

EXCLUSIVE NEGOTIATION AGREEMENT

by and between

**CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation
acting by and through the
SAN FRANCISCO PUBLIC UTILITIES COMMISSION**

and

**RESERVOIR COMMUNITY PARTNERS, LLC,
a Delaware limited liability company**

BALBOA RESERVOIR

December 8, 2017

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EXHIBITS

- EXHIBIT A: PROJECT SITE**
- EXHIBIT B: FEE SCHEDULE**
- EXHIBIT C: PERMIT TO ENTER**
- EXHIBIT D: FIRST SOURCE HIRING**

APPENDIX: DEFINED TERMS AND DESCRIPTIONS

EXCLUSIVE NEGOTIATION AGREEMENT

This EXCLUSIVE NEGOTIATION AGREEMENT (this "**Agreement**") dated as of December 8, 2017, for reference purposes only, is by and between the CITY AND COUNTY OF SAN FRANCISCO (the "**City**"), a municipal corporation acting by and through the SAN FRANCISCO PUBLIC UTILITIES COMMISSION (the "**SFPUC**" or the "**SFPUC Commission**"), and RESERVOIR COMMUNITY PARTNERS, LLC, a Delaware limited liability company ("**Developer**"). City and Developer are sometimes individually referred to in this Agreement as a "**Party**" and collectively as the "**Parties**". Defined terms are listed in the Appendix.

RECITALS

A. City, under the SFPUC's jurisdiction, owns approximately 17 acres of land commonly known as the **Balboa Reservoir** located adjacent to the City College of San Francisco Ocean Avenue Campus, which property is generally depicted on the attached **Exhibit A** (the "**Site**").

B. City issued a Request for Qualifications (the "**RFQ**") on November 10, 2016 to solicit qualified developers to plan, develop, and operate on the Site a housing-oriented mixed-use project. City desires to (i) create a mixed-income housing project that provides the SFPUC's water utility ratepayers with fair market value for its ratepayer utility asset; (ii) meet the objectives of maximizing the amount of affordable housing for low, moderate, and middle income households; and (iii) achieve a Site development demonstrating sensitivity to surrounding neighborhoods, and enhancing the quality of life for individuals who live, work, study, and visit in the surrounding area.

C. Nine developer teams made complete and timely submittals responding to the RFQ. Pursuant to the RFQ's requirements, the information submitted and the evaluation criteria focused on each developer team's experience, financial capacity, and high level vision for developing the Site. All nine proposals were reviewed and evaluated by an evaluation panel comprised of City staff from the SFPUC, the Office of Economic and Workforce Development ("**OEWD**"), the Planning Department, the Mayor's Office of Housing and Community Development, the San Francisco Municipal Transportation Agency, and the Chair of the Balboa Reservoir Community Advisory Committee and a representative of City College of San Francisco. After the evaluation panel scored each response, the SFPUC General Manager reviewed the scores and directed City staff to invite the three top scorers to submit proposals in response to the Request for Proposals (the "**RFP**") issued on March 9, 2017. Developer submitted an initial proposal in response to the RFP released on March 9, 2017 (the "**RFP Proposal**") for its proposed acquisition and development of a project (the "**Project**") pursuant to the terms described in the RFP Proposal and the RFP (the "**Project Terms**").

D. On November 14, 2017, by Resolution 17-0225, the SFPUC Commission awarded Developer the opportunity to proceed with exclusive negotiations and authorized the SFPUC to enter into this Agreement. This Agreement sets forth the process, terms, and conditions upon which City and Developer will negotiate and seek to complete a purchase and sale agreement ("**Purchase Agreement**"), quitclaim deed with reservation of certain easements (the "**Deed**"), development agreement ("**DA**"), declaration of use restrictions, and such other documents as are necessary to effectuate an approved Project for the Site (collectively, the "**Transaction Documents**").

E. The Parties enter into this Agreement with the understanding that the Project will continue to evolve through the public review process. The final terms and conditions of the Transaction Documents for the transfer of the Site and development of the Project must be negotiated during the term of this Agreement. All Project approval actions, including approval

of the Transaction Documents by the SFPUC, City's Board of Supervisors (the "**Board**") and Mayor, and other applicable City agencies are subject to environmental review through the California Environmental Quality Act, Cal. Pub. Res. Code Section 21000 *et seq.* ("**CEQA**"), the CEQA Guidelines, 15 Cal. Code Regs. Section 15000 *et seq.*, and San Francisco's Environmental Quality Regulations, codified at San Francisco Administrative Code Chapter 31. In order to comply with CEQA and give decision-makers and the public the opportunity to be aware of the environmental consequences of any contemplated actions with respect to the Project and to fully participate in the CEQA process, City retains the absolute and sole discretion to (i) structure and modify the Project as City determines may be necessary to comply with CEQA, (ii) select other feasible alternatives to the Project to avoid significant environmental impacts, (iii) balance the benefits of the Project against any significant environmental impacts before final approval by City if such significant impacts cannot otherwise be avoided, and/or (iv) determine not to proceed with the Project due to unavoidable significant impacts. Any provision of this Agreement that is found to conflict with City's exercise of such absolute discretion shall be void and without effect.

AGREEMENT

1. EXCLUSIVE NEGOTIATIONS

(a) **Exclusive Negotiation Period.** During the term of this Agreement (as extended or earlier terminated, the "**Exclusive Negotiation Period**"), City, represented by OEWD under the direction of the SFPUC and in consultation with other City agencies as appropriate, will negotiate exclusively with Developer the terms and conditions of the Transaction Documents, each of which must be in a form approved by the City Attorney, and will not solicit or consider any other proposals or negotiate with any other Person for the acquisition or development of the Site without Developer's consent, which consent Developer may grant or withhold in its sole discretion.

(b) **Interim Uses of the Site.** Developer acknowledges that: (i) certain portions of the Site are subject to an existing license agreement; and (ii) the SFPUC has the continuing right to enter into additional interim leases and other occupancy agreements affecting the use of the Site in the ordinary course of the SFPUC's management in accordance with **Section 2.6(a)**.

(c) **Good Faith Negotiations.** Each Party agrees during the Exclusive Negotiation Period to act in good faith in performing its obligations under this Agreement. Developer acknowledges that the SFPUC's obligation to negotiate in good faith is limited to the actions of the SFPUC General Manager (the "**General Manager**") and OEWD staff and does not obligate any Regulatory Agency, including the SFPUC Commission.

(d) **Due Diligence Period.** Developer has been given or will be given before the end of the Due Diligence Period (as defined below), a full opportunity to investigate the Site, either independently or through agents of Developer's own choosing, including, without limitation, the opportunity to conduct such inspections, tests, audits, verifications, investigations and other due diligence regarding the physical, environmental, title and legal conditions of the Site as Developer deems fit. Developer and its Agents may commence due diligence investigations on the Site on or after the date the Permit to Enter is executed by both Parties. The period for completion of all such investigations shall expire sixty (60) days after the date upon which the Permit to Enter is fully executed and Developer is granted any necessary access to the Site by the current occupant or licensee of the Site (the "**Due Diligence Period**"). Developer shall have the right to terminate this Agreement at any time during the Due Diligence Period upon written notice to City. Upon such termination, neither Developer nor City shall have any further rights or obligations hereunder, except that (i) City shall refund the Negotiating Fee (as defined in Section 4.2) to Developer, without interest; (ii) City will refund the City Costs Deposit (as defined in Section 4.1(d)) paid by Developer without interest, less any amount drawn down to

reimburse City for unpaid City Costs (as defined in Section 4.1); and (iii) as otherwise expressly provided herein.

2. TERM

2.1. Phase 1. The first phase of the Exclusive Negotiation Period ("**Phase 1**") will commence on the date the General Manager executes this Agreement, as authorized by the SFPUC Commission, (the "**Effective Date**") and, subject to a Force Majeure Extension, expire nine (9) months after the Effective Date (the "**Initial Expiration Date**"). If the SFPUC Endorsement and, if required, the Board Endorsement of the Development Overview have not occurred as of the Initial Expiration Date, and if Developer is not in default of this Agreement on the Initial Expiration Date, Phase 1 will automatically be extended for six (6) months, conditioned solely upon City's receipt of Developer's Extension Fee in the amount of Fifty Thousand Dollars (\$50,000). If the Board Endorsement of the Development Overview (or the SFPUC Endorsement if City determines the Board Endorsement is not required) does not occur prior to the end of such six-month extension period, Developer may request one or two additional extensions of no longer than twelve (12) months in the aggregate. The General Manager may deny Developer's request for such extension if, in the General Manager's reasonable judgment, Developer (a) fails to provide adequate documentation that it has proceeded diligently throughout the entirety of the Exclusive Negotiating Period, including timely completion of the Project Schedule milestones, or (b) does not commit to an expeditious and feasible revised Project Schedule corresponding with the length of the desired extension. Developer will pay to City a Developer's Extension Fee for any such additional extension of Phase 1 equal to Ten Thousand Dollars (\$10,000) for each month of extension.

Within two weeks of the commencement of Phase 1, City and Developer shall develop an anticipated schedule of milestones ("**Project Schedule**"), including: (a) Developer's submittal of its formation documents and operating or other managing agreements to City; (b) completion of the Project Description, Term Sheet, and fiscal feasibility analysis; (c) regulatory actions regarding the Term Sheet; (d) findings of fiscal feasibility, if required; (e) commencement and completion of environmental review; and (f) completion and final regulatory approvals of all Project Documents. The Project Schedule will be revised as a condition of Developer's exercise of its additional extensions of Phase 1 and Phase 2, as described in Section 2.1(b) and 2.2(b). In addition, each six (6) months during the Exclusive Negotiating Period, City and Developer will update the Project Schedule to reflect the progress of the Project milestones.

2.2. Phase 2. The second phase of the Exclusive Negotiation Period ("**Phase 2**") will commence on the day after the Board Endorsement of the Development Overview and, subject to a Force Majeure Extension, expire twenty-one (21) months later (the "**Phase 2 Expiration Date**"). If City, in its sole discretion, determines that the Board Endorsement is not necessary, then Phase 2 will commence on the day after the SFPUC Endorsement of the Development Overview. If Developer is not in default of this Agreement on the Phase 2 Expiration Date, Phase 2 will automatically be extended up to two (2) times, each time for six (6) months, conditioned solely upon City's receipt of Developer's Extension Fee in the amount of Fifty Thousand Dollars (\$50,000) for each such extension. If the Board of Supervisors does not approve all required Transaction Documents prior to the end of the second extension period, Developer may request one or more additional extension periods of no more than twenty-four (24) months in the aggregate. The General Manager may deny Developer's request for any such extension if, in the General Manager's reasonable judgment, Developer (a) fails to provide adequate documentation that it has proceeded diligently throughout the entirety of the Exclusive Negotiating Period, including timely completion of the Project Schedule, or (b) does not commit to an expeditious and feasible revised Project Schedule corresponding with the length of the desired extension. Developer will pay to City a Developer's Extension Fee equal to Ten Thousand Dollars (\$10,000) for each such additional month of extension of Phase 2.

Within two weeks of the commencement of Phase 2, City and Developer shall revise the Project Schedule to reflect anticipated changes in timing.

2.3. Regulatory Force Majeure.

(a) The SFPUC will grant to Developer one or more extensions under this Section (each, a “**Regulatory Force Majeure Extension**”) if the General Manager agrees in its reasonable discretion with Developer that Developer cannot satisfy the Project Schedule because of a delay resulting from a determination of a Regulatory Agency that is both reasonably outside of Developer’s control and reasonably likely to prevent the Parties from timely entering into the Transaction Documents (a “**Regulatory Force Majeure Event**”). No Extension Fee will be payable for any Regulatory Force Majeure Extension. Examples of Regulatory Force Majeure Events include delays caused by: (i) Developer’s revisions to the Project Description made in response to requests made by the SFPUC Commission or the Board at a public meeting; (ii) a regional agency’s decision to revise the standards or methods by which certain potentially significant impacts under the California Environmental Quality Act (“**CEQA**”) are evaluated; (iii) a delay in the publication of any environmental review document after Developer has met all requirements for publication in City’s reasonable judgment; and (iv) either Party’s inability to schedule a Board or commission hearing that is otherwise timely requested. Regulatory Force Majeure Events exclude any Litigation Force Majeure Event and any delay occasioned by the direct or indirect action, inaction, or negligence of Developer, any Affiliate of Developer, or any Developer consultant.

(b) In Phase 1, Developer may exercise one or more Regulatory Force Majeure Extensions of no more than six (6) months in the aggregate upon written notice to City that Developer is exercising an extension of the Exclusive Negotiation Period under this Subsection (b) and the General Manager’s agreement that a Regulatory Force Majeure Event exists (a “**Regulatory Force Majeure Notice**”). In Phase 2, Developer may exercise one or more Regulatory Force Majeure Extensions of no more than twelve (12) months in the aggregate upon delivery of a Regulatory Force Majeure Notice to City and City’s agreement that a Regulatory Force Majeure Event exists.

(c) Each Regulatory Force Majeure Notice given under Subsection (b) must: (i) describe the Regulatory Force Majeure Event and Developer’s efforts to resolve the event; (ii) be delivered promptly after Developer first learns of the Regulatory Force Majeure Event; and (iii) provide Developer’s good faith estimate of the dates by which Developer will be able to satisfy the remaining Project Schedule, within the limitations under Subsection (b).

2.4. Litigation Force Majeure.

(a) If Developer cannot satisfy any Project Schedule milestone because of a Litigation Force Majeure Event, then Developer may extend the Exclusive Negotiation Period (a “**Litigation Force Majeure Extension**”) by notice to City (a “**Litigation Force Majeure Notice**”). Developer must deliver a Litigation Force Majeure Notice within thirty (30) days after Developer first learns of the Litigation Force Majeure Event. In the Litigation Force Majeure Notice, Developer must describe the Litigation Force Majeure Event and provide its good faith estimate of the dates by which Developer will be able to satisfy the Project Schedule, the last of which must be on or before the date that is twenty-four (24) months after the Phase 2 Expiration Date.

(b) “**Litigation Force Majeure Event**” means any proceeding before any court, tribunal, or other judicial, adjudicative, or legislative decision-making body, including any administrative appeal, that challenges the validity of any City or SFPUC Regulatory Approval with respect to the Project, including any findings under CEQA, if the pendency of the proceeding is reasonably likely to prevent the Parties from timely entering into the Transaction Documents. Litigation Force Majeure Events exclude any Regulatory Force Majeure Events and

any action or proceeding brought by any Developer Affiliate or their Affiliates, any Developer consultant, or any other third party assisted directly or indirectly by Developer.

