

File No. 170574

Committee Item No. 9
Board Item No. 30

COMMITTEE/BOARD OF SUPERVISORS
AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Sub-Committee Date July 13, 2017

Board of Supervisors Meeting Date July 25, 2017

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Completed by: Linda Wong Date July 7, 2017
Completed by: Linda Wong Date July 19, 2017

AMENDED IN COMMITTEE

7/13/17

FILE NO. 170574

RESOLUTION NO.

1 [Real Property Lease Amendment and Restatement - Pomeroy Recreation and Rehabilitation
2 Center - 207 Skyline Boulevard]

3 **Resolution authorizing the Amendment and Restatement of Recreation Center For the**
4 **Handicapped, Inc. (Original Tenant)'s lease of property from the City and County of San**
5 **Francisco, to name successor entity of Original Tenant – Pomeroy Recreation and**
6 **Rehabilitation Center, a California not-for-profit corporation (Tenant); exercising the**
7 **25-year extension under original lease, and include an additional 25-year extension**
8 **period for Tenant's future use; and authorizing the Director of Property and/or the San**
9 **Francisco Public Utilities Commission General Manager to execute documents, make**
10 **certain modifications, and take certain actions in furtherance of this Resolution, as**
11 **defined herein.**

12 WHEREAS, The City and County of San Francisco (City) owns in fee certain real
13 property under the jurisdiction of the San Francisco Public Utilities Commission (SFPUC),
14 located at 207 Skyline Boulevard in San Francisco, California (Premises); and

15 WHEREAS, The Premises constitute a part of the Lake Merced Tract that the SFPUC
16 uses for watershed purposes on the shores of Lake Merced, which in turn, the SFPUC
17 maintains as an emergency water supply source; and

18 WHEREAS, City, acting through the SFPUC, and Original Tenant entered into a 25-
19 year Indenture of Lease dated February 9, 1971 (Original Lease) for Original Tenant's use of
20 the Premises at a rental rate of \$1 per year, with an option to extend the Original Lease term
21 for a 25-year period; and

22 WHEREAS, Original Tenant built improvements, including a swimming pool complex,
23 on the Premises, and has used the Premises pursuant to the Original Lease to operate a
24 recreational and rehabilitation center for disabled persons and for related services and
25 programs; and

1 WHEREAS, Original Tenant exercised its option to extend the Original Lease term for a
2 25-year period, and the Original Lease term expires on February 8, 2021; and

3 WHEREAS, Original Tenant's successor-in-interest, the Pomeroy Recreation and
4 Rehabilitation Center (Tenant), seeks a new 25-year lease with an option to extend the new
5 lease term for an additional 25-year term; and

6 WHEREAS, SFPUC staff, through consultation with the Office of the City Attorney and
7 the Director of Property, have negotiated with Tenant a proposed Amended and Restated
8 Ground Lease (Restated Lease), a copy of which is on file with the Clerk of the Board of
9 Supervisors under File No. 170574, which is incorporated herein by this reference; and

10 WHEREAS, Although there are no current SFPUC pipelines or other infrastructure
11 placed on or beneath the Premises, the Restated Lease provides that the Premises will still be
12 subject to use by the City and the SFPUC for City uses, including the installation or
13 maintenance of pipelines or other infrastructure, and in such instance, requiring Tenant to
14 remove its improvements as necessary to accommodate such City uses; and

15 WHEREAS, Although Tenant does not currently plan any capital improvements, and,
16 therefore, no CEQA review is required at this time, the Restated Lease requires Tenant to
17 consult with the City Department of Building Inspection regarding, and obtain City's prior
18 consent to any material future improvements to the Premises, and to perform any
19 necessary CEQA review at that time; and

20 WHEREAS, Under the revised Real Estate Guidelines adopted by SFPUC
21 Resolution No. 15-0013, any non-profit entity with a charitable purpose may be eligible for
22 discounted rates for the use of land or improvements owned by the SFPUC; and

23 WHEREAS, Tenant is a non-profit entity with a charitable purpose and has met all
24 other requirements under SFPUC Resolution No. 15-0013; and

1 WHEREAS, Tenant's programs and related services conducted at the Premises for
2 people with disabilities, which promote recreational, vocational, and educational opportunities
3 that encourage their self-expression, promote personal achievement, and lead to greater
4 independence, provide an important community benefit and further a proper public purpose;
5 and

6 WHEREAS, Tenant's use benefits the SFPUC's primary utility purpose under Section
7 5.3.2 of the 2015 Real Estate Guidelines by relieving the SFPUC of the costs of maintaining
8 and securing the Premises, and because the Restated Lease requires Tenant to appropriately
9 insure the Premises with general liability and property damage insurance and comply with all
10 regulations or requirements resulting from City's development of a watershed management
11 plan, Tenant's use thereby furthers the SFPUC's efforts to appropriately protect and maintain
12 its watershed; and

13 WHEREAS, Pursuant to Section 23.03 of the San Francisco Administrative Code, the
14 SFPUC, through the Director of Property, has obtained an appraisal of the Premises that
15 concluded that the annual fair market rental value of the Premises is \$600,000, which equals
16 approximately \$9.31 per square foot based on the 64,418 square feet size of the Pomeroy
17 Recreation and Rehabilitation Center; and

18 WHEREAS, Section 23.03 of the San Francisco Administrative Code provides that the
19 Board of Supervisors may authorize the lease of City real property for a lesser sum than fair
20 market rent if the Board of Supervisors finds that such a lease will further a proper public
21 purpose; and

22 WHEREAS, On September 13, 2016, by SFPUC Resolution No. 16-0195 (SFPUC
23 Resolution), a copy of which is on file with the Clerk of the Board of Supervisors under File
24 No. 170574, which is incorporated herein by this reference, the SFPUC approved the
25 Restated Lease, and authorized the SFPUC General Manager and/or the Director of Property

1 to undertake the process to, following Board of Supervisors approval of the Restated Lease,
2 accept and execute the Restated Lease and any other related documents necessary to
3 consummate the transactions contemplated therein, in the form approved by the City
4 Attorney; and

5 WHEREAS, San Francisco Charter, Section 8B.121(a) grants the SFPUC the exclusive
6 charge of the real property assets under the Commission's jurisdiction, and Charter Section
7 9.118(c) requires that any amendment of any City lease of real property having a term of 10 or
8 more years be approved by resolution of the Board of Supervisors; and

9 WHEREAS, The Original Lease, the Restated Lease, and SFPUC Resolution (Project
10 File) have been made available for review by the Board of Supervisors and the public, and
11 those files are considered part of the record before this Board; and

12 WHEREAS, The Board of Supervisors has reviewed and considered the information
13 contained in Project File; now, therefore, be it

14 RESOLVED, The Board of Supervisors, having reviewed and considered the Project
15 File, finds that the proposed Restated Lease is in the best interest of the City, does not
16 materially increase the obligations or liabilities of the City, and is in compliance with all
17 applicable laws, including the City Charter; and be it

