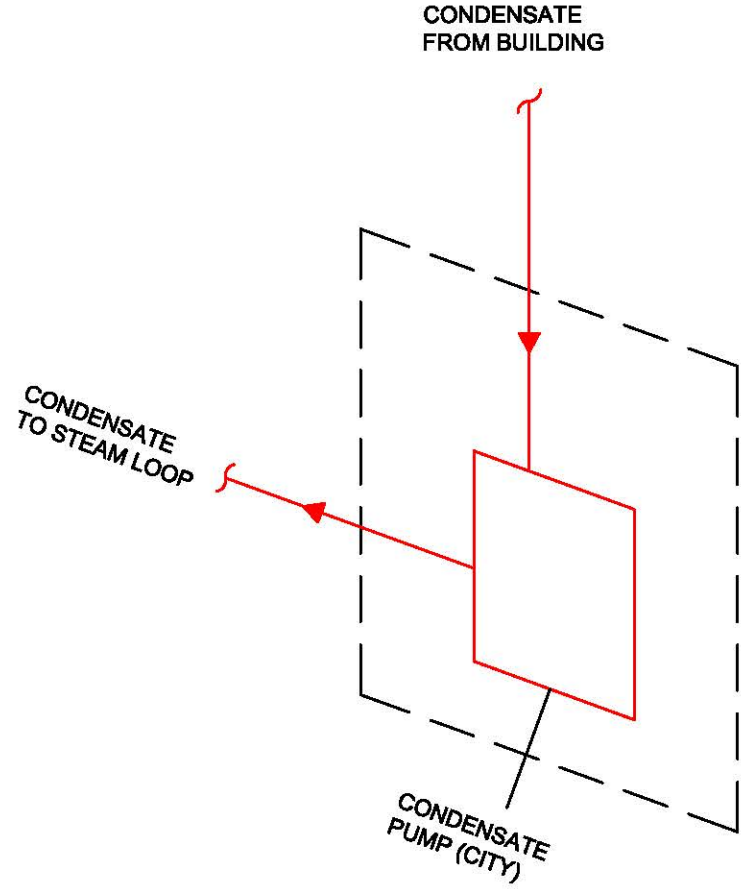
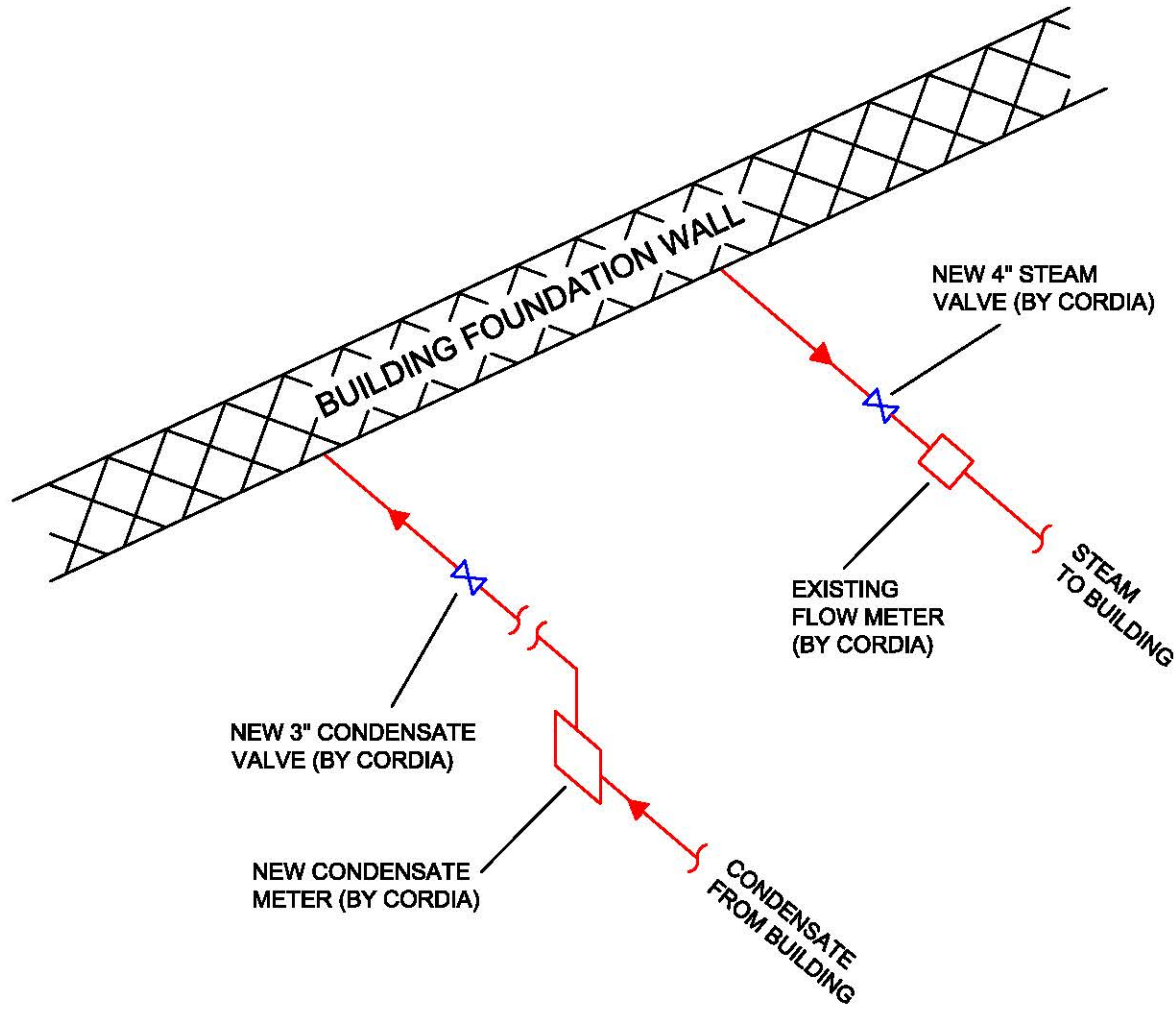
COMPLETION DATE: Three (3) Months from Work Commencement Date.

AGREED UPON REPAIR WORK:

- **99 Grove Street Building-** Work described below and depicted on attached Schedule 4-A:
 - The steam supply piping entering the property including the three initial shutoff valves on the main and branch lines (to be installed by ECSF) are the property of ECSF.
 - The condensate return piping exiting the building at the property line and the associate last existing shutoff valve before exiting the building are the property of ECSF.
 - The condensate meter and isolation valves at either side of the meter which are either existing or to be installed by ECSF will be the property of ECSF.
- **City Hall-** Work described below and depicted on attached Schedule 4-A:
 - The steam supply piping entering the property including the initial shutoff valves (to be installed by ECSF), the existing flow meter and the isolation valve at the outlet of the meter are the property of ECSF.
 - The condensate return piping exiting the building at the property line and the associate last shutoff valve before exiting the building (to be installed by ECSF), the new condensate meter and shutoff valve at the inlet of the meter are the property of ECSF.
- **Bill Graham Civic Auditorium-** Work described below and depicted on attached Schedule 4-A:
 - For both connection #1 and connection #2 at this building, the steam supply piping entering the property including the initial shutoff valve (to be installed by ECSF) are the property of ECSF.
 - For both connection #1 and connection #2 at this building, the condensate return piping exiting the building at the property line and the associate last shutoff valve before exiting the building (to be installed by ECSF) are the property of ECSF.
 - For both connection #1 and connection #2 at this building, the condensate meter and isolation valves at either side of the meter which are either existing or to be installed by ECSF will be the property of ECSF.