2.5. General Provisions Applicable to all Force Majeure Events.

(a) Subject to **Article 8** (Termination) and **Article 9** (Default), a Regulatory Force Majeure Extension or Litigation Force Majeure Extension, as applicable (in either case, a “**Force Majeure Extension**”), will be deemed validly in effect and extend the Initial Expiration Date or the Phase 2 Expiration Date, as applicable, for the period described in Developer’s Regulatory Force Majeure Notice or Litigation Force Majeure Notice (in either case, a “**Force Majeure Notice**”) or a shorter period if the Regulatory Force Majeure Event or Litigation Force Majeure Event (in either case, a “**Force Majeure Event**”) is resolved before such date, unless: (i) City gives Developer notice within ten (10) business days after City’s receipt of the Force Majeure Notice that, based on the General Manager’s reasonable judgment, no Force Majeure Event exists, or (ii) a Terminating Event has occurred before Developer delivered its Force Majeure Notice, or (iii) an Event of Default, or an event that, with notice or the passage of time or both would constitute an Event of Default, has occurred and is uncured on the date the Force Majeure Notice is delivered.

(b) In addition to a Force Majeure Extension under **Section 2.3** (Regulatory Force Majeure) or **Section 2.4** (Litigation Force Majeure), Developer may request one or more additional Force Majeure Extensions under this **Section 2.5(b)** (General Force Majeure Provisions) by submitting its written request to the General Manager describing the Force Majeure Event, providing Developer’s good faith estimate of the dates by which Developer will be able to satisfy the Project Schedule, as extended by any earlier Force Majeure Extension. The General Manager will determine whether to grant Developer’s request for an additional Force Majeure Extension or to submit Developer’s request to the SFPUC Commission to be considered in open session. The General Manager may grant or deny Developer’s request in its sole discretion.

(c) Except for the Phase 2 Expiration Date and the revised Project Schedule as specified in a valid Force Majeure Notice or as otherwise specified in a SFPUC decision granting an additional Force Majeure Extension, no other terms of this Agreement will be affected by a Force Majeure Extension. The Parties agree to proceed with due diligence and cooperate with one another to resolve the Force Majeure Event, and acknowledge that the resolution of the Force Majeure Event may affect Development Overview provisions to which they have previously agreed and require additional Development Overview negotiations.

2.6. SFPUC’s Reserved Rights. During the Exclusive Negotiation Period, the SFPUC reserves the right, in its sole discretion, to take any or all of the following actions:

(a) Enter into interim leases, licenses, use or occupancy agreements for use of any portion of the Site in the ordinary course of the SFPUC’s management, so long as the SFPUC may terminate such interim leases, use or occupancy agreements or they expire without penalty or expense to Developer before the anticipated close of escrow under the Purchase Agreement;

(b) Extend the Exclusive Negotiation Period; and

(c) Expand or contract the scope of the Project, including adding or removing minor areas to or from the Site or otherwise altering the Project concept from that initially proposed to respond to new information, community or environmental issues, or opportunities to improve the financial return to the SFPUC from the Project, or to enhance public benefits, provided that if the SFPUC Commission takes any action described in this subsection (c), Developer will have the right to terminate this Agreement upon notice to City and City will refund the City Costs Deposit paid by Developer, less any amount drawn down to reimburse City for unpaid City Costs, as Developer’s sole remedy. If the SFPUC Commission takes any action, described in this subsection (c) during Phase 2 that is not in furtherance of its rights and

obligations described in Section 6.2, and if it is determined that the Project is Economically Infeasible, then Developer's sole remedy shall be that (i) City will refund the City Costs Deposit as described in the preceding sentence, (ii) City will refund the Extension Fees, if any, paid by Developer, and (iii) the SFPUC shall not market the Site for sale, lease, or development, and shall not enter into negotiations with any other person or entity for the sale, lease, or development of the Site for a period of eighteen (18) months after the date of such action by the SFPUC Commission. Developer and City agree that Developer shall be entitled to the remedy of specific performance in order to enforce City's compliance with the foregoing obligation. "**Economically Infeasible**" means that Developer determines, in its reasonable, good faith discretion, that such action by the SFPUC Commission makes the Project economically infeasible, and the General Manager agrees, in its reasonable discretion, with Developer's determination.

3. **NEGOTIATION OF TERM SHEET AND TRANSACTION DOCUMENTS.**

3.1. Negotiating Principals. During the Exclusive Negotiation Period, City and Developer each will assign designated principals (i.e., an officer, board member, executive employee, or other agent with management level authority) and key staff members who will meet and negotiate diligently in good faith on its behalf in exclusive negotiations.

(a) City's designated negotiating principals are Ken Rich of OEWD, and Deputy General Manager Michael Carlin of the SFPUC.

(b) Developer's designated negotiating principals are Nathan Hong and Brad Wiblin.

(c) Designated negotiating principals may be changed by notice given in accordance with **Article 13** (Notices).

3.2. Project Description. The Parties acknowledge that the Project Terms are preliminary, will be refined, and currently do not include sufficient detail to allow negotiation of the Development Overview. Accordingly, Developer must work with City staff and consultants to develop a proposal that will serve as the basis for the Development Overview (the "**Project Description**"), the analysis of fiscal feasibility, if required under Chapter 29 of City's Administrative Code, and environmental review. The Project Description must be informed by preliminary City and community feedback.

3.3. Development Overview and Fiscal Feasibility Findings.

(a) Concurrently with negotiations between Developer and City over the Project Description, the Parties will negotiate a non-binding term sheet for the Project that is based on the Project Terms (the "**Development Overview**"). The Parties acknowledge that: (i) the Development Overview is intended to be a summary of the general terms for negotiating the Transaction Documents, which will be subject to review and approval by the parties, their respective legal counsel, and the SFPUC Commission; (ii) the Purchase Agreement and Deed will be subject to SFPUC Commission and Board approval; (iii) the DA will be subject to Board approval; and (iv) certain other Transaction Documents may be subject to SFPUC Commission approval, Board approval and other Regulatory Approvals. When the Project Description is complete, and Developer and City have agreed on the Development Overview, the General Manager in its sole discretion will either (i) recommend that the SFPUC Commission endorse the Project Description and the Development Overview, or (ii) provide the General Manager's endorsement of the Project Description and the Development Overview in lieu of the SFPUC Commission endorsement (the "**SFPUC Endorsement**").

(b) Concurrently with negotiations between Developer and City over the Project Description, City and its consultants will analyze the Project Description's fiscal feasibility under Administrative Code Chapter 29, if required.

(c) Following the SFPUC Endorsement of the Development Overview, the SFPUC may submit the Development Overview to the Board for its review and endorsement (the “**Board Endorsement**”). If required, the SFPUC will also submit a concurrent request for the Board’s determination on the Project’s financial feasibility under Administrative Code Chapter 29. If City, in its sole discretion, determines that the Board Endorsement is not necessary, then the Board Endorsement will not be required. At City’s request, Developer will attend the hearings and, if requested, make presentations on the Project to the full Board and any of its committees. Following the SFPUC Endorsement and the Board Endorsement (if necessary), references to the **Project** in this Agreement will mean the Project as reflected in the Project Description as endorsed by the SFPUC and the Board.

(d) The General Manager will have no obligation to execute the Development Overview until it receives the SFPUC Endorsement and, if necessary, the Board Endorsement.

(e) In negotiating the Transaction Documents, City and Developer may agree upon modifications or changes to the terms of the Development Overview, the Project, and the Project Description.

3.4. General Manager Approval Any approval by the General Manager in this Agreement may be given by the General Manager or its designee unless otherwise specified.

4. REQUIRED PAYMENTS

4.1. City Costs. In consideration of the right to negotiate exclusively with City for the Site, Developer agrees to pay to City the actual costs incurred by City for all work associated with the Project and preparing, adopting or negotiating the Transaction Documents (“**City Costs**”) from the date the SFPUC Commission authorizes exclusive negotiations with Developer through the expiration or earlier termination of the Exclusive Negotiation Period.

(a) Eligible City Costs shall include; (1) fees and expenses of the City Attorney’s Office staff at the rates charged by the City Attorney’s Office to third party outside developers from time to time; (2) actual fees and expenses of any outside counsel and third party consultants, advisors, and professionals (including, but not limited to, real estate appraisers); (3) reasonable costs related to public outreach and information; and (4) costs of staff time for City agencies in connection with the Project and Transaction Documents. City Costs shall not include costs that Developer pays or reimburses through the Planning Department or other project or permit applications. City shall obtain Developer’s approval, which approval shall not be unreasonably withheld, prior to engaging any outside counsel or consultants the costs of which will be included in City Costs. OEWD shall be responsible for coordinating the billing of all City agencies as described in this section.

(b) OEWD or its designee will provide Developer with quarterly invoices. These invoices shall indicate the hourly rate for City staff members at that time, the total number of hours spent by City staff on the tasks during the invoice period, any additional costs incurred by City and a brief non-confidential description of the work completed. Developer shall pay the invoiced amount within thirty (30) calendar days of receipt from City.

(c) If Developer in good faith disputes any portion of an invoice, then within sixty (60) calendar days of receipt of the invoice Developer shall provide written notice of the amount disputed and the reason for the dispute, and the parties shall use good faith efforts to reconcile the dispute as soon as practicable. Developer shall have no right to withhold the disputed amount. If any dispute is not resolved within ninety (90) days of Developer’s notice to City of the dispute, Developer may pursue all remedies at law or in equity to recover the disputed amount. Developer shall have no obligation to reimburse City for any cost that is not invoiced to Developer within forty-eight (48) months from the date the cost was incurred. Developer’s obligation to pay City Costs that have become due and payable will survive Termination or expiration of this Agreement.

(d) As a condition to entering into this Agreement, Developer has tendered to City the initial sum of Seventy Five Thousand Dollars (\$75,000) as a deposit against Developer's obligation to pay City's Costs (the "**City Costs Deposit**"), as supplemented from time to time to maintain a balance not less than Seventy-Five Thousand Dollars (\$75,000) from which to pay the City Costs. City will apply the Ten Thousand Dollar (\$10,000) deposit provided by Developer upon submitting its RFQ response towards the City Costs Deposit. City may apply the City Costs Deposit to reimburse City for the City Costs in the event that Developer does not pay quarterly invoices within thirty (30) days. Developer must tender funds as needed to replenish the City Costs Deposit within thirty (30) days after receipt of City's request. If any balance of City Costs Deposit remains at the time that Developer purchases the Site, City will refund such funds to Developer.

(e) City will provide Developer with a City's Cost Budget for Phase 1 with City's estimate of the City Costs that City expects to incur during Phase 1 (not including any extension under **Section 2.1** (Phase 1)).

4.2. Negotiating Fee. In consideration of the right to negotiate exclusively with City for the Site, Developer agrees to pay to City a negotiating fee (the "**Negotiating Fee**") of One Hundred Twenty-Five Thousand Dollars (\$125,000) no more than three (3) days after execution of this Agreement, and, thereafter, extension fees (the "**Extension Fees**") as provided in **Section 2**. City will apply the Extension Fees to the purchase price for the Site.

5. DEVELOPER'S OBLIGATIONS

Developer must pursue diligently and in good faith all of its obligations under this Agreement during the Exclusive Negotiation Period. In furtherance of this Agreement, Developer agrees as follows.

5.1. Developer's Costs. Developer will be solely responsible for all costs (including fees for its attorneys, architects, engineers, consultants, and other professionals) Developer incurs related to or arising from this Agreement, the development and construction of the Project, and the negotiations with City. Developer will have no claims against the SFPUC or City for reimbursement for Developer's costs even if: (a) City's Planning Commission or any other Regulatory Agency (including the Board of Supervisors when acting in a regulatory capacity) does not approve the required permits or issue required approvals; (b) the SFPUC Commission fails to endorse the Development Overview or to approve the Purchase Agreement or other Transaction Documents; or (c) the Board fails to endorse the Development Overview (if required), find the Project fiscally feasible (if required), or approve the Transaction Documents.

5.2. Submittals to City; Appraisals. Developer must: (a) diligently undertake and complete its due diligence review of the Site; (b) provide copies to City of all of Developer's reports and studies on material aspects of the Project, including engineering reports; (c) prepare financial projections and complete concept plans and schematic design plans for the Project, including floor plans, elevations, and renderings; and (d) provide copies to City of any new or amended documents relating to Developer's composition, members' obligations to Developer, and operations. In addition, Developer must submit appraisals for the Project in accordance with City's requirements when required by City.

5.3. Regulatory Approvals.

(a) The Parties acknowledge that rezoning and other discretionary actions or entitlements are required for the development of the Project (each, a "**Regulatory Approval**"). Any Regulatory Approvals obtained by Developer shall be conditioned on Developer's acquiring fee ownership of the Site. Developer agrees and acknowledges that maintaining professional working relations with any officials, departments, boards, commissions or agencies providing a Regulatory Approval (a "**Regulatory Agency**") is critical to City operations. Accordingly,

Developer shall use its best efforts throughout the Term and thereafter to not take any actions relating to the Project that would adversely affect City's relationship with any Regulatory Agency. Before taking any action to obtain any Regulatory Approval, Developer and City must agree upon a process and strategy for obtaining the required Regulatory Approvals.

(b) Developer will be solely responsible for applying for, obtaining, and paying all costs associated with all Regulatory Approvals, and may not file any application for any Regulatory Approval without first obtaining City's authorization, which City will not unreasonably withhold or delay. Developer agrees that City's withholding or delay in approving any application for a Regulatory Approval will be reasonable if the application does not substantially conform to the Development Overview or any subsequent development design and program.

(c) Developer must pay and discharge any fines or penalties imposed as a result of Developer's failure to comply with any Regulatory Approval, for which City will have no monetary or other liability.

(d) Developer must submit to the City Planning Commission, the San Francisco Planning Department's Major Environmental Analysis division ("**Planning**"), and any other Regulatory Agency having approval over any aspect of the Project all specifications, descriptive information, studies, reports, disclosures, and any other information as and when required to satisfy the application filing requirements of those departments or agencies.

