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(Exempt from Recording Fees
Pursuant to Government Code
Section 27383)

**CITY AND COUNTY OF SAN FRANCISCO
DEPARTMENT OF PUBLIC WORKS**

STREET ENCROACHMENT AGREEMENT

WITNESSETH

This Street Encroachment Agreement, dated as of _____, 2012 (this "**Agreement**"), is entered into by and between the City and County of San Francisco, a municipal corporation (the "**City**"), acting by and through its Department of Public Works ("**DPW**"), and SUTTER WEST BAY HOSPITALS, a California nonprofit public benefit corporation doing business as California Pacific Medical Center ("**Permittee**").

This Agreement is entered into in accordance with and subject to the terms and requirements of Resolution No. _____, and Ordinance No. _____, both adopted by the City's Board of Supervisors at its meeting of _____, true copies of which are attached hereto marked Exhibit A (the "**Board Resolution**"), and Exhibit B (the "**Board Ordinance**") and by this reference incorporated herein. All provisions of the Board Resolution are a part of this Agreement. To the extent that the terms of this Agreement and the Development Agreement in the Board Ordinance conflict, the terms in the Development Agreement shall prevail.

1. CPMC shall have the right to encroach on identified public right of way (the "**Encroachment Area**") for the limited purpose and in the manner described in Exhibit A (the "**Permitted Encroachment**"). The Permitted Encroachment shall be limited and narrowly construed to permit the specific uses and facilities, and only the uses and facilities, described in Exhibit A, and no other encroachment shall be permitted on the City's right of way property under this Agreement. The Permitted Encroachment shall constitute a revocable license, shall be personal to Permittee and shall not be assignable or transferable by Permittee (except as permitted under and subject to the Development Agreement), without the prior written consent of City in its sole discretion. Any such consent from City shall be in recordable form, and shall not become effective until it is signed by City and recorded in the Official Records of San Francisco. City may, at its option, require any Successor (as

defined below) to sign a new agreement for the Permitted Encroachment if City continues to allow the Permitted Encroachment.

Upon revocation, Permittee and any subsequent owner of the property described in Exhibit C (the "**Benefitted Property**") if this Agreement has not been terminated before the date of transfer of the Benefitted Property (each, a "**Successor** ") will, if deemed necessary by City, within 30 days of revocation, remove or cause to be removed the Permitted Encroachment and any other encumbrance of Permittee or its agents, and all related materials, at no cost to City, and shall restore the area to a condition reasonably satisfactory to the DPW. Permittee's right to use the Encroachment Area is appurtenant to the Benefitted Property.

All references to Permittee in this Agreement shall include, from and after the date of a transfer of the Benefitted Property, each Successor, and each Successor agrees to abide by all of the terms and provisions in this Agreement, including the releases, waivers and indemnifications in this Agreement, by acquiring the Benefitted Property; provided, (1) if any Successor does not wish to abide by the terms of this Agreement, it shall notify City of such fact before acquiring the Benefitted Property and request that Permittee remove the Permitted Encroachment, and (2) nothing in the foregoing shall release Permittee from its obligations under this Permit (except as and to the extent provided in the Development Agreement), including but not limited to the obligations to notify any potential Successor of this Agreement, to notify the City of any pending transfer of the Benefitted Property, and either remove the Permitted Encroachment before transferring the Benefitted Property or, in the alternative, obtain evidence that the Successor has obtained either a consent to the transfer of this Agreement or a new agreement from City for the Permitted Encroachment.

THE PRIVILEGE GIVEN TO PERMITTEE UNDER THIS AGREEMENT IS EFFECTIVE ONLY INsofar AS THE RIGHTS OF CITY IN THE PROPERTY ARE CONCERNED, AND PERMITTEE SHALL OBTAIN ANY FURTHER PERMISSION NECESSARY BECAUSE OF ANY OTHER EXISTING RIGHTS OR INTERESTS AFFECTING THE ENCROACHMENT AREA.