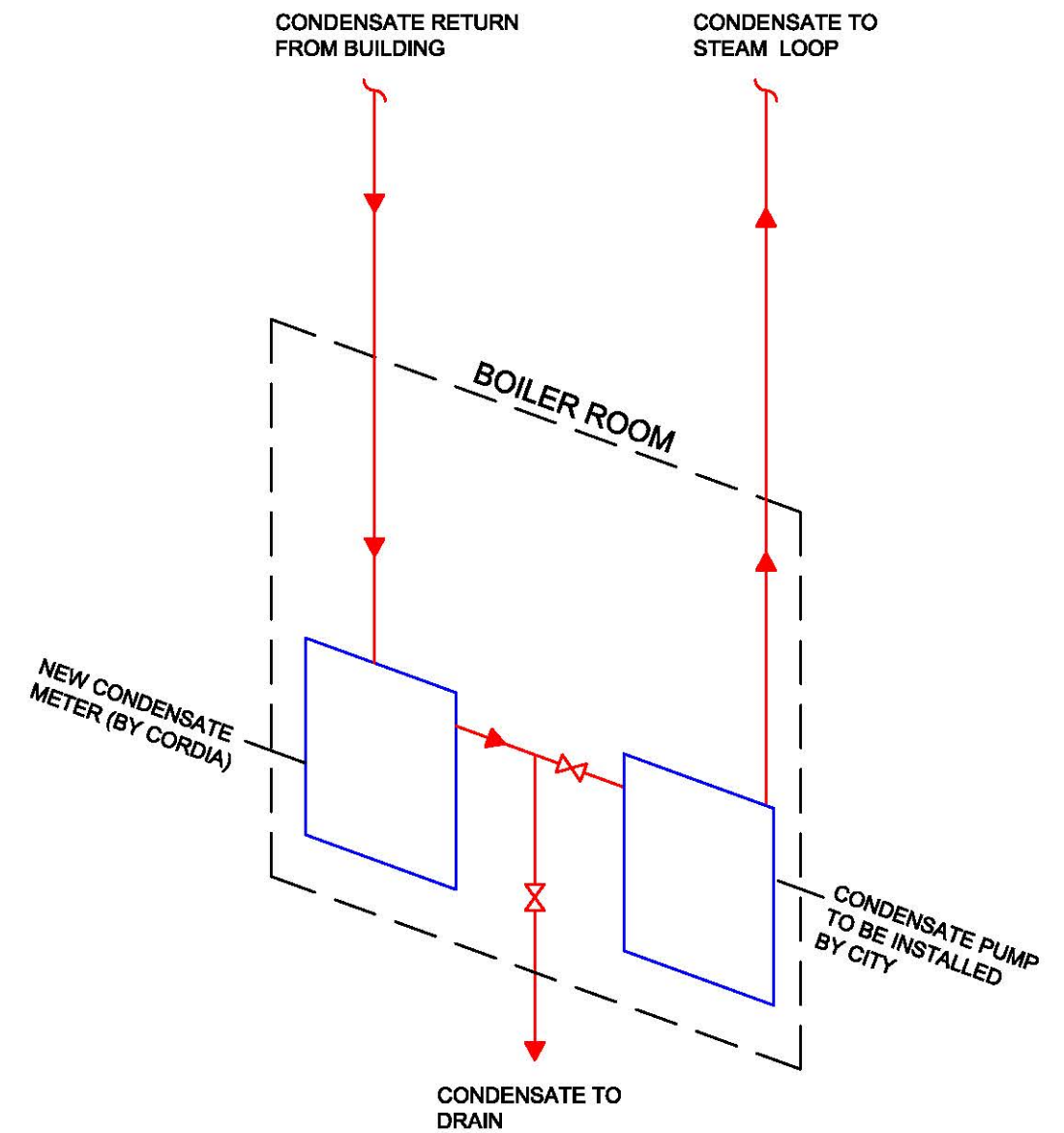
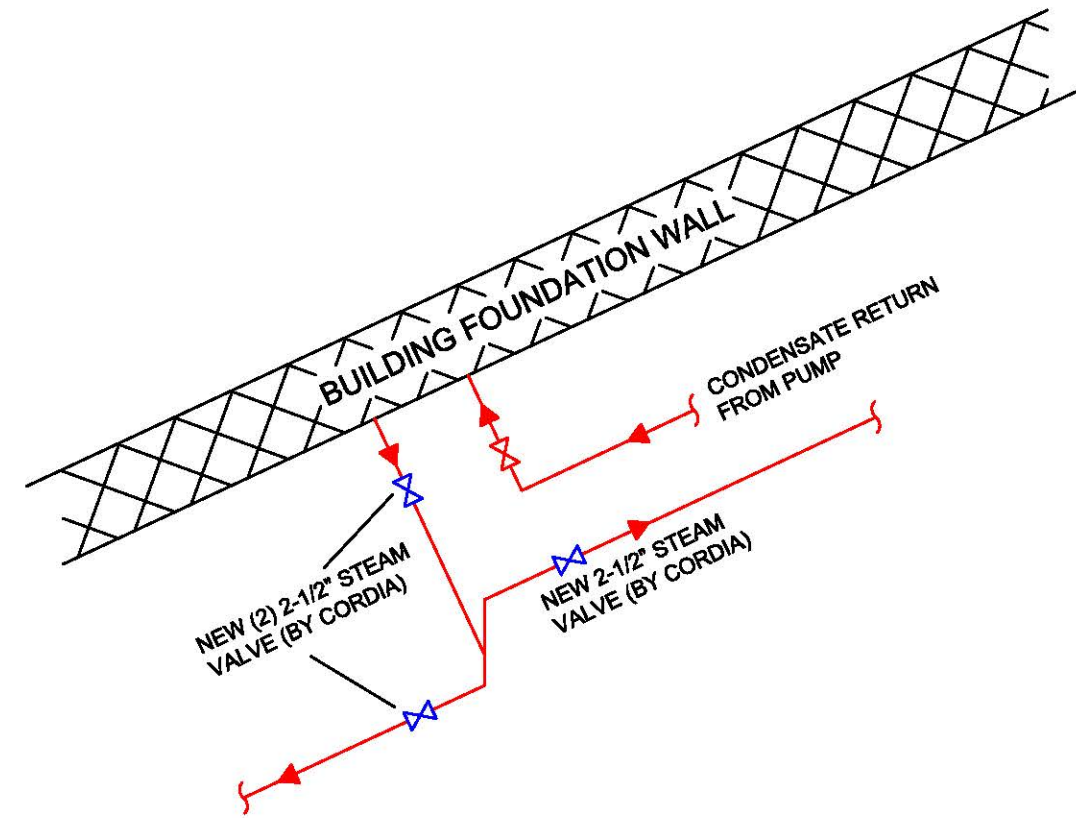
SCHEDULE 4-A
DEPICTION
[PLEASE SEE ATTACHED]