(e) Developer acknowledges that the entire Project and a range of reasonable alternatives and feasible mitigation measures must be analyzed under CEQA prior to Project approval. Developer will work at the direction of Planning to complete all required submittals, studies, and other documents as Planning determines are needed for City to comply with CEQA requirements. The General Manager will cooperate in good faith to support Developer's application for "priority processing" by Planning, pursuant to Planning Director Bulletin No. 2.

(f) Developer acknowledges and agrees that City has made no representation or warranty that the Regulatory Approvals can be obtained. Developer further acknowledges and agrees that although the SFPUC is a Regulatory Agency, the SFPUC has no authority or influence over other City officials, departments, boards, commissions, or agencies or any other Regulatory Agency responsible for issuing required Regulatory Approvals and that the SFPUC is entering into this Agreement in its capacity as a landowner with a proprietary interest in the Site and not as a Regulatory Agency with certain police powers. Accordingly, no guarantee or presumption exists that any of the Regulatory Approvals will be issued by the appropriate Regulatory Agency, including the SFPUC, and the SFPUC's status as a City Regulatory Agency will not limit Developer's obligation to obtain Regulatory Approvals from appropriate Regulatory Agencies.

5.4. Periodic Reports. Developer must prepare and submit to City each twelve (12) months a meaningful summary of major activities taken during the previous period with regard to the Project, including the status of Regulatory Approvals and plans for community outreach and public relations activities for the subsequent period, in an agreed format. Such reports will include Developer's expenditures for professional services and will identify the costs and scope of any planning, engineering, or other work by discipline that Developer proposes to be reimbursed by future public financing by City, but Developer's reporting will not prejudice City's right to determine the extent and timing of any right of Developer to cost reimbursement as may be negotiated in the Development Overview and the Transaction Documents.

5.5. Weekly Meetings. Developer and appropriate City staff will meet weekly to discuss Project coordination, Transaction Documents, entitlement issues, and other Project-related matters, unless the meeting is waived or rescheduled by agreement.

6. CITY'S OBLIGATIONS AND RIGHTS

6.1. SFPUC's Obligations. The SFPUC, in its proprietary capacity, agrees to: (a) cooperate with Developer in filing for, processing, and obtaining all Regulatory Approvals in accordance with the regulatory approval strategy agreed to under **Section 5.3**; (b) if required, join with Developer as co-applicant in filing, processing, and obtaining all Regulatory Approvals; and (c) cooperate with requests for coordination, consultation, and scheduling additional meetings regarding the Project, including matters relating to Regulatory Approvals where the SFPUC is the co-applicant. This Section does not limit or otherwise constrain the SFPUC's or City's discretion, powers, and duties as a Regulatory Agency.

6.2. Final Action Subject to Environmental Review. Nothing in this Agreement commits the SFPUC or City to approve the Project. The SFPUC Commission and City will not approve any Transaction Documents or take any other discretionary actions that will have the effect of committing the SFPUC or City to the development of the Project until environmental review for the Project as required by CEQA has been completed in accordance with CEQA and SF Admin. Code Chapter 31. The SFPUC intends through exclusive negotiations to identify the actions and activities that would be necessary to develop the Site to facilitate meaningful environmental review. No Transaction Documents or other discretionary actions will be approved and become binding on the SFPUC and City unless and until (1) City, acting as the lead agency under CEQA, has determined that the environmental documentation it has prepared for the Project complies with CEQA; and (2) City has reviewed and considered the environmental documentation and adopted appropriate CEQA findings in compliance with CEQA. If the Project is found to cause potential significant environmental impacts, City retains absolute and sole discretion to require additional environmental analysis, if necessary, and to: (a) modify the Project as City determines may be necessary to comply with CEQA; (b) select feasible alternatives to the Project to avoid significant environmental impacts of the proposed Project; (c) require the implementation of specific mitigation measures to address environmental impacts of the Project identified; (d) reject the Project as proposed due to unavoidable significant environmental impacts of the Project; and (e) balance the benefits of the Project against any significant environmental impacts before final approval of the Project upon a finding that the economic, legal, social, technological or other benefits of the Project outweigh unavoidable significant environmental impacts of the Project.

6.3. Effectiveness of Transaction Documents. The effectiveness of the Purchase Agreement and Transaction Documents will be conditioned upon final approval of all rezoning legislation necessary for the Project.

7. PROHIBITED ACTIONS

7.1. No Assignment.

(a) Developer acknowledges that the SFPUC is entering into this Agreement on the basis of Developer's and Co-Developers' special skills, capabilities, and experience. This Agreement is personal to Developer and to Co-Developers and, except as provided in this Agreement, may not be Transferred by Developer or a Co-Developer without the SFPUC prior consent, which may be withheld in the SFPUC's sole and absolute discretion. Any Transfer in violation of this Section will be an incurable Event of Default under this Agreement.

(b) Developer and Co-Developer may Transfer its rights under this Agreement to Affiliates with the General Manager's consent, which it will not withhold unreasonably if the following conditions are met: (i) Developer or Co-Developer provides notice to City at least thirty (30) days before the effective date of the Transfer, together with information about the details of the Transfer, including the creditworthiness, skill, capability, and experience of the transferee Affiliate; and (ii) the General Manager is satisfied that the proposed transferee Affiliate, including any single-purpose entity specifically established for the Project,

meets the same standards of creditworthiness, skill, capability, and experience as Developer or Co-Developer, as applicable.

(c) The following definitions apply to this Agreement.

(i) “**Affiliate**” means: any person that Controls, is Controlled by, or is under Common Control with Developer or a Co-Developer.

(ii) “**Co-Developer**” means each of AvalonBay Communities, Inc., a *Maryland corporation* and Bridge Housing Corporation, California nonprofit public benefit corporation.

(iii) “**Control**” means a person holding or holding the right to acquire direct or indirect ownership of fifty percent (50%) or more of each class of equity interests or fifty percent (50%) or more of each class of interests that has a right to nominate, vote for, or otherwise select the members of the governing body. “**Common Control**” means two or more persons that are Controlled by another person.

(iv) “**Transfer**” means: (1) dissolution, merger, consolidation, or other reorganization, unless the Transfer is the result of a public transaction resulting in a new Controlling entity or entity under Common Control; (2) any cumulative or aggregate sale, assignment, encumbrance, or other transfer of fifty percent (50%) or more of legal or beneficial interests; (3) the withdrawal or substitution (whether voluntary, involuntary, or by operation of law and whether occurring at one time or over a period of time) of either Co-Developer or any member or shareholder of Developer or a Co-Developer owning fifty percent (50%) or more of the interests in Developer or a Co-Developer or rights to its capital or profits; or (4) the occurrence of any of the events described in paragraphs (1), (2), or (3) of this clause (iii) with respect to any Affiliate.

(d) Developer’s team for planning and executing the Project includes three entities other than the Co-Developers that provide depth of experience in developing various types of affordable housing or shared parking facilities. If one or more such entities does not participate in development of the Project as anticipated, Developer agrees to seek to replace the entity with one having similar expertise and will notify City and meet and confer with the General Manager with regard to the departure and replacement of such entity.

7.2. Prohibited Payments. Developer may not pay, or agree to pay, any fee or commission, or any other thing of value contingent on entering into this Agreement, any other Transaction Document, or any other agreement with City or the SFPUC related to the Project, to any City or SFPUC employee or official, or to any City or SFPUC consultant for the Project. By entering into this Agreement, Developer certifies to the SFPUC that Developer has not paid or agreed to pay any fee or commission, or any other thing of value contingent on entering into this Agreement, any other Transaction Document, or any other agreement with City or the SFPUC related to the Project, to any City or SFPUC employee or official, or to any City or SFPUC consultant for the Project.

7.3. Ballot Measures. Developer expressly agrees not to initiate, or to promote, support or pursue directly or indirectly the initiation of, any ballot measure relating to the Project without the prior consent of the SFPUC. Developer must provide the General Manager with reasonable prior written notice of its intent to initiate, promote, support, or otherwise pursue any ballot measure relating to the Project. The General Manager may either make the consent determination himself or seek the SFPUC Commission’s consent by resolution in open session.

7.4. No Entry. Developer expressly acknowledges and agrees that this Agreement does not give Developer or any of its employees, officers, members, managers, directors, agents, contractors, consultants, architects, or engineers (collectively, “**Agents**”) the right to enter or access the Site. The SFPUC will enter into a separate agreement with Developer specifying the terms and conditions of Developer’s and its Agents’ entry on and access to the Site, on the form of Permit to Enter attached as **Exhibit C** (“**Permit to Enter**”).

7.5. Public Relations and Outreach.

(a) Developer must present to the negotiating principals for City for their approval Developer's proposed public relations program and plans for conducting outreach to various community groups and stakeholders in the vicinity of the Project, for educating the public with respect to the Project, and for informing the Board and other Regulatory Agencies about the Project (the "**PR & Community Outreach Program**"). The PR & Community Outreach Program must include: (i) a budget for publicizing the Project (i.e., mailers, brochures, press releases, web-based communications, and forums educating the public); (ii) Developer's strategy for publicizing the Project and for keeping the appropriate Regulatory Agencies apprised of the Project; (iii) a schedule of presentations to community groups, stakeholders, and Regulatory Agencies during the Exclusive Negotiation Period; and (iv) Developer's proposal for keeping City informed of its activities during the Exclusive Negotiation Period.

(b) For any item involving communications with the media, the negotiating principals for City and Developer shall confer and agree upon a media strategy prior to either Party communicating with the media.

8. TERMINATION

8.1. Events Causing Termination. The occurrence of any of the following events (each, a "**Terminating Event**") will cause termination of and extinguish this Agreement ("**Termination**"), without an opportunity to cure or requiring further City action: (a) Subject to its rights under **Article 2** (Term), Developer fails to obtain the SFPUC Endorsement and the Board Endorsement(if required) by the Initial Expiration Date, as such may have been extended; or (b) the Exclusive Negotiation Period expires before the Transaction Documents are approved by the Board and any other necessary Regulatory Agencies; or (c) Developer voluntarily withdraws from or abandons the Project; or (d) Developer fails to comply with **Section 7.1** (No Assignment); or (e) the SFPUC exercises its right to Terminate following an Event of Default by Developer; or (f) Developer exercises its right to terminate this Agreement pursuant to **Section 2.6(c)** (SFPUC's Reserved Rights); or (g) Developer exercises its right to terminate this Agreement following an Event of Default by City.

8.2. Effect of Termination. Following Termination, Developer, City, and the SFPUC will be released from all further obligations under this Agreement except for any obligations that expressly survive Termination or expiration of this Agreement.

8.3. SFPUC's Rights Following Termination. Except as limited by Section 2.6(c), or as otherwise expressly limited under this Agreement, following Termination, the SFPUC Commission in its sole discretion may, without limitation: (a) agree to reinstate and consent to an assignment of this Agreement; (b) undertake other efforts to develop the Site, including issuing a new request for proposals and alternate uses; or (c) cease its efforts to develop the Site.

8.4. Project Assignment After Termination.

(a) If this Agreement is Terminated, Developer must: (i) provide SFPUC with a Project Assignment of all Project Materials, to the extent permitted under its consulting contracts, without cost to City and within sixty (60) days after Termination; (ii) satisfy all outstanding fees relating to the Project Materials that are then due and payable or will become due and payable for services relating to the Project rendered by any of the Project Consultants up to the date of Termination and provide written evidence of satisfaction to the SFPUC; and (iii) deliver copies of all Project Materials, subject to any and all limitations contained therein, in Developer's possession or, for materials not in Developer's possession, confirm, upon request from Project Consultants or the SFPUC, that Project Consultants are authorized to deliver or have delivered from the appropriate parties all Project Materials to the SFPUC. Notwithstanding the foregoing, if this Agreement is terminated by Developer pursuant to Section 2.6(c) during Phase 2 due to a determination of Economic Infeasibility, which determination is not in dispute

or if disputed is upheld, then Developer shall have no obligation to comply with clauses (i) and (iii) of this Section 8.4(a).

(b) Developer will be permitted to disclaim any representations or warranties with respect to the Project Materials (other than Developer's payment of fees), and, at Developer's request, the SFPUC will provide Developer with a release and indemnification from liability for future use of the applicable Project Materials. Developer's acceptance of the SFPUC's release and indemnification will be deemed to waive and release the SFPUC from any claims of proprietary rights or interest in the Project Materials, and Developer agrees that, following a Project Assignment, the SFPUC or its designee may use any of the Project Materials at the Site for any purpose, including pursuit of the same or a similar Project with a third party.

(c) The following definitions apply to this Agreement.

(i) **"Project Assignment"** means a contractual assignment of all of Developer's rights under a consulting contract with a Project Consultant, including any rights to use the Project Consultant's work product.

(ii) **"Project Consultants"** means all of Developer's architects, engineers, and other consultants.

(iii) **"Project Materials"** means all non-privileged, final and material studies, applications, reports, permits, plans, drawings, and similar work product, prepared for the Project by Project Consultants for Developer, exclusive of any internal financial information and projections prepared by Developer or any Project Consultant, except as otherwise agreed by the Parties.

9. DEFAULT

9.1. Developer's Event of Default. In addition to Terminating Events giving rise to Termination under **Article 8** (Termination), the occurrence of any of the following will constitute a default by Developer under this Agreement after the expiration of the applicable cure period, if any (each, an **"Event of Default"**):

(a) Developer fails to pay any sum (including the Negotiating Fee, Extension Fees, and replenishing the City Costs Deposit) when due under this Agreement, unless such failure to pay is cured within five (5) days after City's notice to Developer; or

(b) Developer fails to comply with any other provision of this Agreement, if not cured within thirty (30) days after City's notice to Developer describing the default and specifying the manner in which it may be cured, but if the default cannot be cured within the 30-day cure period, Developer will not be in default of this Agreement if Developer commences to cure the default within the 30-day cure period and diligently and in good faith prosecutes the cure to completion, provided that the default is cured within sixty (60) days after City's notice to Developer; or

(c) A voluntary or involuntary action is filed: (i) to have Developer adjudicated insolvent and unable to pay its debts as they mature or a petition for reorganization, arrangement, or liquidation under any bankruptcy or insolvency law, or a general assignment by Developer for the benefit of creditors; or (ii) seeking Developer's reorganization, arrangement, liquidation, or other relief under any law relating to bankruptcy, insolvency, or reorganization or seeking appointment of a trustee, receiver, or liquidator of Developer or any substantial part of Developer's assets; or

(d) Any of the events described in Subsection (c) occurs with respect to any of Developer's members with a Controlling interest in Developer.