2. The occupancy, construction and maintenance of the Permitted Encroachment shall be in the location and as specified by the plans submitted, revised, approved and filed with DPW. Permittee, by entering into this Agreement, acknowledges its responsibility to strictly comply with all laws relating to Permittee's use of the Encroachment Area, including the occupancy, construction and maintenance requirements specified in Public Works Code Section 786 and the sidewalk maintenance requirements specified in Public Works Code Section 706, each as may be amended from time to time. Immediately following completion of any work permitted hereunder, Permittee shall remove all debris and any excess dirt and shall restore the Encroachment Area to its condition immediately prior to Permittee's work, to the satisfaction of DPW, except as to things contemplated by the Permit to remain.
3. Permittee shall verify the locations of City and utility company facilities that may be affected by the work authorized by this Agreement and shall assume all responsibility for any damage to such facilities due to the work performed by or on

behalf of Permittee. Permittee shall make satisfactory arrangements and payments for any necessary temporary relocation of City and public utility company facilities.

4. Promptly upon completion of the installation of the Permitted Encroachment, Permittee shall furnish DPW with two (2) complete copies of final as-built drawings for the Permitted Encroachment, which drawings shall include sufficient detail so as to allow DPW to precisely locate the facilities. In the event that Permittee or its agents or consultants prepares any environmental, seismic, geophysical or other written report relating to the Encroachment Area and/or any work performed thereon, Permittee shall furnish to City a complete copy of such report, including any schedules, exhibits and maps, promptly upon completion of the same.
5. Permittee is aware that the Encroachment Area constitutes a portion of City's municipal right of way property. Notwithstanding anything to the contrary in this Agreement, any and all of Permittee's activities under this Agreement shall be subject and subordinate at all times to City's existing and future use of the Encroachment Area for municipal purposes. City shall in no way be liable for any damage or destruction to Permittee's property and/or improvements resulting from any City activity in or around the Encroachment Area. Permittee shall, at City's request, immediately remove any property or improvements on the Encroachment Area as needed to allow City access to repair or maintain City facilities. In the event City deems it necessary, City shall have the right to remove any such property or improvements and City shall not be responsible for restoring or returning same to its prior condition.
6. Permittee promises and agrees to perform all the requirements and obligations of this Permit and to comply with all applicable laws, ordinances and regulations.

Permittee agrees to hold harmless, reimburse, defend, and indemnify the City, including, without limitation, each of its commissions, departments, officers, agents and employees, from and against any and all losses, liabilities, expenses, claims, demands, injuries, damages, fines, penalties, costs or judgments including, without limitation, attorneys' fees and costs (collectively, "claims") of any kind allegedly arising directly or indirectly from (i) any act by, omission by, or negligence of, Permittee or its contractors, or the officers, agents or employees of either, while engaged in the performance of the work authorized by this Agreement, or while in or about the Encroachment Area, or resulting directly or indirectly from the maintenance or installation of any equipment, facilities or structures authorized under this Agreement, (ii) any accident or injury to any contractor or subcontractor, or any officer, agent, or employee of either of them, while engaged in the performance of work under this Agreement, or while in or about the property, for any reason connected with the performance of the work, or arising from liens or claims for services rendered or labor or materials furnished in or for the performance of the work, under this Agreement, (iii) injuries or damages to real or personal property, and persons in, upon or in any way allegedly connected with the work authorized by this Agreement from any cause or claims arising at any time, and potentially falls within this indemnity provision, even if the allegations are or may be groundless, false or fraudulent, which obligations arises at the time such claim is tendered to Permittee by the City and continues at all times thereafter. Permittee agrees that the

indemnification obligations assumed under this Agreement shall survive expiration of the Agreement and completion of work.

Permittee shall obtain and maintain through the terms of this Agreement general liability, automobile liability or workers' compensation insurance as the City deems necessary to protect the City against claims for damages for personal injury, accidental death and property damage allegedly arising from any work done under this Agreement. Such insurance shall in no way limit Permittee's indemnity hereunder. Certificates of insurance, in form and with insurers satisfactory to the City, evidencing all coverages above shall be furnished to the City before commencing any operations under this Agreement, with complete copies of policies furnished promptly upon City request.