18 FURTHER RESOLVED, That in accordance with the recommendations of the
19 SFPUC General Manager and the Director of Property, the Board of Supervisors hereby
20 approves the Restated Lease and the transaction contemplated thereby in substantially the
21 form of such instrument presented to this Board; and, be it

22 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of
23 Property and/or the SFPUC's General Manager to enter into any additions, amendments,
24 or other modifications to the Restated Lease that the Director of Property and/or the
SFPUC's General Manager determines are in the best interest of the City, do not materially

1 increase the obligations or liabilities of the City or materially diminish the benefits to the
2 City, and are necessary or advisable to complete the transaction contemplated in the
3 Restated Lease and effectuate the purpose and intent of this resolution, such determination
4 to be conclusively evidenced by the execution and delivery by the Director of Property or
5 the SFPUC's General Manager of the Restated Lease and any amendments thereto; and, be it

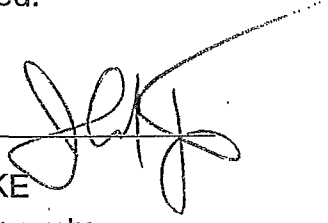
6 FURTHER RESOLVED, That the Director of Property and/or the General Manager
7 of the SFPUC are hereby authorized and urged, in the name and on behalf of the City and
8 County, to execute and deliver the Restated Lease with Tenant, in substantially the form of
9 such instrument presented to this Board, and to take any and all steps (including, but not
10 limited to, the execution and delivery of any and all certificates, agreements, notices,
11 consents, and other instruments or documents) as the Director of Property or the SFPUC
12 General Manager deems necessary or appropriate in order to consummate the Restated
13 Lease, or to otherwise effectuate the purpose and intent of this Resolution, such
14 determination to be conclusively evidenced by the execution and delivery by the Director of
15 Property or SFPUC General Manager of any such documents; and, be it

16 FURTHER RESOLVED, The Director of Property of the SFPUC will evaluate and
17 report to the Board of Supervisors on the amortization of the Tenant's existing capital
18 improvements to the leased site and when such improvements will be fully amortized, and
19 the Tenant's proposed plan for future capital improvements to the leased site, whether
20 those improvements will significantly increase the services provided to San Francisco
21 residents with disabilities, and the length of time for such improvements to be fully
22 amortized; and, be it

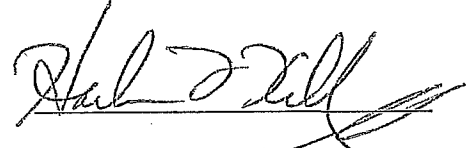
23 FURTHER RESOLVED, That within thirty (30) days of the Restated Lease being fully
24 executed by all parties, the SFPUC shall provide the final Restated Lease to the Clerk of the
25 Board for inclusion into the official file.

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Recommended:



JOHN UPDIKE
Director of Property



HARLAN L. KELLY, JR.
General Manager of the SFPUC

<p>Item 9 File 17-0574</p>	<p>Department: Public Utilities Commission (PUC)</p>
<p>EXECUTIVE SUMMARY</p>	
<p style="text-align: center;">Legislative Objectives</p> <ul style="list-style-type: none"> • The proposed resolution would approve the amended and restated ground lease between the San Francisco Public Utilities Commission (SFPUC) and the Pomeroy Recreation and Rehabilitation Center (Recreation Center), a nonprofit organization, without undergoing a competitive selection process. <p style="text-align: center;">Key Points</p> <ul style="list-style-type: none"> • SFPUC has an existing 50-year ground lease with the Recreation Center from February 1971 to February 2021. Between 1972 and 1984, the Recreation Center constructed facilities on the leased site, totaling approximately 64,418 square feet of space, which include an administrative building with a large auditorium, a gymnasium, a warm water pool, and a day and respite care center. • The Recreation Center is requesting the amended and restated ground lease in order to begin a capital planning process for improvements to the facilities on the leased site. The proposed amended and restated ground lease is for an initial term of 25 years from approximately July 2017 to July 2042, with one 25-year option to extend the lease to approximately July 2067 at the sole discretion of the Recreation Center. <p style="text-align: center;">Fiscal Impact</p> <ul style="list-style-type: none"> • Under the proposed amended and restated ground lease, the Recreation Center would not pay rent to the SFPUC. Fair market rent was determined by an appraisal to be \$600,000 per year. <p style="text-align: center;">Policy Consideration</p> <ul style="list-style-type: none"> • The Recreation Center would lease publicly-owned property from SFPUC for up to 96 years and six months without a competitive process. Although the Recreation Center is requesting the amended and restated ground lease in order to begin a capital planning process for improvements to the facilities on the leased site, the actual plan for capital improvements to the site has not been developed. Nor does the proposed amended and restated ground lease require a minimum investment by the Recreation Center. • The City does not have a consistent policy leasing City-owned property to nonprofit organizations at no rent. The City does not have policies to identify which nonprofit organizations should be able to lease City-owned property, and whether such nonprofit organizations should pay no or market rate rent. 	

Recommendations

- Amend the proposed resolution to request:
 - (1) The SFPUC Director of Real Estate to work with the Director of the City's Real Estate Division to develop criteria on (a) leasing City-owned property to non-profit organizations through a sole source or competitive process, and (b) when such leases should be at no rent, below market rate rent, or market rate rent;
 - (2) The SFPUC Director of Real Estate to evaluate and report to the Board of Supervisors on (a) amortization of the Recreation Center's existing capital improvements to the leased site and when such improvements will be fully amortized, and (b) the Recreation Center's proposed plan for future capital improvements to the leased site, whether those improvements will significantly increase the services provided to San Francisco residents with disabilities, and the length of time for such improvements to be fully amortized; and
 - (3) Reports from the SFPUC Director of Real Estate on (a) criteria for leasing to non-profit organizations, including sole source/competitive processes, and market rate/below market rate/no rent requirements; and (b) amortization of existing and future capital improvements, and whether future capital improvements will significantly increase services to San Francisco residents with disabilities.
- Approval of the proposed resolution as amended is a policy matter for the Board of Supervisors.

MANDATE STATEMENT

Charter Section 9.118(c) requires that amendments of City leases of real property having a term of 10 or more years be subject to approval by resolution of the Board of Supervisors.

BACKGROUND

The San Francisco Public Utilities Commission (SFPUC) owns the 4.5 acre property located at 207 Skyline Boulevard. This property is a part of the Lake Merced Tract, which the SFPUC uses for watershed purposes, and is on the shores of Lake Merced, which the SFPUC maintains as an emergency water supply source.

In 1971, the SFPUC entered into a 25-year ground lease with the non-profit Recreation Center for the Handicapped, Inc. (Recreation Center) from February 1971 to February 1996.¹ The ground lease granted the Recreation Center the right to construct facilities at their own expense to provide recreational and rehabilitation services to disabled persons, and related services and programs to the public. The ground lease set rent at \$1 per year, and included one option to extend the lease term for an additional 25-year period from February 1996 to February 2021, which the Recreation Center exercised.