9.2. City Event of Default. City's failure to comply with any provision of this Agreement, if the failure is not cured within thirty (30) days after Developer's notice to City, will constitute an event of default by City (**"City Event of Default"**); but if the City Event of Default

cannot be cured within the 30-day cure period, City will not be in default of this Agreement if City commences to cure the City Event of Default within the 30-day cure period and diligently and in good faith prosecutes the cure of the City Event of Default to completion.

10. REMEDIES

10.1. City's Remedies. Following a Developer Event of Default, City, at its option may: (a) Terminate this Agreement; (b) seek to recover from Developer any funds due and owing to City; (c) seek to enforce Developer's indemnity obligations; (d) seek to obtain copies or assignments of the Project Materials to which City is entitled; and (e) seek enforcement of any of its other remedies under this Agreement. These remedies are not exclusive, but are cumulative with any remedies now or later allowed by law or in equity.

10.2. Developer's Remedies. Following a City Event of Default, Developer will have the option, as its sole and exclusive remedy at law or in equity, to: (a) Terminate this Agreement by delivery of notice to City, and Developer and City will each be released from all liability under this Agreement (except for those obligations that survive Termination); or (b) file in any court of competent jurisdiction an action for specific performance to require City to perform under this Agreement (but Developer will not be entitled to recover from City Monetary Damages, or reimbursement of any fees paid by Developer, in connection with the City Event of Default). Developer, on behalf of itself and its Agents, successors and assigns, including but not limited to Co-Developers, waives any and all claims (as defined in Section 11.2) for Monetary Damages or other damages arising out of or relating to this Agreement, including loss of bargain, special, punitive, compensatory or consequential damages.

INITIALS: Developer: BN / NA

11. INDEMNITY; WAIVERS

11.1. Developer's Duty to Indemnify. To the fullest extent permitted by law, Developer agrees to indemnify and hold City, including the SFPUC, and their respective Agents (collectively, the "**Indemnified Parties**") harmless from and against any loss, expense, cost, compensation, damages, including foreseeable and unforeseeable loss of bargain, special, punitive, compensatory, and consequential damages, (collectively "**Monetary Damages**"), attorneys' fees, claims, liens, obligations, injuries, interest, penalties, fines, lawsuits and other proceedings, judgments, awards, or liabilities of any kind, known or unknown, contingent or otherwise, equitable relief, mandamus relief, specific performance, or any other relief (collectively, "**Losses**") that the Indemnified Parties may incur arising out of or related to any activity of Developer or its Agents under this Agreement. Notwithstanding anything herein to the contrary, Developer's obligations to the Indemnified Parties shall not extend to Monetary Damages and Losses to the extent arising out of the negligence or intentional misconduct of any Indemnified Party. Developer's obligations under this Section will survive the expiration or Termination of this Agreement.

11.2. Developer's Releases.

(a) Developer, on behalf of itself and its Agents, successors and assigns (collectively, "**Developer Agents**"), fully, unconditionally and irrevocably releases, discharges, and forever waives (collectively, "**releases**") any and all claims, demands, rights, and causes of action (collectively, "**claims**") against, and covenants not to sue or to pay the attorneys' fees and other litigation costs of any Party to sue, the SFPUC or City, or any of their respective Agents (collectively, "**City Agents**"), for Monetary Damages and Losses arising from, accruing from, or due to, directly or indirectly: (i) the facts or circumstances of or alleged in connection with the Project to the extent arising before the Effective Date; (ii) any failure by any Regulatory Agency to issue any necessary Regulatory Approval; and (iii) Developer's or its Agents' entry onto or activities conducted in, on or around the Site.

(b) Developer understands that if any facts concerning the claims released in this Agreement should be found to be other than or different from the facts now believed to be true, Developer expressly accepts and assumes the risk of the possible difference in facts and agrees that the release in this Agreement will remain effective. By placing its initials below, Developer specifically acknowledges and confirms the validity of the release made above and the fact that Developer was represented by or had the opportunity to consult with counsel, who explained the consequences of the above release at the time this Agreement was made.

INITIALS: Developer: EW / NA

11.3. City's Waiver of Claims for Consequential Damages

(a) City, on behalf of itself and its Agents, successors and assigns, including but not limited to the SFPUC, waives any and all claims for consequential damages arising out of or relating to this Agreement. This waiver includes, without limitation, damages incurred by City for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons.

INITIALS: City: ND

12. NOTICES

12.1. Form and Manner of Delivery. Any notice given under this Agreement must be in writing and delivered in person, by commercial courier, or by registered, certified mail, or express mail, return receipt requested, with postage prepaid, to the mailing addresses below. All notices under this Agreement will be deemed given, received, made, or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt. For the convenience of the Parties, copies of notices may also be given by email or telephone, but email or telephonic notice will not be binding on either Party. The effective time of a notice will not be affected by the time that email or telephonic notice was delivered.

12.2. Addresses for Notices. Addresses for notices given under this Agreement follow. Any contact information may be changed by giving written notice of the change in the manner provided above at least ten (10) days before the effective date of the change.

SFPUC: San Francisco Public Utilities Commission
Real Estate Services Division
525 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102
Attn: Real Estate Director
Balboa Reservoir Project

Telephone: (415) 487-5210
Email: RES@sfgwater.org

OEWD: San Francisco Office of Economic and Workforce
Development
Joint Development Division
1 Dr. Carlton B. Goodlett Pl., Room 448
San Francisco, CA 94102
Attn: Director of Development

Telephone: (415) 554-5194
Email: ken.rich@sfgov.org

With a copy to:

City Attorney's Office
City Hall, Rm 234
1 Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: Elizabeth Dietrich

Telephone: (415) 554-4700
Email: Elizabeth.Dietrich@sfgov.org

Developer:

AvalonBay Communities, Inc.
455 Market Street, Suite 1650
San Francisco, CA 94105
Attn: Nathan Hong, Sr. Vice President

Telephone: (415) 284-9093
Email: nathan_hong@avalonbay.com

and

AvalonBay Communities, Inc.
671 N. Glebe Road, Suite 800
Arlington, VA 22203
Attention: Legal Department

Telephone: (703) 329-6300
Email: legal@avalonbay.com

and

Rebecca Hlebasko
SVP, General Counsel
600 California Street, Suite 900
SF, CA 94108

Telephone: (415) 989-1111
Email: Rhlebasko@bridgehousing.com

With a copy to:

Farella Braun + Martel LLP
235 Montgomery Street, 17th Floor
San Francisco, CA 94104
Attn: Charles J. Higley

Telephone: (415) 954-4942
Email: cjhigley@fbm.com

12.3. Day-to-Day Communications. Developer and the SFPUC agree that day-to-day communications will be directed as follows to:

- (a) Kevin Griffith and Joe Kirchofer for Developer;

- (b) Emily Lesk for OEWD; and
- (c) Rosanna Russell and Christopher Wong for the SFPUC.

13. CITY AND SFPUC REQUIREMENTS

Developer has reviewed, understands, and is ready, willing, and able to comply with the terms and conditions of this Article, which summarizes certain special City and SFPUC requirements as of the Effective Date, each of which is fully incorporated by reference. Developer acknowledges that City and SFPUC requirements in effect when the Transaction Documents are executed will be incorporated into the Transaction Documents, as applicable, and will apply to all contractors, subcontractors, subtenants, and any other Developer Parties, as applicable. City requirements of general applicability will apply to the Project even if not summarized below.

The following summary is for Developer's convenience only; Developer is obligated to become familiar with all applicable requirements and to comply with them fully as they are amended from time to time. City ordinances are currently available on the internet at www.sfgov.org. References to specific laws in this Article refer to San Francisco municipal codes unless specified otherwise.

13.1. Nondiscrimination in City Contracts and Benefits Ordinance.

(i) **Developer Shall Not Discriminate.** In the performance of this Agreement, Developer agrees not to discriminate against any employee, City and County employee working with such developer or subcontractor, applicant for employment with such developer or subcontractor, 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 such protected classes, or in retaliation for opposition to discrimination against such classes.

(ii) **Subcontracts.** Developer shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. Developer's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

(iii) **Nondiscrimination in Benefits.** Developer does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

(iv) **Condition to Contract.** As a condition to this Agreement, Developer shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form CMD-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Contracts Monitoring Division.

(v) **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein.

Developer shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Developer understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of Fifty Dollars (\$50) for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Developer and/or deducted from any payments due Developer.

13.2. Prohibition on Political Activity with City Funds. Under Administrative Code chapter 12G, Developer may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure in the performance of the services required under this Agreement. Developer agrees to comply with chapter 12G and any implementing rules and regulations promulgated by the Controller. If Developer violates this Section, in addition to any other rights or remedies available, City may: (a) terminate this Agreement; and (b) prohibit Developer from bidding on or receiving any new City contract for a period of 2 years. The Controller will not consider Developer's use of profit as a violation of this Section.

13.3. Requiring Health Benefits for Covered Employees. Unless exempt, Developer agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance ("HCAO"), as set forth in Administrative Code chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the HCAO is available on the web at <http://www.sfgov.org/olse/hcao>. Capitalized terms used in this Section and not defined in this Agreement will have the meanings assigned to them in chapter 12Q.

(a) For each Covered Employee, Developer shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Developer chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

(b) Notwithstanding the above, if the Developer is a small business as defined in Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with subsection (a) above.

(c) Developer's failure to comply with the HCAO shall constitute a material breach of this Agreement. City shall notify Developer if such a breach has occurred. If, within thirty (30) days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Developer fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Developer fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

(d) Any Subcontract entered into by Developer shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Developer shall notify City's Purchasing Department when it enters into such a Subcontract and shall certify to the Purchasing Department that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Developer shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, City may pursue the remedies set forth in this Section against Developer based on the Subcontractor's failure to comply, provided that City has first provided Developer with notice and an opportunity to obtain a cure of the violation.

(e) Developer shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Developer's compliance or

anticipated compliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) Developer represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

(g) Developer shall keep itself informed of the current requirements of the HCAO.

(h) Developer shall provide reports to City in accordance with any reporting standards promulgated by City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

(i) Developer shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least five (5) business days to respond.

(j) City may conduct random audits of Developer to ascertain its compliance with HCAO. Developer agrees to cooperate with City when it conducts such audits.

(k) If Developer is exempt from the HCAO when this Agreement is executed because its amount is less than Twenty-Five Thousand Dollars (\$25,000), but Developer later enters into an agreement or agreements that cause Developer's aggregate amount of all agreements with City to reach Seventy-Five Thousand Dollars (\$75,000), all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Developer and the Contracting Department to be equal to or greater than Seventy-Five Thousand Dollars (\$75,000) in the fiscal year.

13.4. First Source Hiring. Developer and City will enter into a First Source Agreement based upon the form attached to this Agreement as **Exhibit D** pursuant to San Francisco Administrative Code, Chapter 83 (the "**First Source Agreement**") prior to undertaking any activities that are subject to San Francisco Administrative Code Chapter 83. Any default by Developer under the First Source Agreement shall be a default under this Agreement. Developer acknowledges that the Transaction Documents will require compliance with City's local hire requirements set forth in Section 23.62 of the San Francisco Administrative Code.

13.5. Consideration of Criminal History in Hiring and Employment Decisions.

(a) Developer agrees to comply fully with and be bound by all of the provisions of Chapter 12T "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code (Chapter 12T), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at www.sfgov.org/olse/fco. A partial listing of some of Developer's obligations under Chapter 12T is set forth in this Section. Developer is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

(b) The requirements of Chapter 12T shall only apply to a Developer's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, shall apply only when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco, and shall not apply when the application in a particular context would

conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

(c) Developer shall incorporate by reference in all subcontracts the provisions of Chapter 12T, and shall require all subcontractors to comply with such provisions. Developer's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

(d) Developer or Subcontractor shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

(e) Developer or Subcontractor shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in **Section 14.5(d)**. Developer or Subcontractor shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

(f) Developer or Subcontractor shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment to be performed under this Agreement, that the Developer or Subcontractor will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(g) Developer and Subcontractors shall post the notice prepared by the Office of Labor Standards Enforcement (OLSE), available on OLSE's website, in a conspicuous place at every workplace, job site, or other location under the Developer or Subcontractor's control at which work is being done or will be done in furtherance of the performance of this Agreement. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace, job site, or other location at which it is posted.

(h) Developer understands and agrees that if it fails to comply with the requirements of Chapter 12T, City shall have the right to pursue any rights or remedies available under Chapter 12T, including but not limited to, a penalty of Fifty Dollars (\$50) for a second violation and One Hundred Dollars (\$100) for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Agreement.

13.6. MacBride Principles - Northern Ireland.

The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Developer confirms that Developer 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.

13.7. Tropical Hardwood and Virgin Redwood Ban. The SFPUC and City urge Developer not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood product. Except as expressly permitted by Environment Code sections 802(b) and 803(b), Developer may not provide any

items to the construction of the Project, or otherwise in the performance of this Agreement that are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. If Developer fails to comply in good faith with any of the provisions of Environment Code chapter 8, Developer will be liable for liquidated damages for each violation in any amount equal to the contractor's net profit on the contract, or 5 percent of the total amount of the contract dollars, whichever is greater.

13.8. Preservative-Treated Wood Containing Arsenic. Developer 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 under Section 1304 of the Environment Code. The term "**preservative-treated wood containing arsenic**" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Developer may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Developer from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "**saltwater immersion**" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

13.9. Notification of Limitations on Contributions. Through its execution of this Agreement, Developer 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 City whenever such transaction would require 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 (a) City elective officer, (b) a candidate for the office held by such individual, or (c) 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 six months after the date the contract is approved. Developer 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 Fifty Thousand Dollars (\$50,000) or more. Developer further acknowledges that the prohibition on contributions applies to each Developer; each member of Developer's board of directors, and Developer's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Developer; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Developer. Additionally, Developer acknowledges that Developer must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Developer further agrees to provide to City the name of each person, entity or committee described above.