7. Permittee accepts the Encroachment Area in its "AS IS" condition, without representation or warranty of any kind by City, its officers, agents or employees, and subject to all applicable laws, rules and ordinances governing the use of the Encroachment Area. Neither City nor any of its commissions, departments, boards, officers, agents or employees shall be liable for any damage to the property of Permittee, its officers, agents, employees, contractors or subcontractors, or their employees, or for any bodily injury or death to such persons, resulting or arising from the condition of the Encroachment Area or its use by Permittee. Permittee on behalf of itself and its successors and assigns, waives its right to recover from, and forever releases and discharges, City and its Agents, and their respective heirs, successors, administrators, personal representatives and assigns, from any and all Claims, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the physical or environmental condition of the Encroachment Area and any related improvements or any law or regulation applicable thereto or the suitability of the Encroachment Area for Permittee's intended use.
8. Permittee acknowledges that this Permit is freely revocable by City and in view of such fact, Permittee expressly assumes the risk of making any expenditures in connection with this Agreement, even if such expenditures are substantial. Without limiting any indemnification obligations of Permittee or other waivers contained in this Permit and as a material part of the consideration for this Permit, Permittee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any present or future laws, statutes, or regulations, including, but not limited to, any claim for inverse condemnation or the payment of just compensation under law or equity, in the event that City exercises its right to revoke or terminate this Agreement.
9. In connection with the foregoing releases, Permittee acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

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

Permittee acknowledges that the releases contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Permittee 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 herein shall survive any termination of this Agreement.

10. Permittee will, at no cost to City, maintain in full force and effect an insurance policy or policies issued by an insurance company or companies satisfactory to the City's Controller and written by an insurance company or companies having a policy holders surplus of at least Twenty Million Dollars (\$20,000,000) or if insurance is written by more than one company, each company shall have policy holders surplus of at least ten times the amount insured.

Policy or policies shall afford liability insurance covering all operations, including but not limited to premises (definition of "premises" to be expanded to include the Permitted Encroachment), products, personal injuries and automobiles and injury to property for single limit of not less than Two Million Dollars (\$2,000,000) applying to bodily injuries, personal injuries and property damage or a combination of such injuries. Said policy or policies shall include the City and County of San Francisco and its officers and employees jointly and severally as additional insured and shall apply as primary insurance and shall stipulate that no other insurance affected by the City and County of San Francisco will be called on to contribute to a loss covered hereunder. Said policy or policies shall provide thirty (30) days notice to Controller, City and County of San Francisco, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102, if the policy or policies should be canceled or materially changed. The encroachment permission granted by this Agreement shall automatically terminate upon the termination of such insurance. Upon such termination, Permittee shall remove the encroachment and all property and materials of Permittee and restore the Encroachment Area at no cost to the City. "Personal Injuries", as used herein, shall include wrongful death.

11. Before beginning any work in the Encroachment Area, Permittee shall obtain any and all permits, licenses and approvals (collectively, "**Approvals**") of all regulatory agencies and other third parties that are required to commence, complete and maintain the permitted work. Permittee recognizes and agrees that no approval by DPW for purposes of Permittee's work hereunder shall be deemed to constitute the approval of any federal, state or local regulatory authority with jurisdiction, and nothing herein shall limit Permittee's obligation to obtain all such Approvals, at Permittee's sole cost. Without limiting the foregoing, Permittee shall obtain a building permit at the Central Permit Bureau, 1660 Mission Street for the construction or alteration of any building.
12. Permittee shall contact the Street Permit Section (415) 554-5810, at least 48 hours prior to starting work to arrange an inspection schedule.
13. Permittee agrees to notify any potential Successor of the existence of this Agreement and the Permitted Encroachment, and either to remove the Permitted

Encroachment or obtain evidence that the Successor has obtained a new agreement from DPW, or consented to the transfer of this Agreement, 60 days in advance of any transfer of the Benefitted Property. Permittee's obligation to remove the Permitted Encroachment and restore the Encroachment Area to a condition satisfactory to the DPW shall survive the revocation, expiration or termination of this Agreement if City does not issue a new permit for the Permitted Encroachment or consent to a transfer of this Agreement as set forth above.

14. Permittee recognizes and understands that this Agreement may create a possessory interest subject to property taxation and that Permittee may be subject to the payment of such taxes.

In witness whereof, the parties have executed this Agreement this _____ day of _____, 20__.

City and County of San Francisco, acting
by and through its Department of Public Works

By: _____
Director, DPW

CPMC:

SUTTER WEST BAY HOSPITALS,
a California non-profit public benefit
corporation

By: _____
Mike Cohill, its President

By: _____
John Gates, its Chief Financial
Officer

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____ before me, _____ Notary Public in and for
said County and State, personally appeared _____ who
proved to me on 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 this 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

(NOTARY STAMP OR SEAL)

Notary Public in and for said
County and State