Between 1972 and 1984, the Recreation Center constructed facilities on the leased site, totaling approximately 64,418 square feet of space, which include an administrative building with a large auditorium, a gymnasium, a warm water pool, and a day and respite care center. The original lease provided that any facilities constructed by the Recreation Center would become the property of the City on termination of the lease.

At the request of the Recreation Center, the SFPUC approved an amended and restated ground lease with the Recreation Center in September 2016 which would extend the total lease term by up to 46 years and six months. The current ground lease term ends in February 2021. The proposed amended and restated ground lease would (a) set a new 25-year lease term from the date of Board of Supervisors approval in approximately July 2017 through July 2042; and (b) provide for one additional 25-year option to extend the lease through July 2067 at the sole discretion of the Recreation Center. Therefore, under the proposed amended and restated ground lease, the lease termination date would be extended by up to approximately 46 years and six months from the current termination date in February 2021 to the new termination date in July 2067, if the Recreation Center exercises the 25-year option to extend the ground lease.

According to the SFPUC staff report to the September 13, 2016 Public Utilities Commission meeting, the Recreation Center is requesting the amended and restated ground lease in order to begin a capital planning process for improvements to the facilities on the leased site.

¹ The Recreation Center for the Handicapped, Inc. is now called the Pomeroy Recreation and Rehabilitation Center.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve the amended and restated ground lease between SFPUC and the Pomeroy Recreation and Rehabilitation Center² (Recreation Center), a nonprofit organization, without undergoing a competitive selection process. The proposed amended and restated ground lease is for an initial term of 25 years from approximately July 2017 to July 2042, with one 25-year option to extend the lease to approximately July 2067 at the sole discretion of the Recreation Center. The proposed resolution also authorizes SFPUC's General Manager to execute documents, make certain modifications, and take certain actions in furtherance of this resolution.

Under the proposed amended and restated ground lease, the Recreation Center would not pay ground rent to SFPUC. In the event that the Recreation Center earns net revenue, SFPUC would be entitled to 50 percent of the net revenue. "Net revenue" is defined as any revenue received by the Recreation Center in a calendar year that exceeds the Recreation Center's operating expenses. However, net revenue excludes charitable donations, bequests, grants, capital gains, allocations to the capital expenditure or endowment fund, and other revenues. Given that this definition of net revenue excludes almost all sources of revenues to the Recreation Center, the SFPUC would likely not be entitled to any revenues under this amended and restated ground lease.

FISCAL IMPACT**Property Market Rate**

R. Blum and Associates, a real estate appraisal and consulting firm retained by the City's Real Estate Division, submitted a report in April 2017, appraising the fair market ground lease rent of the subject property at \$600,000 per year. The rent was established by comparisons with the leases of nine nearby properties with recreational, institutional and/or educational uses, and assumes use of the property in as-is condition. "As-is condition" includes the existing facilities constructed by the Recreation Center. The restriction in the lease that the subject space be used only to operate a center providing recreational, vocational, and educational opportunities for people with disabilities was also taken into consideration.

According to the appraisal report, the present value of the proposed 25-year amended and restated ground lease is \$7,000,000 and the present value of the proposed 50-year amended and restated ground lease, including the initial 25-year term and the 25-year extension term is \$8,300,000.

² As noted above, the name of the Recreation Center was changed from the Recreation Center for the Handicapped to the Pomeroy Recreation and Rehabilitation Center.

POLICY CONSIDERATION

The Recreation Center would lease publicly-owned property from SFPUC for up to 96 years and six months without a competitive process.

The current ground lease between the Recreation Center and SFPUC is for 50 years from February 1971 to February 2021. The proposed amended and restated ground lease would extend the term by up to 46 years and six months through July 2067, as noted above.

According to Mr. Anthony Bardo, SFPUC Assistant Real Estate Director, SFPUC is proposing entering into the amended and restated ground lease with the Recreation Center without undergoing a competitive process for the following reasons:

- (1) The Recreation Center has constructed buildings and made improvements to the property at an estimated cost of \$12,005,959.³
- (2) The Recreation Center's programs to provide recreational, vocational and educational opportunities for people with disabilities conform to the SFPUC's Community Benefits Policy, and are funded largely by the California Department of Education, federal Medicaid funds, and City. The SFPUC's Community Benefits Policy identifies outcomes for community programs, including: (a) use of land in a way that maximizes health, environmental sustainability, and innovative ideas; and (b) in-kind contributions and volunteerism. According to the Recreation Center's 2016 Annual Report, the Center served 287 adult and 76 children with disabilities, offered 1,920 hours of occupational therapy, provided weekly pool access to 1,130 swimmers, including 300 therapeutic swimmers, and provided 155 classes. The Recreation Center had 909 volunteers for 16,908 volunteer hours.
- (3) The Recreation Center would risk the permanent disruption of its programs if the Center had to relocate, because the facilities located at the leased site were designed and constructed by the Recreation Center to meet program needs for adults and children with disabilities. The Recreation Center would have difficulty replicating these facilities elsewhere in San Francisco due to the lack of affordable space, potentially requiring the Recreation Center to relocate outside of San Francisco or to discontinue its programs altogether.

Capital Improvements

The proposed amended and restated ground lease between the SFPUC and the Recreation Center allows the Recreation Center to lease the site for up to an additional 46 years and six months to approximately July 2067 with no charge to the Recreation Center for ground rent. Although the Recreation Center is requesting the amended and restated ground lease in order to begin a capital planning process for improvements to the facilities on the leased site,

³ According to the Recreation Center's FY 2014-15 federal tax filing (Form 990), the cost basis for buildings, improvements, and equipment to the leased site is \$12,005,959, which includes \$1,423,940 in roof repairs made by the Recreation Center in 2015.

according to the SFPUC staff report to the September 13, 2016 Public Utilities Commission meeting, the actual plan for capital improvements to the site has not been developed. Nor does the proposed amended and restated ground lease require a minimum investment by the Recreation Center.

According to Mr. Bardo, the intent of the proposed restated and amended lease is also to allow the Recreation Center to benefit from their original investment in buildings and improvements to the leased site of \$12,005,959. Due to depreciation, this original investment has a current book value as of FY 2014-15 of \$3,726,999.⁴ As noted above, under the existing lease, these buildings and improvements, which were constructed between 1972 and 1984, would become the property of the City on termination of the existing lease in February 2021.

The City does not have a consistent policy leasing City-owned property to nonprofit organizations at no rent

According to the Budget and Legislative Analyst's April 2017 performance audit of the City's Real Estate Division, the City leases approximately 457,074 square feet of City-owned property to nonprofit organizations for rent of \$0 to \$1 per year. However, the City leases an additional 129,973 square feet of space to nonprofit organizations at market rate rent. The City does not have policies to identify which nonprofit organizations should be able to lease City-owned property, and whether such nonprofit organizations should pay no or market rate rent.