13.10. Requiring Minimum Compensation for Covered Employees.

(a) Developer agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Sections 12P.5 and 12P.5.1 of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco. A partial listing of some of Developer's obligations under the MCO is set forth in this Section. Developer is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

(b) The MCO requires Developer to pay Developer's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated

time off. The minimum wage rate may change from year to year and Developer is obligated to keep informed of the then-current requirements. Any subcontract entered into by Developer shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Developer's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Developer.

(c) Developer shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within ninety (90) days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO. Developer shall maintain employee and payroll records as required by the MCO. If Developer fails to do so, it shall be presumed that the Developer paid no more than the minimum wage required under State law. City is authorized to inspect Developer's job sites and conduct interviews with employees and conduct audits of Developer.

(d) Developer's commitment to provide the Minimum Compensation is a material element of City's consideration for this Agreement. City in its sole discretion shall determine whether such a breach has occurred. City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Developer fails to comply with these requirements. Developer agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that City and the public will incur for Developer's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

(e) Developer understands and agrees that if it fails to comply with the requirements of the MCO, City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within thirty (30) days after receiving written notice of a breach of this Agreement for violating the MCO, Developer fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Developer fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

(f) Developer represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

(g) If Developer is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than Twenty-Five Thousand Dollars (\$25,000), but Developer later enters into an agreement or agreements that cause Developer to exceed that amount in a fiscal year, Developer shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Developer and this department to exceed Twenty-Five Thousand Dollars (\$25,000) in the fiscal year.

13.11. Sunshine Ordinance. In accordance with Administrative Code Section 67.24(e), contracts, contractors' bids, leases, agreements, responses to requests for proposals, and all other records of communications between the SFPUC and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or

benefit. Information provided to the SFPUC that is within the scope of this Section will be made available to the public upon request.

13.12. Conflicts of Interest. Developer acknowledges that it is familiar with the provisions of San Francisco Charter, Article III, Chapter 2, Section 15.103 of City's Campaign and Governmental Conduct Code, and California Government Code sections 87100 *et seq.* and sections 1090 *et seq.*, certifies that it does not know of any facts that would constitute a violation of these provisions, and agrees that if Developer becomes aware of any such fact during the term of this Agreement, Developer will notify the SFPUC immediately.

13.13. Prevailing Wages and Working Conditions.

Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.61. Developer shall require its Contractors and Subcontractors performing (i) labor in connection with a "public work" as defined under California Labor Code Section 1720 *et seq.* (which includes certain construction, alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) or (ii) Covered Construction, at the Site to (1) pay workers performing such work not less than the Prevailing Rate of Wages, (2) provide the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, and (3) employ Apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, "**Prevailing Wage Requirements**"). Developer agrees to cooperate with City in any action or proceeding against a Contractor or Subcontractor that fails to comply with the Prevailing Wage Requirements.

Developer shall include, and shall require its subtenants, and Contractors and Subcontractors (regardless of tier) to include, the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract with specific reference to San Francisco Administrative Code Section 23.61. Each such Construction Contract shall name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any Contractor or Subcontractor in accordance with San Francisco Administrative Code Section 23.61. Developer's failure to comply with its obligations under this Section shall constitute a material breach of this Agreement. A Contractor's or Subcontractor's failure to comply with this Section will enable City to seek the remedies specified in San Francisco Administrative Code Section 23.61 against the breaching party. For the current Prevailing Rate of Wages, see www.sfgov.org/olse or call the City's Office of Labor Standards Enforcement at 415-554-6235.

13.14. Local Business Enterprise Utilization; Liquidated Damages.

Developer shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "**LBE Ordinance**"), provided such amendments do not materially increase Developer's obligations or liabilities, or materially diminish Developer's rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this Section. Developer's willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of Developer's obligations under this Agreement and shall entitle City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Developer shall comply fully with all other applicable local, state and federal laws

prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

14. MISCELLANEOUS PROVISIONS

14.1. Attorneys' Fees. If either Party brings an action or proceeding at law or in equity against the other Party to enforce any provision of this Agreement or to protect or establish any right or remedy under this Agreement, the unsuccessful Party to the litigation must pay to the prevailing Party all costs and expenses incurred by the prevailing Party as determined by the court, including reasonable attorneys' fees. If the prevailing Party obtains a judgment in any action or proceeding, costs, expenses, and attorneys' fees will be included in and be a part of the judgment. For purposes of this Agreement, reasonable fees of attorneys of the Office of the City Attorney will be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience (calculated by reference to earliest year of admission to the Bar of any State) who practice in the San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

14.2. California Law. This Agreement must be construed and interpreted in accordance with the laws of the State of California and City's Charter.

14.3. Entire Agreement; Conflict. This Agreement contains all of the representations and the entire agreement between the Parties with respect to the subject matter of this Agreement. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to its subject matter are superseded by this Agreement. No prior drafts of this Agreement or changes from those drafts to the executed version of this Agreement may be introduced as evidence in any litigation or other dispute resolution proceeding by any Party or other person, and no court or other body should consider those drafts in interpreting this Agreement.

14.4. Amendments. No amendment to this Agreement will be valid unless it is in writing and signed by all of the Parties.

14.5. Severability. Except as otherwise specifically provided in this Agreement, a judgment or court order invalidating any provision of this Agreement, or its application to any person, will not affect any other provision of this Agreement or its application to any other person or circumstance, and the remaining portions of this Agreement will continue in full force and effect, unless enforcement of this Agreement as invalidated would be unreasonable or grossly inequitable under all of the circumstances or would frustrate the purposes of this Agreement.

14.6. No Party Drafter; Captions. The provisions of this Agreement will be construed as a whole according to their common meaning and not strictly for or against any Party in order to achieve the objectives and purposes of the Parties. Any caption preceding the text of any section, paragraph or subsection or in the table of contents is included only for convenience of reference and will be disregarded in the construction and interpretation of this Agreement.

14.7. Interpretation. Whenever required by the context, the singular shall include the plural and vice versa, the masculine gender shall include the feminine or neuter genders, and vice versa, and defined terms encompass all correlating forms of the terms (e.g., the definition of "waive" applies to "waiver," "waived," "waiving"). In this Agreement, the terms "include," "included" and "including" will be deemed to be followed by the words "without limitation" or "but not limited to."

14.8. Authority. If Developer signs as a corporation, limited liability company or a partnership, each of the persons executing this Agreement on behalf of Developer represents and warrants that Developer is a duly authorized and existing entity, that Developer has and is qualified to do business in California, that Developer has full right and authority to enter into this Agreement, and that each and all of the persons signing on Developer's behalf are authorized to

do so. Upon the SFPUC's request, Developer must provide the SFPUC with evidence satisfactory to the SFPUC confirming these representations and warranties.

14.9. Waiver. None of the following will constitute a waiver of any breach under, or of the SFPUC's right to demand strict compliance with, this Agreement: (a) the SFPUC's or another City agency's failure to insist upon Developer's strict performance of any obligation under this Agreement; (b) the SFPUC's or another City agency's failure to exercise any right, power, or remedy arising from Developer's failure to perform its obligations for any length of time; or (c) the SFPUC's or another City agency's acceptance of any full or partial payment, including any portion of the Negotiating Fee, during the continuance of the breach. the SFPUC's or another City agency's consent to or approval of any act by Developer requiring consent or approval may not be deemed to waive or render unnecessary any consent to or approval of any subsequent act by Developer. Any waiver by any City agency or the SFPUC of any default must be in writing and will not be a waiver of any other default concerning the same or any other provision of this Agreement.

14.10. Time is of the Essence. Time is of the essence for each provision of this Agreement, including Developer proceeding diligently to meet the Project Schedule..

14.11. Broker. City will not pay a finder's or broker's fee in connection with this Agreement or upon execution of any of the Transaction Documents. Developer agrees to indemnify and hold City harmless from any costs, including attorneys' fees, City incurs if any broker or brokers claim a commission in connection with this Agreement or any of the Transaction Documents.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Developer and the SFPUC have executed this Agreement as of the last date written below.

DEVELOPER:

RESERVOIR COMMUNITY PARTNERS, LLC, a Delaware limited liability company

By its Members:

BHC BALBOA BUILDERS, LLC,
a California limited liability company

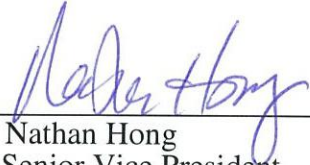
By: 

Name: Brad Wiblin
Title: Vice President

Date: 12.6.17

AVB BALBOA LLC,
a Delaware limited liability company


By: AvalonBay Communities, Inc.,
a Maryland corporation, its sole member

By: 
Name: Nathan Hong
Title: Senior Vice President

Date: 12/6/17

SFPUC:

SAN FRANCISCO PUBLIC UTILITIES COMMISSION

By: 

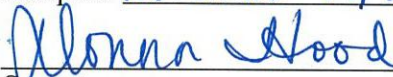
Harlan L. Kelly, Jr.,
General Manager

Date: 12.8.2017

**APPROVED BY
PUBLIC UTILITIES
COMMISSION**

Pursuant to Resolution No. 17-0225

Adopted November 14, 2017


Secretary

APPROVED AS TO FORM:
Dennis J. Herrera, City Attorney

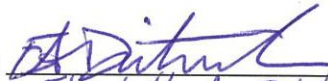
By: 
Elizabeth A. Dietrich
Deputy City Attorney

EXHIBIT A
Balboa Reservoir Site
(Attached)



EXHIBIT B
FEE SCHEDULE

Period	Associated Payments*	Maximum Length
PHASE 1 – Commences Upon ENA Execution		
Initial phase length	\$75,000 deposit toward City Costs; \$125,000 negotiating fee	9 months
Automatic extension with payment	\$50,000 extension fee	6 months
Additional extension at City's discretion	\$10,000 per month	Up to 12 months
PHASE 2 – Commences Upon Development Overview Endorsement		
Initial phase length	None	21 months
First Automatic extension with payment	\$50,000 extension fee	6 months
Second automatic extension with payment	\$50,000 extension fee	6 months
Additional extension at City's discretion	\$10,000 per month	Up to 24 months

* Payments due at beginning of associated period.

EXHIBIT C

PERMIT TO ENTER

(Attached)

PERMIT TO ENTER AND USE PROPERTY

This Permit to Enter and Use Property (the "Permit" or "Agreement") is entered into this _____ day of __, 20__, by and between the City and County of San Francisco, a municipal corporation acting by and through its Real Estate Division ("City") and _____, a _____ ("Permittee").

RECITALS

This Permit is entered into on the basis of the following facts, understandings and intentions of the Parties:

A. Permittee desires to undertake due diligence investigations and testing at the Balboa Reservoir, which comprises approximately 17 acres of land adjacent to the City College of San Francisco Ocean Campus (the "Property"), and is under the control of City.

B. City desires to provide this Permit to assist Permittee in performing such investigation.

C. City and Permittee wish to set forth their understandings as they relate to Permittee's use of the Property.

D. This Permit is entered into by City without any representation, warranty, or admitting to any fact, responsibility, fault, or liability to the Permittee for any property conditions, including any contamination, or Hazardous Material (as defined below) that may be present on or about the Permit Area.

In consideration of the mutual covenants and promises of the parties, City and Permittee hereby agree as follows:

Grant of Use.

City hereby grants to Permittee (including, its officers, directors, employees, contractors, subcontractors, agents, invitees, successors and assigns, collectively "Agents") a temporary, non-possessory, non-exclusive right to enter upon and use that certain real property owned by City, said property being more particularly shown on Exhibit A attached hereto and incorporated herein (the "Permit Area"). Permittee's use of the Permit Area shall be subject to the conditions and restrictions set forth in this Permit and coordination with City's staff and occupants of the Property. Permittee acknowledges that the Property, including the Permit Area, is currently being utilized by San Francisco City College as a parking lot. Any reference to "Permittee" in this Permit shall include Permittee's Agents unless explicitly provided otherwise.

Use of the Permit Area.

14.12. Permittee shall use the Permit Area for performing site investigation and due diligence activities related to Permittee's potential acquisition and development of the Property, including undertaking environmental and geotechnical investigations, described in Exhibit B attached hereto and incorporated herein (the "Permitted Activities") and for no other purposes. Permittee may not use pesticides, as defined by San Francisco Environment Code Section 301, in the Permit Area. Any amendments or alterations to the Permitted Activities to be performed by Permittee pursuant to this Permit must be approved in writing by City prior to performance of the work. City approval will not be unreasonably withheld, and in any event, City will provide notification of its decision will be given within ten (10) business days from its receipt of the request for approval. Failure to provide its approval within such time period shall be deemed to be a disapproval by City.

14.13. Permittee shall provide City with copies of all boring logs, sample or laboratory test results promptly upon receipt, and copies of any reports prepared by Permittee documenting the results of the work conducted by Permittee pursuant to this Permit. Permittee shall notify City's designated representative(s) by telephone or electronic mail at least five (5) business days in advance of all of Permittee's invasive or destructive field activities, and at least two (2) business days in advance of Permittee's other field activities. Permittee shall allow City's designated representative to observe, photograph and/or otherwise record all of Permittee's activities, and to obtain duplicate samples of disturbed media, at no cost to Permittee.

14.14. If any of Permittee's Permitted Activities involve the drilling of holes having a diameter dimension that could create a safety hazard for persons, Permittee shall, during any drilling operations, carefully safeguard such holes and secure them at the completion of each day's work. Upon the completion of Permittee's drilling operations, Permittee shall refill and compact all holes with the same or better material to the level of the original ground surface with the finish and color of such material to match the surrounding surface materials. Except for wells needed for subsequent monitoring, prior to the expiration of the term hereof Permittee shall abandon any wells placed by Permittee on the Permit Area in accordance with all laws, including without limitation, any Environmental Laws and City's Department of Public Health ("DPH") requirements. With respect to wells needed by Permittee for monitoring after expiration of this Permit, Permittee shall maintain such wells in accordance with all laws, including without limitation Environmental Laws and DPH requirements, and, when no longer required by Permittee, abandon them in accordance with all laws, including without limitation any Environmental Laws and DPH requirements. City shall allow Permittee reasonable access to the Permit Area after the expiration of the term hereof, through the issuance of a license or permit to enter satisfactory to City, to maintain and abandon such wells as required.