CITY HALL
BUILDING STEAM CONNECTIONS

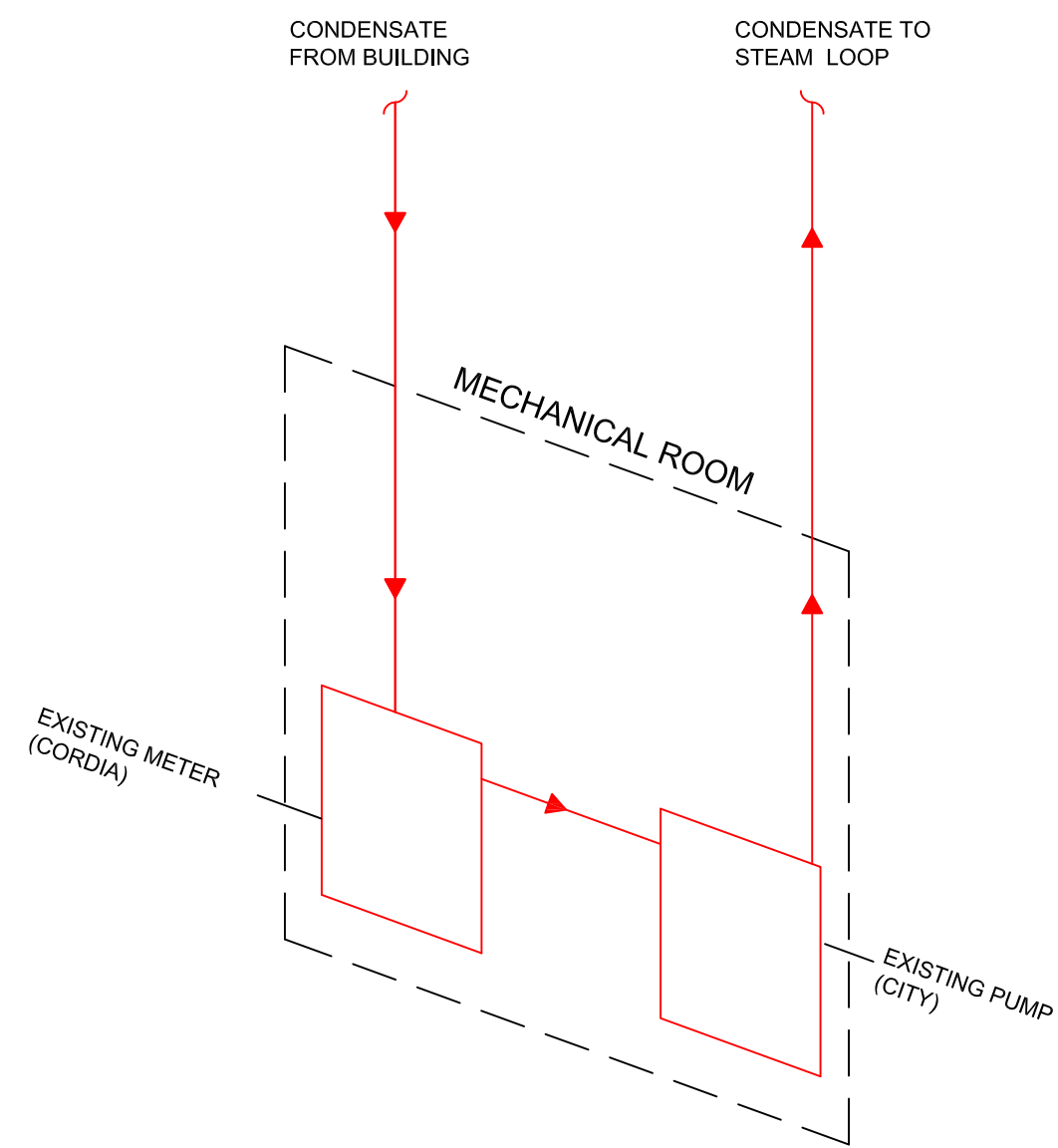
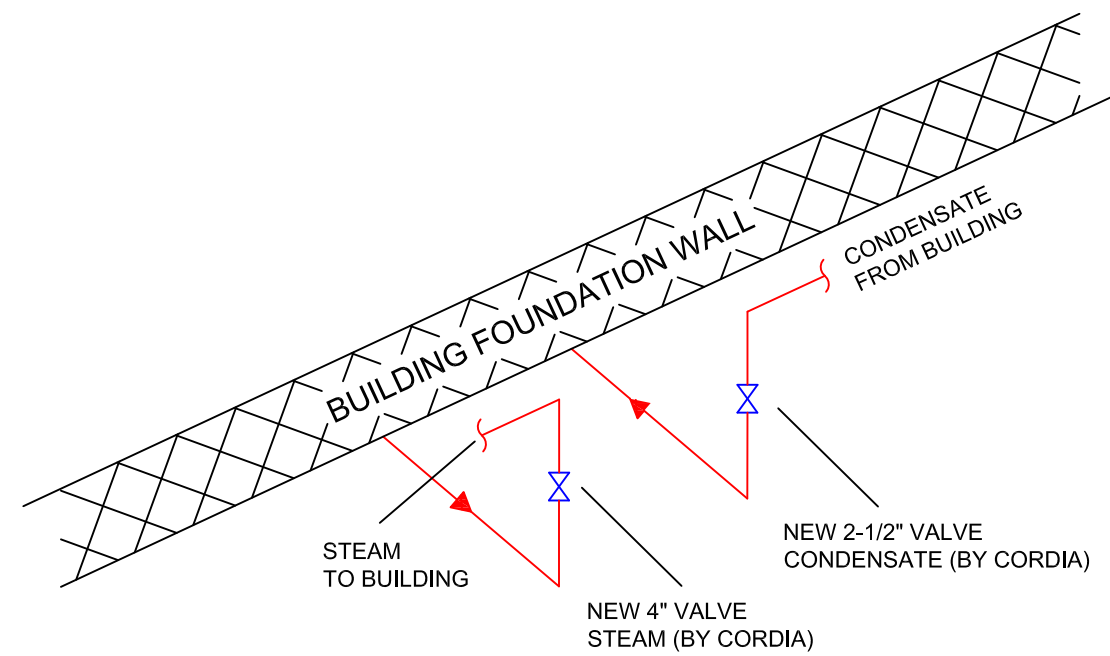