Summary

The Budget and Legislative Analyst considers approval of the proposed resolution to be a policy matter for the Board of Supervisors because the proposed amended and restated ground lease would allow the Recreation Center to lease 4.5 acres of land owned by SFPUC on Lake Merced for up to up to an additional 46 years and six months to approximately July 2067 with no charge to the Recreation Center for ground rent without undergoing a competitive process. While the justification, stated in the SFPUC staff report to the September 16, 2016 Public Utilities Commission meeting, for extending the lease for up to an additional 46 years and six months at no rent without a competitive process is to allow the Recreation Center to begin a capital planning process for the leased site, the actual plan for capital improvements to the site has not been developed, and the proposed amended and restated ground lease does not require a minimum investment for such improvements by the Recreation Center.

Further, the City does not have policies to identify which nonprofit organizations should be able to lease City-owned property, and whether such nonprofit organizations should pay no or market rate rent. The Board of Supervisors should request the SFPUC Director of Real Estate to work with the Director of the City's Real Estate Division to develop criteria on (a) leasing City-owned property to non-profit organizations through a sole source or competitive process, and (b) when such leases should be at no rent, below market rate rent, or market rate rent.

⁴ While the cost basis for the Recreation Center's construction of buildings, improvements, and equipment to the leased site is \$12,005,959, these improvements have depreciated by \$8,278,960, resulting in a FY 2014-15 book value of \$3,726,999. The Form 990 for FY 2015-16 is not available.

The Budget and Legislative Analyst also recommends that the Board of Supervisors request the SFPUC Director of Real Estate to evaluate and report to the Board of Supervisors on (a) amortization of the Recreation Center's existing capital improvements to the leased site and when such improvements will be fully amortized, and (b) the Recreation Center's proposed plan for future capital improvements to the leased site, whether those improvements will significantly increase the services provided to San Francisco residents with disabilities, and the length of time for such improvements to be fully amortized.

The Board of Supervisors should request reports from the SFPUC Director of Real Estate on (a) criteria for leasing to non-profit organizations, including sole source/competitive processes, and market rate/below market rate/no rent requirements; and (b) amortization of existing and future capital improvements, and whether future capital improvements will significantly increase services to San Francisco residents with disabilities.

RECOMMENDATIONS

- Amend the proposed resolution to request:
 - (1) The SFPUC Director of Real Estate to work with the Director of the City's Real Estate Division to develop criteria on (a) leasing City-owned property to non-profit organizations through a sole source or competitive process, and (b) when such leases should be at no rent, below market rate rent, or market rate rent;
 - (2) The SFPUC Director of Real Estate to evaluate and report to the Board of Supervisors on (a) amortization of the Recreation Center's existing capital improvements to the leased site and when such improvements will be fully amortized, and (b) the Recreation Center's proposed plan for future capital improvements to the leased site, whether those improvements will significantly increase the services provided to San Francisco residents with disabilities, and the length of time for such improvements to be fully amortized; and
 - (3) Reports from the SFPUC Director of Real Estate on (a) criteria for leasing to non-profit organizations, including sole source/competitive processes, and market rate/below market rate/no rent requirements; and (b) amortization of existing and future capital improvements, and whether future capital improvements will significantly increase services to San Francisco residents with disabilities.
- Approval of the proposed resolution as amended is a policy matter for the Board of Supervisors.

SAN FRANCISCO PUBLIC UTILITIES COMMISSION

EDWIN M. LEE, MAYOR

AMENDED AND RESTATED GROUND LEASE

between

CITY AND COUNTY OF SAN FRANCISCO,

as Landlord,

and

POMEROY RECREATION AND REHABILITATION CENTER,

as Tenant,

For the lease of
207 Skyline Boulevard, San Francisco, CA 94132

August 1, 2016

SAN FRANCISCO PUBLIC UTILITIES COMMISSION

**Francesca Vietor - President
Anson B. Moran - Vice President
Ann Moller Caen - Commissioner
Vince Courtney - Commissioner
Ike Kwon - Commissioner**

**Harlan L. Kelly, Jr.
General Manager of San Francisco Public Utilities Commission**

TABLE OF CONTENTS

	<u>Page</u>
1. AMENDED AND RESTATED LEASE; BASIC LEASE INFORMATION.....	1
1.1. Amended and Restated Lease.....	1
1.2. Basic Lease Information.....	1
2. DEFINITIONS.....	3
3. PREMISES.....	6
3.1. Premises.....	6
3.2. Rights Reserved to City.....	7
3.3. Subject to Municipal Uses.....	7
3.4. As Is Condition of Premises.....	8
3.5. Accessibility Disclosures.....	8
4. TERM.....	9
4.1. Term.....	9
4.2. Commencement Date and Expiration Date.....	9
4.3. Restated Lease Effective Date.....	9
4.4. Extension Term.....	9
5. RENT.....	9
5.1. Base Rent.....	9
5.2. Additional Charges.....	10
5.3. Net Lease.....	10
6. TAXES, ASSESSMENTS, AND OTHER EXPENSES.....	10
6.1. Taxes and Assessments, Licenses, Permit Fees, and Liens.....	10
6.2. Other Expenses.....	11
6.3. Evidence of Payment.....	11
7. USE; COVENANTS TO PROTECT PREMISES AND THE SFPUC FACILITIES.....	11
7.1. Tenant's Permitted Use.....	11
7.2. Covenants Regarding Use.....	13
8. IMPROVEMENTS.....	15
8.1. Construction of Improvements.....	15
8.2. Ownership of Improvements.....	16

8.3.	Tenant's Personal Property	16
8.4.	Ownership of Gas Tank and Related Appurtenances.....	17
9.	REPAIRS AND MAINTENANCE	17
9.1.	Tenant Responsible for Maintenance and Repair	17
9.2.	Utilities	17
9.3.	Maintenance of Fences	18
9.4.	No Right to Repair and Deduct	18
10.	LIENS	18
11.	COMPLIANCE WITH LAWS	18
11.1.	Compliance with Laws	18
11.2.	Regulatory Approvals	19
11.3.	Compliance with City's Risk Management Requirements	19
11.4.	Reports.....	19
12.	FINANCING; ENCUMBRANCES; SUBORDINATION	20
12.1.	Encumbrance of City's Fee Interest.....	20
12.2.	Leasehold Encumbrances	20
13.	DAMAGE OR DESTRUCTION.....	20
13.1.	Damage or Destruction to the Improvements.....	20
13.2.	Abatement in Rent.....	21
13.3.	Waiver.....	21
14.	INTENTIONALLY OMITTED.....	21
15.	EMINENT DOMAIN	21
15.1.	General.....	21
15.2.	Total Taking; Automatic Termination	21
15.3.	Partial Taking; Election to Terminate.....	21
15.4.	Termination of Lease; Rent and Award.....	22
15.5.	Partial Taking; Continuation of Lease	22
15.6.	Temporary Takings.....	22
16.	ASSIGNMENT AND SUBLETTING.....	23
16.1.	Restriction on Assignment and Subletting	23
16.2.	Notice of Proposed Transfer	23
16.3.	City's Response	23
16.4.	Sublease or Recapture Premises.....	24