14.15. Permittee shall prevent all excavated materials (including soil), dewatered groundwater, equipment, and import materials (collectively, the "Excavation Materials") from entering storm drains, sewers, or the San Francisco Bay, to the extent the Excavation Materials arise from Permittee's activities in the Permit Area. Permittee shall not store Excavation Materials (including soil) where storm water runoff may wash materials into the Bay. Any Excavation Materials accidentally released by Permittee shall be immediately retrieved and/or

cleaned up. Permittee shall immediately notify City and the appropriate regulatory agencies as required by local, State, and Federal law in case of any accidental release.

14.16. Permittee shall not stockpile excavated soil at or near the Permit Area. Permittee shall immediately deposit excavated soil into receptacles (e.g., transport trucks or bins) that can be covered and directly transported to an appropriate landfill (the "Receptacles"). Permittee shall arrange for the timely arrival of Receptacles to match the rate of Permittee's excavation. Permittee's Receptacles will be removed from the Permit Area immediately after filling, and none of Permittee's Receptacles (empty or filled) will be left on the Property at the end of each workday. Permittee shall ensure that the Receptacles used by Permittee to contain saturated soil (i.e., wet soil excavated from below the groundwater table) are watertight and will retain all liquids. Permittee will capture and contain any liquids that drain from soil Receptacles and will manage such liquids as dewatered groundwater pursuant to appropriate regulatory approvals.

14.17. (A) In the event Permittee (including, its officers, directors, employees, contractors, subcontractors, agents, invitees, successors and assigns, collectively "Agents") uses or occupies space outside the Permit Area (the "Encroachment Area") without the prior written consent of City, then upon written notice from City ("Notice to Vacate"), Permittee shall immediately vacate such Encroachment Area and pay rent for each day Permittee used, occupied, uses or occupies such Encroachment Area, an amount equal to the rentable square footage of the Encroachment Area, multiplied by the higher of (a) the highest rental rate then approved by the City for the Permit Area, or (b) then current fair market rent for such Permit Area, as reasonably determined by City (the "Encroachment Area Charge"). Permittee's use or occupancy of the Encroachment Area for any portion of a day shall be considered use or occupancy for a full day. If Permittee uses or occupies such Encroachment Area for a fractional month, then the Encroachment Area Charge for such period shall be prorated based on a thirty (30) day month. In no event shall City's acceptance of the Encroachment Area Charge be deemed a consent by City to the use or occupancy of the Encroachment Area by Permittee, its Agents, or a waiver (or be deemed as a waiver) by City of any and all of City's other rights and remedies under this Permit (including Permittee's obligation to indemnify, defend and hold City harmless as set forth in this Section), at law or in equity.

In addition to the foregoing amount, Permittee shall pay to City, an amount equaling Two Hundred Dollars (\$200.00) upon delivery of the initial Notice to Vacate plus the actual cost associated with a survey of the Encroachment Area. In the event City determines during subsequent inspection(s) that Permittee has failed to vacate the Encroachment Area, then Permittee shall pay to City, an amount equaling Two Thousand Dollars (\$2,000) for each additional Notice to Vacate, if applicable, delivered by City to Permittee following each inspection. The amounts set forth in this Section shall be due within three (3) business days following the applicable Notice to Vacate or separate invoice relating to the actual cost associated with a survey of the Encroachment Area.

In addition to the rights and remedies of City as set forth in the foregoing paragraphs of this Section, the terms and conditions of the indemnity and exculpation provision set forth in Section 12 below shall also apply to Permittee's Agents' use and occupancy of the Encroachment Area as if the Permit Area originally included the Encroachment Area, and Permittee shall additionally indemnify, defend and hold City harmless from and against any and

all loss or liability resulting from delay by Permittee in so surrendering the Encroachment Area including, without limitation, any loss or liability resulting from any Claims against City made by any licensee, tenant or prospective licensee or tenant founded on or resulting from such delay and losses to City due to lost opportunities to permit the use of any portion of the Encroachment Area to any such licensee, tenant or prospective licensee or tenant, together with, in each case, actual attorneys' fees and costs.

(B) Without limiting City's other rights and remedies set forth in this Permit, at law or in equity, in the event Permittee fails to submit to the appropriate party, on a timely basis, the items identified in Sections 7(e) and 7(f), or to provide evidence of the required insurance coverage described in Section 13 below, then upon written notice from City of such failure, Permittee shall pay, an amount equaling One Thousand Dollars (\$1,000). In the event Permittee fails to provide the necessary document within the time period set forth in the initial notice and City delivers to Permittee additional written notice requesting such document, then Permittee shall pay to City, an amount equaling Two Thousand Dollars (\$2,000) for each additional written notice City delivers to Permittee requesting such document.

(C) In the event City determines after an inspection, that an activity other than the Permitted Activities is occurring on the Permit Area (the "Prohibited Use"), then Permittee shall immediately cease the Prohibited Use and shall pay to City, an amount equaling Two Hundred Dollars (\$200.00) upon delivery of written notice to Permittee to cease the Prohibited Use ("Notice to Cease Prohibited Use"). In the event City determines in subsequent inspection(s) of the Permit Area that Permittee has not ceased the Prohibited Use, then Permittee shall pay to City, an amount equaling One Thousand Dollars (\$1,000) for each additional Notice to Cease Prohibited Use delivered to Permittee.

The parties agree that the charges associated with activities described in this Section 2(f) represent a fair and reasonable estimate of the administrative costs and expense that City will incur by reason of City's inspection of the Permit Area (if applicable) and Permittee's failure to comply with the applicable notice, and that City's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this Permit, at law or in equity. By placing their initials below, each party specifically confirms the accuracy of the statements made in this Section 2(f) and the reasonableness of the amount of the charges described therein.

Initials: _____ City _____ Permittee

Recovery of City's Cost.

Permittee shall bear all costs or expenses of any kind or nature in connection with Permittee's use of the Permit Area, including but not limited to all costs of excavation, construction, operation, sampling, monitoring, testing, transporting and disposing of Excavated Materials and backfilling, and shall keep the Permit Area and the Property free and clear of any mechanics' liens or other claims of lien arising out of or in any way connected with its Permittee's use of the Permit Area. Permittee shall also bear all costs necessitated by the presence of its equipment, including but not limited to monitoring or injection wells and

treatment facilities, any costs for enhanced or revised design, construction and operation in order to protect, accommodate or relocate such equipment in light of City needs.

“As Is” Condition of Property; Security.

The Permit Area is accepted “as is” without any representation or warranty by City and entry upon the Permit Area (including but not limited to any contamination or presence of Hazardous Materials) by Permittee is an acknowledgment by Permittee that it will inspect the Permit Area and accepts all risk associated with all dangerous places and defects on said Permit Area. To the extent Permittee identifies any dangerous places or defects on the Permit Area are affected by Permittee’s activities, Permittee shall notify the City of such dangerous places or defects, and shall secure and use commercially reasonable efforts to keep such places or defects in a secure condition during the Term hereof. Permittee shall maintain the Permit Area so that Permittee’s activities do not result in the Permit Area being unsafe, unsightly or unsanitary (provided that Permittee’s maintenance obligations shall not exceed the maintenance standard of the Permit Area at the commencement of Permittee’s then applicable entry). Permittee shall safeguard any portions of the Permit Area that are excavated or otherwise affected by Permittee’s Activities and secure them at the completion of each day’s work. The parties acknowledge that City shall not provide any security for the Permit Area.

Term of Permit; Termination.

The rights granted pursuant to this Permit are temporary only and shall commence on _____, 20__, and shall expire on the earlier of Tenant’s acquisition the Property or _____, 20__ (the “Term”); provided, however, if Permittee requires a reasonable extension to complete its work hereunder, City shall grant such extension unless (a) Permittee is in breach or default under this Permit, or (b) such extension would materially interfere with City operations or the use of the Property. If Permittee fails to comply with the terms and conditions of this Permit and such failure is not cured by Permittee within three (3) days of notice by City, or in the case of a non-compliance which cannot be cured within three days, Permittee has not commenced and is not diligently pursuing the cure of said non-compliance (but in no event shall Permittee have more than fifteen (15) days to cure such failure), Permittee shall be in default of this Permit and this Permit shall terminate upon one (1) day’s written notice to Permittee, and Permittee shall forthwith remove all equipment and installations from the Permit Area, and shall restore the Permit Area to its former condition.

No Interference With Use.

Permittee shall not materially interfere with or obstruct City’s use of the Permit Area, its conduct of normal business operations thereon, or the rights of any permittee, tenant, licensee or occupant (“Current Occupants”) relating to the Permit Area. 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 Permit Area. Permittee has the sole responsibility to locate the same and protect the same from damage arising from Permittee’s activities. Permittee shall be solely responsible for any damage to utilities or other damages resulting from Permittee’s activities under this Permit. Permittee’s use of the Permit Area is subject and subordinate to the rights of any Current Occupants, and Permittee has the sole responsibility to (i) notify any Current Occupants of the activities

undertaken by Permittee under this Permit, (ii) make any arrangements necessary to accommodate any Current Occupants, and (iii) obtain any approval of any Current Occupants if necessary to use the Permit Area prior to undertaking any Permittee's Activities hereunder. Permittee shall provide its own generator and stand-alone equipment for any utility needs in connection with the Permitted Activities, and City shall have no responsibility to provide Permittee with any such utilities.

Hazardous Materials; Compliance; Notice; Disclosure.

14.18. Definitions. For purposes of this Permit, the following terms have the following meanings:

(a) **“Environmental Laws”** means any federal, state or local laws, ordinances, regulations or policies judicial and administrative directives, orders and decrees dealing with or relating to Hazardous Materials (including, without limitation, their use, handling, transportation, production, disposal, discharge, storage or reporting requirements) or to health and safety, industrial hygiene or environmental conditions in, on, under or about the Permit Area or property, including, without limitation, soil, air, bay water and groundwater conditions or community right-to-know requirements, related to the work being performed under this Permit.

(b) **“Handle”** or **“Handling”** means to use, generate, process, produce, package, treat, store, emit, discharge or dispose.

(c) **“Hazardous Material”** means any substance or material which has been determined by any state, federal, or local government authority to be a hazardous or toxic substance or material, including without limitation, any hazardous substance as defined in Section 101(14) of CERCLA (42 USC Section 9601(14)), or Sections 25281(f) or 25316 of the California Health and Safety Code, any hazardous material as defined in Section 25501(k) of the California Health and Safety Code, and any additional substances or materials which at such time are classified or considered to be hazardous or toxic under any federal, state or local law, regulation or other exercise of governmental authority.

(d) **“Investigation”** means activities undertaken to determine the nature and extent of Hazardous Materials which may be located on or under real property, or which have been, are being, or threaten to be released to the environment.

(e) **“Remediation”** shall mean activities undertaken to cleanup, remove, contain, treat, stabilize, monitor or otherwise control Hazardous Materials located on or under real property or which have been, are being or threaten to be released to the environment.

(f) **“Regulatory Agency”** means any federal, state or local governmental agency or political subdivision related thereto. Regulatory Agency shall include City to the extent that City is acting in its capacity as a regulatory authority, rather than in its proprietary capacity as a landowner.

(g) **“Release”** means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment

of any Hazardous Material (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Material or pollutant or contaminant).

14.19. Compliance with Laws. All activities performed on the Permit Area by Permittee, and its Agents shall be done in accordance with all laws, regulations and orders of any governmental or other regulatory entity.

14.20. Hazardous Materials. Permittee shall Handle all Hazardous Materials introduced by Permittee or disturbed on the Property by Permittee during the Term of this Permit in compliance with all Environmental Laws. Permittee shall not be responsible for the safe Handling of Hazardous Materials Released on the Property solely by City or its Agents, except to the extent Permittee disturbs or exacerbates such Hazardous Materials. Permittee shall protect its employees and the general public from Permittee's activities in accordance with all Environmental Laws. City may from time to time request, and Permittee shall be obligated to provide, information reasonably adequate for City to determine that any and all Hazardous Materials are being Handled in a manner which complies with all Environmental Laws. In accordance with Section 10, Permittee shall not have any liability under this Agreement resulting from the discovery or disclosure of pre-existing Hazardous Materials or the non-negligent aggravation of pre-existing Hazardous Materials on, in, under or about the Permit Area.

14.21. Removal of Hazardous Materials. Prior to termination of this Permit, Permittee, at its sole cost and expense, shall remove any and all Hazardous Materials introduced or released in, on, under or about the Property by Permittee or its Agents during the Term of this Permit and shall Remediate or dispose of any Hazardous Materials produced as a result of the Permitted Activities. All costs of storage, shipping and disposal of extracted soils and groundwater shall be the sole responsibility of Permittee including, without limitation, the costs of preparation and execution of shipping papers, including but not limited to hazardous waste manifests. With respect to shipping papers and hazardous waste manifests, Permittee shall be the "generator" and in no case shall the City be named as the generator.

14.22. Notification. Permittee shall notify City upon the issuance of a permit issued by DPH and the receipt of a hazardous waste generator identification number issued by the U.S. Environmental Protection Agency or the California Environmental Protection Agency to itself or its Agents relating to the Permitted Activities.

14.23. Notification of Any Notice, Investigation, or Claim. With respect to the Permitted Activities, Permit Area, or Property, Permittee shall immediately notify City in writing of, and shall contemporaneously provide City with a copy of:

(a) Any release or discharge of any Hazardous Materials, whether or not the release is in quantities that would be required under applicable laws to be reported to a governmental or regulatory agency;

(b) Any written notice of release of Hazardous Materials in or on the Permit Area or the Property that is provided by Permittee or its Agents to a governmental or regulatory agency, including any regulatory agency of City;

(c) Any notice of a violation, or a potential or alleged violation, of any Environmental Law relating to the Permit Area or the Property that is received by Permittee or its Agents from any governmental or regulatory agency, including any regulatory agency of City;

(d) Any inquiry, investigation, enforcement, cleanup, removal, or other action that is instituted or threatened by a governmental or regulatory agency, including any regulatory agency of City, against Permittee or its Agents and that relates to the release or discharge of Hazardous Material on or from the Permit Area or the Property;

(e) Any claim that is instituted or threatened by any third party against Permittee or its Agents and that relates to any release or discharge of Hazardous Materials on or from the Permit Area or the Property; and

(f) Any notice of the termination, expiration or substantial amendment of any environmental operating permit or Permit needed by Permittee or its Agents in connection with the Permit Area.