TYPICAL OF FOUR
MECHANICAL ROOMS
ONE IN EACH QUADRANT

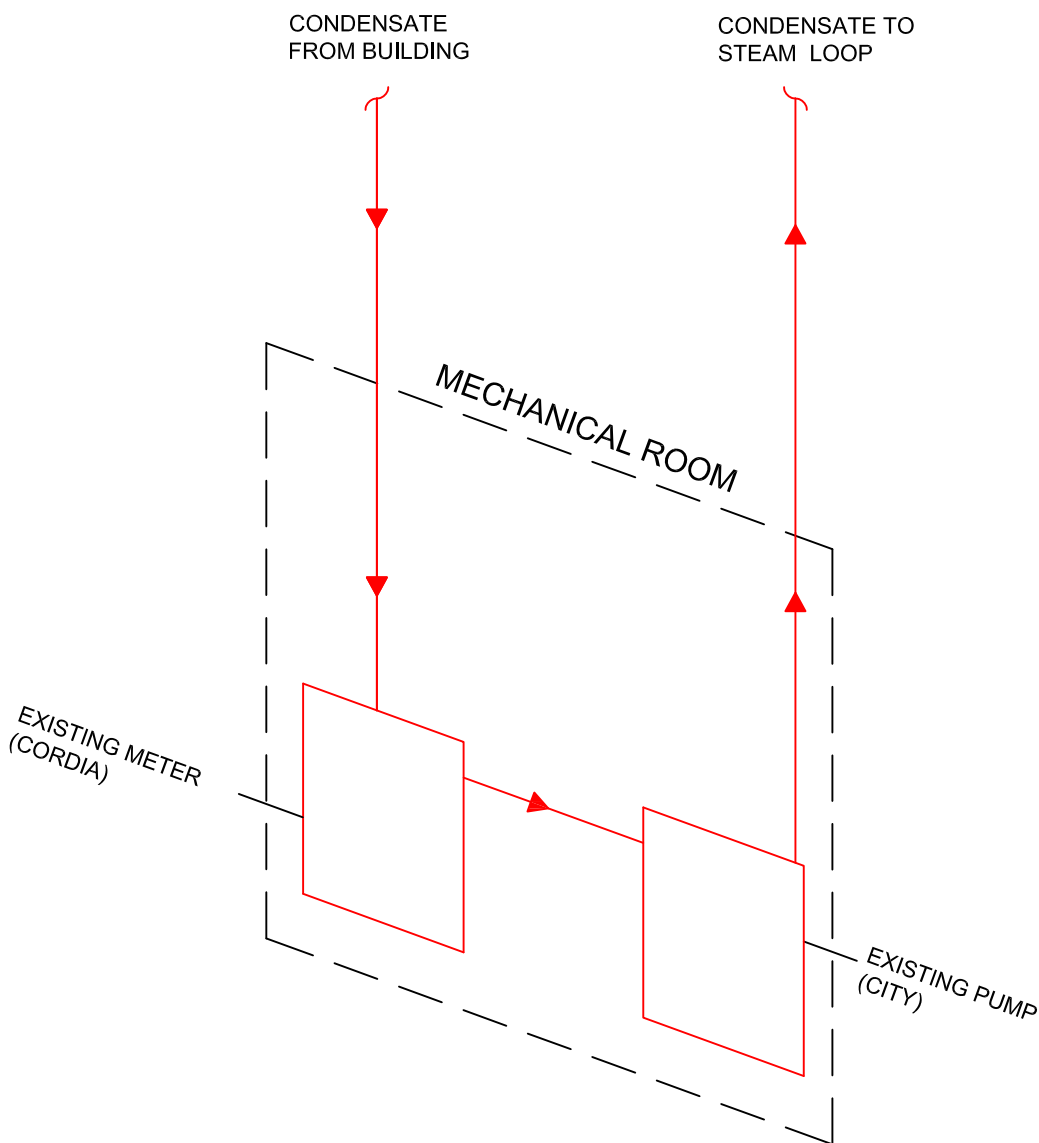