16.5.	Effect of Transfer.....	25
16.6.	Assumption by Transferee.....	25
16.7.	Indemnity for Relocation Benefits	25
16.8.	IPM Plan and Form CMD-12B-101	25
17.	DEFAULT; REMEDIES.....	25
17.1.	Events of Default.....	25
17.2.	Remedies.....	26
17.3.	City's Right to Cure Tenant's Defaults.....	27
17.4.	Special Administrative Charges	27
18.	WAIVER OF CLAIMS; INDEMNIFICATION	28
18.1.	Waiver of Claims	28
18.2.	Tenant's Indemnity.....	29
19.	INSURANCE.....	29
19.1.	Tenant's Insurance	29
19.2.	General Requirements.....	31
19.3.	Proof of Insurance	31
19.4.	Review of Insurance Requirements	32
19.5.	No Limitation on Indemnities.....	32
19.6.	Lapse of Insurance.....	32
19.7.	Tenant's Personal Property	32
19.8.	Waiver of Subrogation	32
20.	ACCESS BY CITY	32
20.1.	Access to Premises by City.....	32
20.2.	Pipeline and Utility Installations	33
20.3.	Roadways.....	33
21.	ESTOPPEL CERTIFICATES	33
22.	SURRENDER	34
22.1.	Surrender of the Premises.....	34
22.2.	Automatic Reversion	34
23.	HAZARDOUS MATERIALS.....	35
23.1.	No Hazardous Materials	35
23.2.	Tenant's Environmental Indemnity	35
23.3.	Exiting Corrective Actions.....	35

24.	SECURITY DEPOSIT	36
25.	GENERAL PROVISIONS	36
	25.1. Notices	36
	25.2. No Implied Waiver	36
	25.3. Amendments.....	37
	25.4. Authority	37
	25.5. Joint and Several Obligations.....	37
	25.6. Interpretation of Lease.....	37
	25.7. Successors and Assigns.....	37
	25.8. Brokers.....	38
	25.9. Severability	38
	25.10. Governing Law.....	38
	25.11. Entire Agreement.....	38
	25.12. Attorneys' Fees.....	38
	25.13. Holding Over.....	39
	25.14. Time of Essence.....	39
	25.15. Cumulative Remedies	39
	25.16. Survival of Indemnities	39
	25.17. Relationship of Parties	39
	25.18. Transfer by City.....	39
	25.19. Recording.....	40
	25.20. Non-Liability of City Officials, Employees, and Agents	40
	25.21. Wages and Working Conditions.....	40
	25.22. Non-Discrimination in City Contracts and Benefits Ordinance	40
	25.23. Requiring Health Benefits for Covered Employees.....	41
	25.24. Notification of Limitations on Contributions.....	42
	25.25. No Relocation Assistance; Waiver of Claims	43
	25.26. MacBride Principles - Northern Ireland	43
	25.27. Conflicts of Interest	43
	25.28. Charter Provisions.....	43
	25.29. Tropical Hardwood and Virgin Redwood Ban.....	43
	25.30. Prohibition of Tobacco Sales and Advertising.....	43
	25.31. Prohibition of Alcoholic Beverage Advertising.....	44

25.32. Consents, Approvals, Elections, and Options	44
25.33. Counterparts	44
25.34. Disclosure.....	44
25.35. Food Service Waste Reduction	44
25.36. Cooperative Drafting.....	44
25.37. Bottled Drinking Water	45
25.38. Criminal History in Hiring and Employment Decisions.....	45
25.39. Vending Machines; Nutritional Standards	46
25.40. All-Gender Toilet Facilities.....	46

LIST OF EXHIBITS

EXHIBIT A	Legal Description of Premises
EXHIBIT B	Drawing of Premises
EXHIBIT C	Form of Estoppel Certificate
EXHIBIT D	Depiction of Existing Improvements

SAN FRANCISCO PUBLIC UTILITIES COMMISSION

AMENDED AND RESTATED GROUND LEASE

THIS AMENDED AND RESTATED GROUND LEASE (this "Lease") dated for reference purposes only as of August 1, 2016, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City" or "Landlord"), acting by and through its Public Utilities Commission ("SFPUC"), and POMEROY RECREATION AND REHABILITATION CENTER, a California not-for-profit corporation ("Tenant").

City and Tenant hereby agree as follows:

1. AMENDED AND RESTATED LEASE; BASIC LEASE INFORMATION

1.1. Amended and Restated Lease.

This Lease amends and restates the Indenture of Lease dated February 9, 1971 by and between City, as landlord, and Tenant's predecessor in interest, Recreation Center For the Handicapped, Inc., a California not-for-profit corporation, (such Indenture of Lease, together with any amendments thereto and extensions thereof, the "Original Lease"). The Parties acknowledge that, since on or about February 9, 1971, and continuing through the date on which this Lease becomes effective pursuant to Section 4.3 [Restated Lease Effective Date] below (the "Restated Lease Effective Date"), Tenant has occupied the Premises (defined below) pursuant to the Original Lease. Effective on the Restated Lease Effective Date, this Lease shall immediately supersede and replace the Original Lease and the terms and conditions of the Original Lease shall have no further force or effect. Any plans, approvals, or other matters contained in, attached to, or referred to in the Original Lease that are not expressly incorporated by this Lease shall not be deemed to be contained in, attached to, or referred to in this Lease or approved or permitted by City. Accordingly, as of the Restated Lease Effective Date, this Lease alone shall govern the respective obligations of the Parties with respect to Tenant's occupancy and use of the Premises. If the terms and conditions of the Original Lease conflict with the terms and conditions of this Lease, the terms and conditions of this Lease shall prevail.

1.2. Basic Lease Information

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

Lease Reference Date: August 1, 2016
Landlord: City and County of San Francisco, acting by and through its Public Utilities Commission
Tenant: Pomeroy Recreation and Rehabilitation Center
Premises (Section 3.1): That real property located at 207 Skyline Boulevard in San Francisco, California, as more particularly described in the attached Exhibit A and depicted in the attached Exhibit B, together with any appurtenances.
Term (Section 4.1): Commencement Date: February 9, 1971
Expiration Date: Twenty-five (25) years from Restated Lease Effective Date subject to Tenant's right to terminate this Lease earlier upon at least twelve (12) months' written notice to City as stated in Section 4.1(b) [Term].

Extension Term (Section 4.4):

Subject to the terms and conditions of Section 4.4 [Extension Term], by notice given to City not less than three hundred sixty-five (365) days prior to the Expiration Date, Tenant may exercise one (1) option to extend the Term for an additional twenty-five (25) years.