14.24. Hazardous Material Disclosures. California law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Although this Permit grants Permittee only a license, Permittee is hereby advised that Hazardous Materials (as herein defined) may be present on the Property, including, but not limited to vehicle fluids, janitorial products, tobacco smoke, and building materials containing chemicals, such as formaldehyde. Further, the following known Hazardous Materials are present on the Property: _____, and as further described in the _____ report dated _____, copies of which have been delivered to or made available to Permittee. By execution of this Permit, Permittee acknowledges that the notice set forth in this section satisfies the requirements of California Health and Safety Code Section 25359.7 and related statutes. Permittee also acknowledges its own obligations pursuant to California Health and Safety Code Section 25359.7 as well as the penalties that apply for failure to meet such obligations.

Proprietary Capacity.

Permittee understands and agrees that City is entering into this Permit in its capacity as a landowner with a proprietary interest in, on, or around the Permit Area and not as a regulatory agency of the City with certain police powers. Except as specifically stated herein, Permittee further understands and agrees that no City approval for purposes of this Permit shall be deemed to constitute any approval required by any federal, state, regional or City authority. Before beginning any work in the Permit Area, Permittee shall obtain any and all necessary permits and other regulatory approvals for conducting the then applicable Permitted Activities and shall maintain such approvals as necessary throughout the Term of this Permit. Promptly upon receipt of such approvals, Permittee shall deliver copies to City. City shall cooperate with Permittee, at no cost to City, to the extent necessary to obtain necessary approvals. To the fullest extent permitted by law, Permittee agrees to indemnify and hold City and its Agents harmless from and against any loss, expense, cost, damage, attorneys' fees, penalties, claims or liabilities which City or its Agents may incur as a result of Permittee's failure to obtain or comply with the terms

and conditions of any regulatory approval received by Permittee related to the Permit Area or applicable to Permittee's Activities under this Agreement.

Initials: _____ Permittee

Repair of Damage.

If any portion of the Permit Area, or any other property of City or its Agents, or City Occupants, or their respective agents or invitees, located on or about the Permit Area, is damaged by any of the activities conducted by Permittee or its Agents, Permittee shall, at its own cost and expense, repair any and all such damage and restore said property to the conditions it was in when the activities by Permittee began. Such repair shall be done immediately if the damage creates an unsafe condition or, if the damage does not create an unsafe condition, within a reasonable period but not longer than five (5) days from the date of the damage.

Indemnity.

14.25. General Indemnity. Permittee agrees to indemnify, hold harmless and defend, City and its Agents from and against any and all claims, demands, actions, causes of action or suits (actual or threatened), judgments, losses, costs, damages, penalties, fines or liabilities including, without limitation, interest, engineering fees, consultant fees and reasonable attorneys' fees of whatever kind (collectively "Claims") arising in any manner out of (i) any injury to or death of any person or damage to or destruction of any property occurring in, on, under or about the Permit Area or the Property, on any part thereof, whether to the person or property of Permittee, or its Agents, or third persons, in connection with use of the Permit Area by Permittee or its Agents; or (ii) any failure by Permittee or its Agents to faithfully observe or perform any of the terms, covenants or conditions of this Permit.

14.26. Hazardous Materials Indemnity. Permittee agrees to indemnify, hold harmless and defend, without cost to City and its Agents from any and against any Claims arising from (i) any Handling, Release or threatened Release of Hazardous Materials, pollutant, or contaminant, or any condition of pollution, contamination or nuisance in the vicinity of the Permit Area or in ground or surface waters associated with or in the vicinity of the Permit Area in connection with the use of the Permit Area by Permittee or its Agents during the Term of the Permit; (ii) any requirement of a Regulatory Agency for Investigation or Remediation of any Release of Hazardous Materials at the Permit Area or the Property in connection with use of the Permit Area by Permittee or its Agents during the Term of this Permit; (iii) any requirement of a Regulatory Agency for Investigation or Remediation of any Hazardous Materials arising out of or in connection with the activities under this Permit, including, without limitation, requirements which would not have been imposed except for Permittee's use of the Permit Area or Permittee's Permitted Activities; or (iv) any breach of or failure to perform or observe any term, covenant, or agreement in this Permit to be performed or observed by Permittee, including, but not limited to any violation of any Environmental Law. These indemnity obligations shall apply to all Claims described above regardless of the active, passive or concurrent negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City or its Agents, except to the extent Claims are caused by the gross negligence, or willful or intentional misconduct of City, or its officers, agents or employees. The provisions of this Section 10 and any other

indemnification obligation shall survive termination of this Permit with respect to any Claim arising out of Permittee's Activities hereunder. In addition to Permittee's obligation to indemnify City and its Agents, Permittee specifically acknowledges and agrees that it has an immediate and independent obligation to defend City and its Agents from any claim that actually or potentially falls within the indemnification provisions of this Section, even if the allegations are or may be groundless, false or fraudulent. Permittee's obligation to defend shall arise at the time such claim is tendered to Permittee by City and/or its Agents and shall continue at all times thereafter. Notwithstanding anything in this Section 10 or otherwise in this Agreement, Permittee shall not have any liability under this Agreement resulting from the discovery or disclosure of pre-existing Hazardous Materials or the non-negligent aggravation of pre-existing Hazardous Materials on, in, under or about the Permit Area.

14.27. Waiver of Liability. City shall not be liable for any damage to the property of Permittee or its Agents, or for any bodily injury or death to any such Agent, resulting or arising from the condition of the Permit Area or its use by Permittee with the exception of damage or injury caused by the active, willful or intentional misconduct of City or its Agents.

Waiver of Claims. Permittee hereby waives and releases on behalf of itself and its heirs, successors, and assigns, any and all rights which it may have to file a claim or bring an action of any kind or character against City or its agents for damage to property or personal injury, including death, which might arise out of the use of the Permit Area by Permittee, or activities conducted in, on or around the permit area by Permittee, except to the extent that such damage or injury results from any claims caused by the active, willful or intentional misconduct of City or its Agents.

Entry Under Permittee's Authority.

This Permit to Enter granted to Permittee shall include all Agents of Permittee identified in Exhibit C (attached hereto and incorporated herein), and Permittee shall include in any agreement with such Agents that such Agents shall be bound by the terms and conditions of this Permit. Permittee shall notify City of any changes in the Agents conducting Permitted Activities with the Permit Area by providing the City with an updated Exhibit C within four (4) calendar days of any change. Unless City notifies Permittee of its rejection of an updated Exhibit C within ten (10) business days of receipt, the updated Exhibit C will be deemed disapproved. Permittee assumes all responsibility for the safety of all persons and property on the Permit Area pursuant to this Permit. All work performed in the Permit Area and all persons entering the Permit Area and all property and equipment placed therein in furtherance of the permission granted herein is presumed to be with the express authorization of Permittee.

Removal of Equipment and Installations.

Upon completion of Permitted Activities, Permittee shall promptly remove all equipment and installations from the Permit Area, but in no event no later than the expiration or earlier termination of this Permit. Any equipment or any other property remaining in the Permit Area after completion of activities may be deemed abandoned by City in its sole discretion and City may store, remove, and dispose of such equipment or property at Permittee's sole cost and

expense. Permittee waives all claims for any costs or damages resulting from City's retention, removal, and disposition of such property.

Insurance.

During the Term of this Permit, Permittee shall at its own costs and expense at all times while Permitted Activities are being conducted, procure and maintain and shall cause all Agents identified in Exhibit C attached hereto, to procure and maintain, insurance in the following amounts and coverages; provided, however that Pollution Legal Liability insurance specified below shall be provided only by Permittee or Permittee's Agents that perform invasive testing on the Permit Area or that perform removal or transport of any Hazardous Material from the Permit Area:

14.28. Workers' Compensation as required by laws, with Employers' Liability limits not less than \$1,000,000 for each accident, injury or illness.

14.29. Comprehensive General Liability Insurance with limits not less than \$2,000,000 for each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations, and \$2,000,000 General Annual Aggregate Limit (other than Products-Completed Operations). The Comprehensive General Liability Insurance provided shall cover any property damage or personal injury resulting from any work conducted as part of the Permitted Activities.

14.30. Comprehensive Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned and Non-owned and hired auto coverage, as applicable.

14.31. Contractor's Pollution Legal Liability Insurance with combined single limit of \$2,000,000 each claim, \$2,000,000 aggregate, and with coverage to include legal liability arising from the sudden and accidental release of pollutants, and no less than a one-year extended reporting period.

14.32. All policies and certificates shall be endorsed to provide that no cancellation for any reason, non-renewal, major change of coverage, or expiration shall become effective or occur until at least thirty (30) days' notice, if commercially available. Permittee shall provide thirty (30) days' advance written notice to City of cancellation, intended non-renewal, or reduction in coverages, except for non-payment for which no less than ten (10) days' notice shall be provided to City. Within one (1) business day of receiving any notice from its insurance provider or broker of intent to cancel or materially reduce, or cancellation, material reduction, or depletion of, its required coverage, Permittee shall provide a copy of such notice to City and take prompt action to prevent cancellation, material reduction, or depletion of coverage, reinstate or replenish the cancelled, reduced, or depleted coverage, or obtain the full coverage required by this Section 14 (Insurance) from a different insurer meeting the qualifications of this Section. Notice to City shall be delivered to the address(es) for City set forth in Section 15 (Notices) below.

14.33. If at any time during the Term of this Permit, Permittee or its Agents, as the case may be, fails to maintain the required insurance in full force and effect, all work under the Permit

shall be discontinued immediately, and shall not resume until City receives notice that the required insurance has been renewed to full force and effect for a period satisfactory to City. Failure to maintain the required insurance will be sufficient cause for immediate termination of the Permit notwithstanding the notice required under Section 7 of this Permit.

14.34. City's approval of insurance shall not relieve or decrease the liability of Permittee or its Agents under this Permit.

14.35. Certificates of insurance, in form and with insurers satisfactory to the City, evidencing all coverages above shall be furnished to the City before commencement of any operations under this Permit, with complete copies of policies to be furnished promptly upon City's request.

14.36. Permittee's provision of satisfactory evidence of the insurances required pursuant to this Section 13 is a condition precedent to the effectiveness of this Permit.

14.37. The parties release each other, and their respective authorized representatives, from any claims for damage to the Permit Area or personal property of either City or Permittee in or on the Permit Area which are caused by or result from risks insured against under any property insurance policies carried by the parties and in force at the time of any such damage, to the extent such claims for damage are paid by such policies. Each party shall cause each property insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against the other party in connection with any damage covered by any policy.

14.38. All policies required by this Permit shall 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, its Public Utilities Commission and its commissioners, officers, agents, and employees; (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 Permit and that insurance applies separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limit of liability; and (iv) include a waiver of subrogation endorsement or provision wherein the insurer acknowledges acceptance of Permittee's waiver of claims against City. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury, or damage that occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

14.39. Prior to the commencement of the Term, Permittee shall deliver to City certificates of insurance and additional insured policy endorsements from insurers in a form satisfactory to City, evidencing the coverages required by this Permit, together with complete copies of the policies at City's request. Permittee and its contractors shall submit or cause their respective insurance brokers to submit requested information through the Exigis insurance verification program designated by City or any successor program used by City for verification

of Permittee and contractor insurance coverage. If Permittee shall fail to procure such insurance, or to deliver such policies or certificates, at its option, City may procure the same for the account of Permittee, and Permittee shall reimburse City for any costs so paid by City within five (5) business days after delivery to Permittee of bills therefor.

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

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

Notices.

Except as otherwise expressly provided herein, any notices given under this Permit shall be effective only if in writing and given by delivering the notice in person, by sending it first class mail or certified mail, with a return receipt requested, or overnight courier, return receipt requested, with postage prepaid, addressed as indicated below. For convenience of the parties, copies of notices may also be given by email to the email address set forth below or such other address as may be provided from time to time; however, neither party may give official or binding notice by email.

- 16. To City: City and County of San Francisco
Office of Economic and Workforce Development
Attn: _____
Telephone: (415) _____
E-Mail: _____@sfgov.org

- 17. With a copy to: San Francisco Public Utilities
Commission
525 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102
Attention: Real Estate Director
Telephone: (415) 487-5210
E-Mail: RES@sfgov.org

- 18. To Permittee: _____

Attn: _____
E-Mail: _____

19.

With a copy to: _____

E-Mail: _____

The Parties hereto may give notice pursuant to this Section of other persons to receive future notices on their behalf. Notices herein shall be deemed given two (2) days after the date when it shall have been mailed if sent by first class, certified or overnight courier, or upon the date personal delivery is made.

Taxes and Assessments.

14.42. Payment of Taxes. During the Term of this Permit, Permittee agrees to pay, when due, to the proper authority any and all real property and personal taxes, general and special assessments, license fees, permit fees and all other governmental charges of any kind or nature whatsoever, including without limitation all penalties and interest thereon, levied or assessed on the Permit Area and relating to this Permit, whether in effect at the time this Permit is entered into or which become effective thereafter, and all taxes levied or assessed on the possession, use or occupancy, as distinguished from the ownership, of the Permit Area, including without limitation, any possessory interest tax. Permittee shall not permit any such taxes, assessments or other charges to become a defaulted lien on the Permit Area. In the event of any dispute regarding the validity of any such tax; assessment or similar charge, Permittee shall indemnify and hold City, and its Agents harmless from and against all losses, damages, costs, or expenses, including attorneys' fees, resulting therefrom.

14.43. Notice to County Assessor. San Francisco Administrative Code Sections 23.38 and 23.39 may require that the City and County of San Francisco report certain information relating to this Permit, and any renewals thereof, to the County Assessor within sixty (60) days after any such transaction and that Permittee report certain information relating to any assignment of or sublease under this Permit to the County Assessor within sixty (60) days after such assignment or sublease transaction.

Limitation on Assignment.

This Permit is personal to Permittee and shall not be assigned, except with the written consent by City. Such consent may be withheld or conditioned at City's sole and absolute discretion.

Attorneys Fees.

If either party hereto brings an action or proceeding (including any cross complaint or counterclaim) against the other party by reason of a default, or otherwise arising out of this Permit, the prevailing party in such action or proceeding shall be entitled to recover from the other party its costs and expenses of suit, including but not limited to reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment. "Prevailing party" within the meaning of this section shall include, without limitation, a party who substantially obtains or defeats, as the case may be, the relief sought in the action, whether by compromise,

settlement, judgment or the abandonment by the other party of its claim or defense. Attorneys' fees under this section shall include attorneys' fees and all other reasonable costs and expenses incurred in connection with any appeal. For purposes of this Permit, reasonable fees of attorneys of the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience (calculated by reference to earliest year of admission to the Bar of any State) who practice in San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

Time is of the Essence.