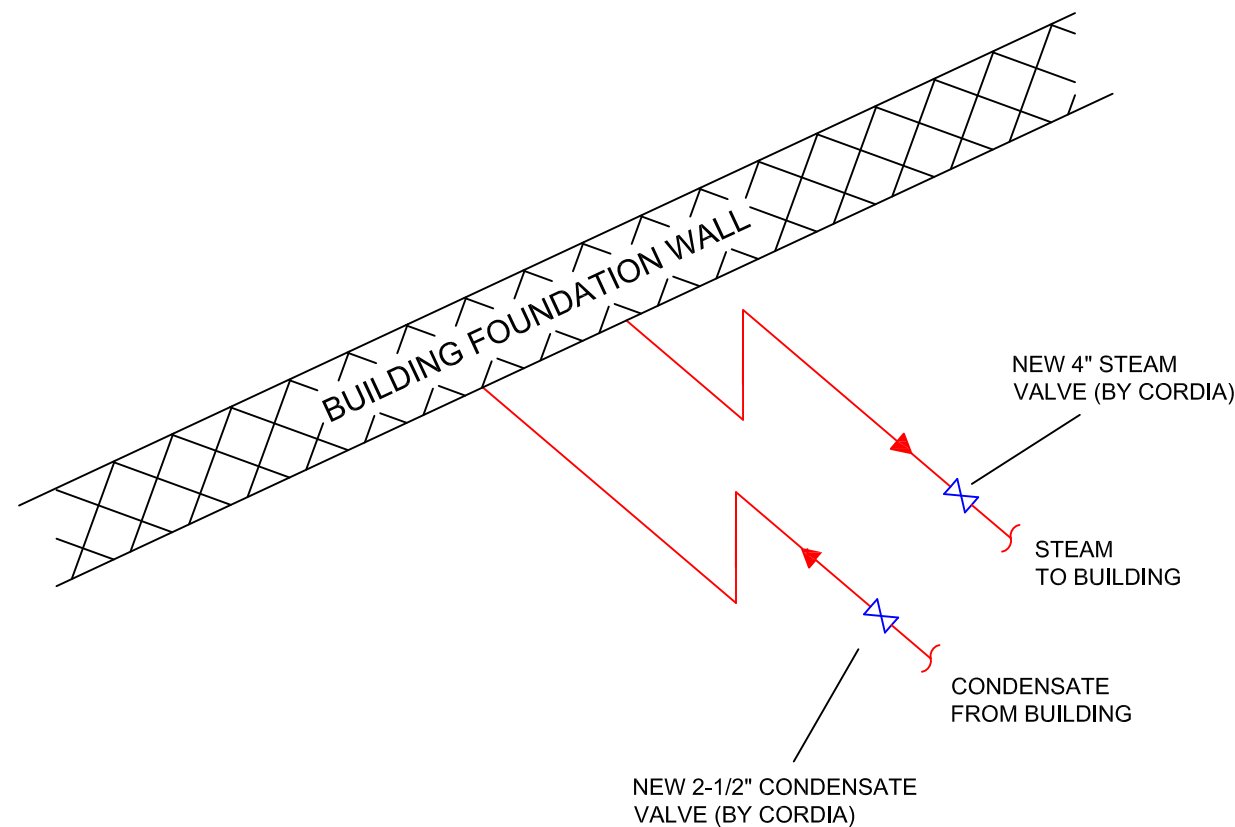
99 GROVE STREET BUILDING STEAM CONNECTIONS



BILL GRAHAM CIVIC AUDITORIUM
BUILDING STEAM CONNECTIONS - #1



BILL GRAHAM CIVIC AUDITORIUM BUILDING STEAM CONNECTIONS - #2



SCHEDULE 9.2(b)
CLAIMS, LITIGATION AND PROCEEDINGS