Base Rent (Section 5.1):

None.

Permitted Use (Section 7.1):

(1) The operation of a center to provide recreational, vocational, and educational opportunities for people with disabilities through programs and related services to such people that encourage their self-expression, promote personal achievement, and lead to greater independence ("Tenant's Principal Mission"); (2) occasional use of Premises by Permitted Occasional Users strictly in accordance with the terms of Section 7.1 [Tenant's Permitted Use]; and (3) the operation, use, maintenance, and repair of the Gas Tank (defined in Section 7.1(c) [Gas Tank Operation] below) solely for use in connection with Tenant's leased or owned vehicles utilized by Tenant in connection with Tenant's Principal Mission . Any material alternative or additional use during the Term is subject to the prior written consent of the SFPUC's Real Estate Director, which consent shall not be unreasonably withheld or delayed.

Security Deposit (Section 24):

\$10,000

Pro Rata Share of Property Taxes (Section 6.1):

One Hundred Percent (100%).

City's Notice Address (Section 25.1):

Real Estate Services Division
San Francisco Public Utilities Commission
525 Golden Gate Avenue, 10th Floor
San Francisco, California 94102
Attn: Real Estate Director
Re: **Pomeroy Recreation and Rehabilitation
Center Lease # L2946A**

with a copy to:

Office of the City Attorney
City and County of San Francisco
Room 234, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4682
Attn: Real Estate & Finance Team
Re: **Pomeroy Recreation and Rehabilitation
Center Lease # L2946A**

Key Contact for City:

SFPUC Real Estate Director

Telephone No.:

(415) 487-5210

Tenant's Notice Address (Section 25.1):

207 Skyline Boulevard
San Francisco, CA 94132
Attn: Chief Executive Officer

Key Contact for Tenant: Chief Executive Officer
Telephone No.: (415) 213-8564
Email Address: ceo@prrcsf.org

2. DEFINITIONS

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

"**Additional Charges**" has the meaning given in Section 5.2 [Additional Charges] and includes any and all real and personal property taxes, possessory interest taxes, and other costs, impositions, and expenses described in Section 6 [Taxes and Assessments, and Other Expenses] or otherwise payable by Tenant under this Lease.

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

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

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

"**Assignment**" has the meaning given in Section 16.1 [Assignment and Subletting].

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

"**Basic Lease Information**" means the information with respect to this Lease summarized in Section 1.2 [Basic Lease Information].

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

"**Board of Supervisors**" means the City and County of San Francisco Board of Supervisors.

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

"**Commencement Date**" means the date on which the Term of the Original Lease commenced as described in Section 4.2 [Commencement Date and Expiration Date].

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

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

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

"**Environmental Laws**" means any present or future federal, state, or local Laws or policies relating to Hazardous Material (including, without limitation, its use, handling,

transportation, production, disposal, discharge, or storage) or to human health and safety, industrial hygiene, or environmental conditions in, on, under, or about the Premises (including any permitted Improvements) and any other property, including, without limitation, soil, air, and groundwater conditions.

"Event of Default" means any one of the events of default described in Section 17.1 [Events of Default].

"Extension Term" has the meaning given in Section 4.4 [Extension Term].

"Gas Systems" has the meaning given in Section 8.4(c) [Ownership of Gas Tank and Related Appurtenances].

"Gas Tank" has the meaning given in Section 7.1(c) [Gas Tank Operation].

"Gas Termination Date" has the meaning given in Section 7.1(c) [Gas Tank Operation].

"General Manager" means the General Manager of the Public Utilities Commission.

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

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

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

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

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

"Investigation" when used with reference to Hazardous Material means any activity undertaken to determine the nature and extent of Hazardous Material that may be located in, on, under, or about the Premises, any Improvements or any portion thereof or that have been, are being,

or threaten to be Released into the environment. Investigation shall include, without limitation, preparation of site history reports and sampling and analysis of environmental conditions in, on, under, or about the Premises or any Improvements.

"**Invitees**" when used with respect to Tenant means the clients, customers, invitees, guests, members and licensees, assignees, and subtenants of Tenant.

"**Land**" means the real property described in the attached Exhibit A.

"**Landlord**" means the City and County of San Francisco.

"**Law**" means any law, statute, ordinance, resolution, regulation, proclamation, order, or decree of any municipal, county, state, or federal government or other governmental or regulatory authority with jurisdiction over the Premises, or any portion thereof, whether currently in effect or adopted in the future and whether or not in the contemplation of the Parties.

"**Lease**" means this Amended and Restated Lease as it may be amended in accordance with its terms.

"**Losses**" means any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards, and costs and expenses, including, without limitation, reasonable attorneys' and consultants' fees and costs.

"**Official Records**" means the official records of the City and County of San Francisco.

"**Original Lease**" means the Indenture of Lease dated February 9, 1971 by and between City, as landlord, and Tenant's predecessor in interest Recreation Center For the Handicapped, Inc., a California not-for-profit corporation, together with any amendments and extensions of that Indenture of Lease prior to the Restated Lease Effective Date.

"**Party**" means City or Tenant; "**Parties**" means both City and Tenant.

"**Permitted Occasional User**" has the meaning given in Section 7.1 [Tenant's Permitted Use].

"**Permitted Use**" means the use specified in the Basic Lease Information and Section 7.1 [Tenant's Permitted Use].

"**Premises**" has the meaning given in Section 3.1 [Premises]. The Premises shall include any existing and permitted future Improvements, together with any additions, modifications, or other Alterations thereto permitted under this Lease. Notwithstanding anything to the contrary in this Lease, the Premises do not include the SFPUC Facilities, nor any water, water rights, riparian rights, water stock, mineral rights, or timber rights relating to the Premises.

"**Release**" when used with respect to Hazardous Material means any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any existing improvements or any Improvements constructed pursuant to this Lease by or on behalf of Tenant, or in, on, under, or about the Premises or any portion of the SFPUC Facilities.

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

"**Rent**" means any amounts payable by Tenant as consideration for its occupancy of the Premises under this Lease, including any and all Additional Charges.

"**Restated Lease Effective Date**" means the date on which this Lease becomes effective pursuant to Section 4.3 [Restated Lease Effective Date]; whereupon the Original Lease will be

deemed to be replaced, superseded, and revoked by this Lease.

"SFPUC" means the Public Utilities Commission of the City and County of San Francisco.

"SFPUC Facilities" means any and all water pipelines, drainage pipelines, hatch covers, wells, and other surface and subsurface facilities owned by City or the SFPUC and now or later located in, under, on, or about the Premises for the storage, transportation, or distribution of water for municipal purposes, together with all related appurtenances and monuments.

"Sublease" has the meaning given in Section 16.1 [Restrictions on Assignment and Subletting].