Time is of the essence as to each and every provision of this Permit.

California Law.

This Agreement shall be construed and interpreted in accordance with the laws of the State of California and City's Charter.

Authority.

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

City Requirements.

14.44. Prohibition of Alcoholic Beverage Advertising. Permittee acknowledges and agrees that no advertising of alcoholic beverages is allowed on the Permit Area. For purposes of this section, "alcoholic beverage" shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product.

14.45. Tobacco Products Advertising Ban. Permittee acknowledges and agrees that no advertising or sale of cigarettes or tobacco products is allowed on the Permit 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.

14.46. Non-Discrimination.

(a) **Covenant Not to Discriminate.** In the performance of the Work, Permittee covenants and agrees not to discriminate on the basis of the fact or perception of a

person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), weight, height, association with members of classes protected under Chapter 12 of the San Francisco Administrative Code or in retaliation for opposition to any practices forbidden under said Chapter 12 against any employee of Permittee, any City and County employee working with Permittee, any applicant for employment with Permittee, any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Permittee in the City and County of San Francisco.

(b) Other Contracts. Permittee shall include in all contracts, and shall cause Permittee's Agents to include any contract and other subcontracts relating to the Work (collectively "Work Contracts") a non-discrimination clause applicable to such Permittee's Agent in substantially the form of Section 22.2(i) above. In addition, Permittee shall and shall cause Permittee's Agents to incorporate by reference in all Work Contracts the provisions of Sections 12B.2(a), 12B.2(c)-(k) and 12C.3 of the San Francisco Administrative Code and shall require all Permittee's Agents to comply such provisions. Permittee's failure to comply with the obligations in this subsection shall constitute a material breach of this Permit.

(c) Non-Discrimination in Benefits. Permittee does not as of the date of this Permit and will not during the Term, in any of its operations in San Francisco or where the work is being performed for the City, 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 (collectively "Core Benefits") as well as any benefits other than the Core Benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local Law authorizing such registration, subject to the conditions set forth in Section 12B.2 of the San Francisco Administrative Code.

(d) Condition to Permit. As a condition to the effectiveness of this Permit, Permittee shall execute and deliver to City the Nondiscrimination in Contracts and Benefits form approved by the San Francisco Contract Monitoring Division of City's General Services Agency.

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

14.47. MacBride Principles Northern Ireland. The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Permit. By signing this Permit, Permittee confirms that Permittee has read and understood that the 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.

14.48. Notification of Limitations on Contributions. Through its execution of this Permit, Permittee 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 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 six months after the date the contract is approved. Permittee 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 \$50,000 or more. Permittee further acknowledges that the prohibition on contributions applies to each Permittee; each member of Permittee's board of directors, and Permittee's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than twenty percent (20%) in Permittee; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Permittee. Additionally, Permittee acknowledges that Permittee must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Permittee further agrees to provide to City the names of each person, entity or committee described above.

14.49. Conflicts of Interest. Through its execution of this Permit, Permittee acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provision, and agrees that if Permittee becomes aware of any such fact during the term of this Permit, Permittee shall immediately notify the City.

14.50. Charter Provisions. This Permit is governed by and subject to the provisions of the Charter of the City and County of San Francisco.

14.51. Drug-Free Workplace. Permittee and Permittee's Agents acknowledge that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City or City premises. Permittee and Permittee's Agents agree that any violation of this prohibition by Permittee or any of Permittee's Agents, and their respective employees, contractors and agents or assigns shall be deemed a material breach of this Permit.

14.52. First Source Hiring. The City has adopted a First Source Hiring Ordinance (San Francisco Administrative Code Sections 83.1 et seq.) that establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry-level positions. Pursuant to Section 83.7(b) of the First Source Hiring Ordinance, City Commission has adopted a First Source Hiring Implementation and Monitoring Plan (“City Plan”) subject to approval by the First Source Hiring Administration. Permittee acknowledges receiving and reviewing the First Source Hiring Ordinance. Under Section 83.9(d) of the First Source Hiring Ordinance, compliance by an employer with City Plan is deemed to be compliance with the provisions of the First Source Hiring Ordinance.

Based on the foregoing, unless exempt, Permittee agrees to comply with City Plan through compliance with all of the following measures:

(a) Permittee shall notify the City and County of San Francisco’s Workforce Development System, Department of Human Services of all projected Entry Level Positions and the approximate date such positions will be available, by using the Job Survey Form provided by City of San Francisco. The City will also provide Permittee with a detailed instruction sheet summarizing the procedure for the commencement of this Permit. Permittee shall return the Job Survey Form to City within thirty (30) days after execution of this Permit by City and Permittee.

For purposes of this Permit the terms “Entry Level Position”, “San Francisco Workforce Development System”, “Qualified Economically Disadvantaged Individual”, and “First Source Hiring Agreement” shall have the meaning provided in Section 83.4 of the San Francisco Administrative Code.

Permittee shall notify the San Francisco Workforce Development System of all vacancies for existing or new Entry Level Positions in, on, or around the Permit Area, during this Permit term, and shall offer the San Francisco Workforce Development System the first opportunity to provide Qualified Economically Disadvantaged Individuals for employment in these positions.

(b) Permittee shall not publicize or otherwise post such vacancies until the San Francisco Workforce Development System refers Qualified Economically disadvantaged Individuals for employment in these positions or notifies Permittee that no Qualified Economically Disadvantaged Individuals are available for the particular vacancies. The San Francisco Workforce Development System shall respond to Permittee within ten (10) business days. After ten (10) business days, if the San Francisco Workforce Development System does not refer applicants, Permittee can advertise and fill Entry Level Positions outside of the City referral system.

(c) Permittee shall interview qualified applicants and use good faith in hiring applicants. Permittee shall maintain good records of recruitment and hiring process, and shall permit City or City to audit such records upon request.

Pursuant to Section 83.10 of the Ordinance, if upon administrative review, it is determined that Entry Level positions were not made available to the San Francisco Workforce Development System for referral of Qualified Economically Disadvantaged Individuals, and the

Employer does not remedy the violations, the Employer shall be assessed a penalty in the amount of \$2,070 for every new hire for an Entry Level Position improperly withheld from the First Source Hiring process.

14.53. Sugar-Sweetened Beverage Prohibition. Contractor agrees that it will not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Agreement.

14.54. Prevailing Wage. Permittee agrees that any person performing labor in connection with the Permit Area that is a “public work” as defined under San Francisco Administrative Code Section 6.22(E) or California Labor Code Section 1720 et seq. (which includes certain construction, alteration, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) shall be paid not less than the highest prevailing rate of wages consistent with the requirements of Section 6.22(E) of the San Francisco Administrative Code, and shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco County. Permittee shall include in any contract for such work a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Permittee shall require any contractor to provide, and shall deliver to City upon request, certified payroll reports with respect to all persons performing such labor on or about the Permit Area.

Requiring Health Benefits for Covered Employees.

Unless exempt, Permittee agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q (Chapter 12Q), including the implementing regulations as the same may be amended or updated from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Permit as though fully set forth herein. The text of the HCAO is currently available on the web at www.sfgov.org. Capitalized terms used in this Section and not defined in this Permit shall have the meanings assigned to such terms in Chapter 12Q.

14.55. For each Covered Employee Permittee shall provide the appropriate health benefit set forth in Section 12Q.3.

14.56. Notwithstanding the above, if Permittee meets the requirements of a “small business” by the City pursuant to Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with Section 22(1)(i) above.

14.57. Permittee understands and agrees that the failure to comply with the requirements of the HCAO shall constitute a material breach by Permittee of this Permit.

14.58. If, within thirty (30) days after receiving written notice of a breach of this Permit for violating the HCAO, Permittee fails to cure such breach or, if such breach cannot reasonably be cured within such 30-day period. Permittee fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the

remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

14.59. Any Work Contract regarding services to be performed in, on, or around the Permit Area entered into by Permittee shall require Permittee's Agents, as applicable, to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in Chapter 12Q. Permittee shall notify the City Purchasing Department when it enters into such a Work Contract and shall certify to the City Purchasing Department that it has notified Permittee's Agents of the obligations under the HCAO and has imposed the requirements of the HCAO on Permittee's Agents through written agreement with the applicable Permittee's Agent. Permittee shall be responsible for ensuring compliance with the HCAO for each of Permittee's Agents performing services in, on, or around the Permit Area. If any of Permittee's Agents fails to comply, the City or City may pursue the remedies set forth in Section 12Q.5 of the Administrative Code against Permittee based on Permittee's Agents failure to comply, provided that the City Contracting Department has first provided Permittee with notice and an opportunity to cure the violation.

14.60. Permittee shall not discharge, reprimand, penalize, reduce the compensation of, or otherwise discriminate against, any employee for notifying the City of any issue relating to the HCAO, for opposing any practice proscribed by the HCAO, for participating in any proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

14.61. Permittee represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the requirements of the HCAO.

14.62. Permittee shall keep itself informed of the requirements of the HCAO, as they may change from time to time.

14.63. Upon request, Permittee shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Permittee's Agents.

14.64. Within five (5) business days of any request, Permittee shall provide the City with access to pertinent records relating to any Permittee's compliance with the HCAO. In addition, the City and its agents may conduct random audits of Permittee at any time during the Term of this Permit. Permittee agrees to cooperate with City in connection with any such audit.

14.65. If a Permittee's Agent is exempt from the HCAO because the amount payable to such Permittee's Agent under all of its contracts with the City or relating to City-owned property is less than \$25,000 (or \$50,000 for nonprofits) in that fiscal year, but such Permittee's Agent later enters into one or more agreements with the City or relating to City-owned property that cause the payments to such Permittee's Agent to equal or exceed \$75,000 in that fiscal year, then all of such Permittee's Agent's contracts with the City and relating to City-owned property shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements to equal or exceed \$75,000 in the fiscal year.

Amendments; Miscellaneous.

This Permit may be amended or modified only by a written amendment signed by each of the Parties hereto. No waiver by a Party of any of the provisions of this Permit shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver. This Permit may be executed in one or more counterparts, each of which shall be an original but all of which together shall be deemed to constitute a single agreement. The paragraph headings of this Permit are for convenience of reference and shall be disregarded in the interpretation of this Permit.

Severability.

Except as is otherwise specifically provided for in this Permit, invalidation of any provision of this Permit, or of its application to any person, by judgment or court order, shall not affect any other provision of this Permit or its application to any other person or circumstance, and the remaining portions of this Permit shall continue in full force and effect, unless enforcement of this Permit as invalidated would be unreasonable or grossly inequitable under all of the circumstances or would frustrate the purposes of this Permit.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, CITY and PERMITTEE execute this Permit at San Francisco, California, as of the date set forth above.

PERMITTEE:

By: _____

By: _____

By: _____

20. CITY:

SAN FRANCISCO PUBLIC UTILITIES
COMMISSION

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

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Deputy City Attorney

EXHIBIT A

Description of Permit Area

EXHIBIT B

Description of Permitted Activities

EXHIBIT C

EXHIBIT C

List of Permittee's Agents

EXHIBIT D

APPENDIX

DEFINED TERMS AND DESCRIPTIONS

Defined Term	Location
Affiliate	§ 7.1(c)(i)
Agents	§ 7.4
Agreement	Preamble
Balboa Reservoir	Recital A, Exhibit A
Board	Recital E
Board Endorsement	§ 3.3(c)
CEQA	Recital E, §2.3(a)
City	Preamble
City Agents	§ 11.2(a)
City Costs	§ 4.1
City Costs Deposit	§ 4.1(d)
City Event of Default	§ 9.2
claims	§ 11.2
Co-Developer	§7.1(c)
Common Control	§ 7.1(c)
Control	§ 7.1(c)
DA	Recital D
Deed	Recital D
Developer	Preamble
Developer Agents	§ 11.2(a)
Development Overview	§ 3.3(a)
Effective Date	§ 2.1
Event of Default	§ 9.1
Exclusive Negotiation Period	§ 1(a)
Phase 2 Expiration Date	§ 2.2
Extension Fees	§ 4.2
First Source Agreement	§ 13.4, Exhibit D
Force Majeure Event	§ 2.5(a)
Force Majeure Extension	§ 2.5(a)
Force Majeure Notice	§ 2.5(a)
General Manager	§ 1(c)
HCAO	§ 13.3
Indemnified Parties	§ 11.1
Initial Expiration Date	§ 2.1
LBE Ordinance	§ 13.14
Litigation Force Majeure Event	§ 2.4(b)
Litigation Force Majeure Extension	§ 2.4(a)
Litigation Force Majeure Notice	§ 2.4(a)
Losses	§ 11.1
Monetary Damages	§ 11.1
Negotiating Fee	§ 4.2
OEWD	Recital C
Party, Parties	Preamble
Permit to Enter	§ 7.4, Exhibit C
Phase 1	§ 2.1

Defined Term	Location
Phase 2	§ 2.2
Phase 2 Expiration Date	§ 2.2
Planning	§ 5.3(d)
PR & Community Outreach Program	§ 7.5(a)
preservative-treated wood containing arsenic	§ 13.8
Prevailing Wage Requirements	§ 13.13
Project	Recital C, § 3.3(c)
Project Assignment	§ 8.4(c)
Project Consultants	§ 8.4(c)
Project Description	§ 3.2
Project Materials	§ 8.4(c)
Project Schedule	§ 2.1
Project Terms	Recital C
Purchase Agreement	Recital D
Regulatory Agency	§ 5.3(a)
Regulatory Approval	§ 5.3(a)
Regulatory Force Majeure Event	§ 2.3(a)
Regulatory Force Majeure Extension	§ 2.3(a)
Regulatory Force Majeure Notice	§ 2.3(b)
releases	§ 11.2(a)
RFP Proposal	Recital C
RFQ	Recital B
saltwater immersion	§ 13.8
Site	Recital A, Exhibit A
SF Admin. Code Chapter 31	Recital E
SFPUC	Preamble
SFPUC Commission	Preamble
SFPUC Endorsement	§ 3.3(a)
Terminating Event	§ 8.1
Termination	§ 8.1
Transaction Documents	Recital D
Transfer	§ 7.1(c)