"Taking" means a taking or damaging, including severance damage, by eminent domain, inverse condemnation, or for any public or quasi-public use under Law. A Taking may occur pursuant to the recording of a final order of condemnation, or by voluntary sale or conveyance in lieu of condemnation or in settlement of a condemnation action.

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

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

"Tenant's Principal Mission" means the operation of a center to provide recreational, vocational, and educational opportunities for people with disabilities through programs and related services that encourage self-expression, promote personal achievement, and lead to greater independence.

"Term" means the term of this Lease as determined under Section 4.1 [Term].

"Transfer" means any Assignment or Sublease.

"Transferee" means any recognized assignee of any part of Tenant's leasehold interest under this Lease or any recognized subtenant of any portion of the Premises, pursuant to a Transfer that complies with Section 16 [Assignment and Subletting].

"Unmatured Event of Default" means any failure by Tenant to perform its obligations pursuant to this Lease that (a) has been the subject of a written notice of default given by City pursuant to the provisions of Section 17.1 [Events of Default] below and (b) that does not yet constitute an Event of Default because such failure to perform has not yet been remedied by Tenant and the time to remedy or cure such default specified in Section 17.1 [Events of Default] has not yet elapsed.

3. PREMISES

3.1. Premises

Subject to the terms, covenants, and conditions of this Lease, City leases to Tenant and Tenant leases from City, the real property described in the attached Exhibit A (the "Premises"), together with any and all improvements existing on such real property as of the Commencement Date or existing on the Restated Lease Effective Date, including those Improvements identified on the attached Exhibit D, but excluding therefrom and reserving during the Term unto City, its successors, and assigns the rights described in Section 3.2 [Rights Reserved to City]. The Premises are shown generally on the attached Exhibit B. Any acreage stated in this Lease with respect to the Premises is an estimate only, and City does not warrant it to be correct. The Parties agree, however, that for all purposes of this Lease, any such acreage shall be deemed to be correct. Nothing in this Lease is intended to grant Tenant any right whatsoever to possess, use, or operate

the any portion of the SFPUC Facilities.

3.2. Rights Reserved to City

Notwithstanding anything to the contrary in this Lease, City reserves and retains all of the following rights relating to the Premises:

(a) Any and all water and water rights, including, but not limited to (i) any and all surface water and surface water rights, including, without limitation, riparian rights and appropriative water rights to surface streams and the underflow of streams, and (ii) any and all groundwater and subterranean water rights, including, without limitation, the right to export percolating groundwater for use by City or its water customers;

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

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

(d) All rights to use, operate, maintain, repair, enlarge, modify, expand, replace, and reconstruct the SFPUC Facilities;

(e) The right to grant future easements and rights-of-way over, across, under, in, and upon the Premises as City shall determine to be in the public interest, provided that any such easement or right-of-way shall be conditioned upon the grantee's assumption of liability to Tenant for damage to its property that Tenant may sustain during the Term with respect to the Premises as a result of the grantee's use of such easement or right-of-way;

(f) Without limiting the generality of Section 3.2(e), the right to grant future easements, rights-of-way, permits, and/or licenses over, across, under, in, and upon the Premises for the installation, operation, maintenance, repair, and removal of (i) equipment for furnishing cellular telephone, radio, or other telecommunications services, including, without limitation, antennas, radio, devices, cables, and other equipment associated with a telecommunications cell site, and (ii) commercial billboards, signs, and/or advertising kiosks, provided that any such easement or right-of-way shall not materially interfere with Tenant's Permitted Use of the Premises under this Lease, and provided further that the grant of any such easement or right-of-way shall be conditioned upon the grantee's assumption of liability to Tenant for damage to its property that Tenant may sustain during the Term with respect to the Premises as a result of the grantee's use of such easement or right-of-way; and

(g) All rights of access provided for in Section 20 [Access by City].

3.3. Subject to Municipal Uses

Tenant's rights under this Lease shall be subject to City's use of the Premises for municipal purposes and for other City uses. So long as there is no Event of Default or Unmatured Event of Default on the part of Tenant outstanding, however, and subject to the terms and conditions of this Lease, City shall use reasonable efforts to avoid interfering with Tenant's quiet use and enjoyment of the Premises pursuant to this Lease. The use of the term "right-of-way" or similar terms in this document or in any communications relating to this Lease or the Premises shall not be deemed to imply that City holds less than fee title to the Premises or otherwise call into question the nature

of City's title to any of its property. City shall in no way be liable for any damage or destruction to Tenant's property and/or any Improvements resulting from any pipeline break or from any pipeline repair or maintenance activities. At City's request Tenant shall immediately remove any property or Improvements on the Premises to allow City access to the pipelines. If City deems it necessary, at its sole discretion, City shall have the right to remove any such property or Improvements on or about the Premises and City shall not be responsible for restoring or returning same to its prior condition.

3.4. As Is Condition of Premises

(a) Inspection of Premises

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

(b) As Is; Disclaimer of Representations

Tenant acknowledges and agrees that, as of the Commencement Date and the Restated Lease Effective Date, the Premises were and are being leased and accepted strictly in their "AS IS, WITH ALL FAULTS" condition on such dates, without representation or warranty of any kind, and subject to all applicable Laws governing the use, occupancy, management, operation, and possession of the Premises. Without limiting the foregoing, this Lease is made subject to any and all covenants, conditions, restrictions, easements, and other title matters affecting any portion of the Premises whether or not of record. Tenant acknowledges and agrees that neither City, the SFPUC, nor any of their respective Agents have made, and City hereby disclaims, any representations or warranties, express or implied, concerning: (i) title or survey matters affecting the Premises, (ii) the physical, geological, seismological, or environmental condition of the Premises, (iii) the quality, nature, or adequacy of any utilities serving the Premises, (iv) the present or future suitability of the Premises for Tenant's business and intended uses, (v) the feasibility, cost, or legality of constructing any Improvements on the Premises if required for Tenant's Permitted Use and otherwise permitted under this Lease, or (vi) any other matter whatsoever relating to the Premises or their use, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

3.5. Accessibility Disclosures

(a) California Civil Code Section 1938 requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist ("CASp") to determine whether the property meets all applicable construction-related accessibility requirements. The law does not require landlords to have the inspections performed. Tenant is hereby advised that the Premises have not been inspected by a CASp.

(b) Tenant acknowledges that prior to the Restated Lease Effective Date, City provided Tenant with, and Tenant signed, the Disability Access Obligations Notice described in Section 38.3 of the San Francisco Administrative Code. Tenant and City each agree to use reasonable efforts to notify the other Party if making any Improvements or Alterations that might impact accessibility to the Premises under any disability access laws.

4. TERM

4.1. Term

(a) The Premises are leased for a term (the "Term") that commenced on the date specified in the Basic Lease Information as the commencement date (the "Commencement Date"). Subject to this Lease becoming effective pursuant to Section 4.3 [Restated Lease Effective Date], the Term of this Lease shall end on the expiration date specified in the Basic Lease Information, unless sooner terminated pursuant to the provisions of this Lease.

(b) At any time during the Term, Tenant may terminate this Lease prior to the expiration of the then-current Term by delivery to City of at least twelve (12) months' prior written notice of such termination.

4.2. Commencement Date and Expiration Date

The dates on which the Term commenced and terminates pursuant to this Lease are referred to respectively as the "Commencement Date" and the "Expiration Date."

4.3. Restated Lease Effective Date

This Lease shall become effective on the date (the "Restated Lease Effective Date") that is the later of (a) the date the Parties complete the mutual execution and delivery of this Lease and (b) the date the SFPUC and City's Board of Supervisors and Mayor have each adopted or approved, at their sole and absolute discretion, an appropriate resolution or ordinance approving this Lease as required by applicable Law.

4.4. Extension Term

Tenant shall have the right to extend the Initial Term of this Lease (the "Extension Option") for one (1) additional term as specified in the Basic Lease Information (the "Extended Term"). Such Extension Option shall be on all of the terms and conditions contained in this Lease. Tenant may exercise the Extension Option, if at all, by giving written notice to City no earlier than five hundred forty-five days, and no later than three hundred sixty-five (365) days, prior to expiration of the Term to be extended; provided, however, if Tenant is in material default under this Lease on the date of giving such notice and fails to cure such default as provided in this Lease, City may reject such exercise by delivering written notice of such rejection to Tenant promptly after such failure to cure.

5. RENT

5.1. Base Rent

Tenant is a non-profit organization which depends, in great part, upon State of California and City funding and charitable donations to finance its operational costs. Tenant represents that it also earns revenue from its Respite Care Program, recreational hall event rentals, and certain other programs, which such revenue solely defrays its operational costs and no part of Tenant's revenue results in a profit to Tenant or benefits any private party. Tenant acknowledges and agrees that Landlord has agreed not to charge any "Base Rent" based upon Tenant's non-profit organizational status and Tenant's representation that it receives the majority of its operating revenue from government and non-profit agencies. Tenant further acknowledges and agrees that in the event Tenant generates "net revenue" (as defined below), City is entitled to fifty percent (50%) of such "net revenue." For the purposes of this Lease, the term "net revenue" means, with respect to any calendar year, any income or monies, or their equivalent, that Tenant receives in such year in excess of Tenant's operational costs at the Premises; provided that any such income or monies shall not include any of the following: any and all bequests, charitable donations,

unrealized or realized capital gains, grants, or any revenues placed into a capital expenditure fund, endowment, program development reserve, maintenance and repair reserve, job training program, or any other program or fund intended to be used in furtherance of Tenant's Principal Mission. On March 1 during each calendar year of the Term, Tenant shall submit its then-current financial statement for the immediately preceding calendar year, together with an affidavit or certificate in a form acceptable to City executed and attested to by its Chief Financial Officer, stating the sum of Tenant's operational costs and revenue for such prior calendar year and any sums received by Tenant during such year. If Tenant earns net revenue for such prior calendar year, Tenant shall submit to City concurrently with such financial statement and affidavit a check in the sum of fifty percent (50%) of such net revenue to City. Any such amounts so payable by Tenant shall be considered as "Rent" under this Lease

5.2. Additional Charges

Tenant shall pay to City any and all charges and other amounts required under this Lease as additional rent (collectively, "Additional Charges"). All such Additional Charges shall be payable to City at the same place and the same manner as the Rent is payable. City shall have the same remedies for a default in the payment of any Additional Charges as for a default in the payment of Rent. As used in this Lease, the term "Rent" shall include the Additional Charges and any other amounts or costs that Tenant is obligated to pay pursuant to this Lease, whether or not any such amounts are specifically characterized as rent.

5.3. Net Lease

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

6. TAXES, ASSESSMENTS, AND OTHER EXPENSES

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

(a) Payment Responsibility

Tenant shall pay any and all real and personal property taxes, general and special assessments, excises, licenses, permit fees, and other charges and impositions of every description levied on or assessed against the Premises, any Improvements, Tenant's Personal Property, the leasehold estate or any subleasehold estate, or Tenant's use of the Premises or any Improvements.

Tenant shall make all such payments directly to the charging authority when due and payable and at least ten (10) days before delinquency, subject to Tenant's right to contest the validity of such charge pursuant to **Section 6.1(c) [No Liens]**. With respect to real property taxes and assessments levied on or assessed against the Premises for which City receives the tax bill directly from the taxing authority, however, Tenant shall reimburse City for payment of such sums immediately upon demand.

(b) Taxability of Possessory Interest

Without limiting the foregoing, Tenant recognizes and agrees that this Lease may create a possessory interest subject to property taxation and that Tenant may be subject to the payment of property taxes levied on such interest.

(c) No Liens

Tenant shall not allow or suffer a lien for any taxes payable by Tenant pursuant to this Lease to be imposed upon the Premises or upon any equipment or other property located on or about the Premises without promptly discharging the same. Tenant may have a reasonable opportunity to contest the validity of any such taxes provided Tenant, before commencement of any proceeding or contest, furnishes to City a surety bond issued by a surety company qualified to do business in California and acceptable to City's Controller. The amount of such bond shall be equal to one hundred twenty-five percent (125%) of the amount of taxes in dispute and shall be in such form as approved by City's Office of the City Attorney. The bond shall insure payment of any judgment that may be rendered should Tenant be unsuccessful in any such contest. Tenant shall Indemnify City, the other Indemnified Parties, and the Premises from and against any Losses arising out of any proceeding or contest provided for under this Lease. The foregoing Indemnity shall not be limited by the amount of the bond.

(d) Reporting Requirement

Tenant shall provide such information as City may request to enable City to comply with any tax reporting requirements applicable to this Lease.

6.2. Other Expenses

Tenant shall be responsible for any and all other charges, costs, and expenses related to its use, occupancy, operation, or enjoyment of the Premises or any permitted Improvements, including, without limitation, the cost of any utilities or services necessary for Tenant's use.

6.3. Evidence of Payment

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

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

7.1. Tenant's Permitted Use

(a) Primary Permitted Use

Tenant may use the Premises and any Improvements allowed by this Lease only for the use (the "Permitted Use") specified in the Basic Lease Information, and for no other purpose. Any material alternative or additional use during the Term is subject to the prior written consent of the SFPUC's Real Estate Director, which consent shall not be unreasonably withheld or delayed.

(b) **Permitted Occasional Users**

Notwithstanding anything to the contrary in this Lease, however, from time to time, one or more users (each, a “**Permitted Occasional User**”) may enter upon the Premises to use the Premises for the Permitted Use for a period of up to fourteen (14) consecutive days or for longer periods of time as may be approved in writing by the SFPUC. Any use of the Premises by a Permitted Occasional User in excess of fourteen (14) consecutive days shall require (a) the SFPUC’s prior written consent, at its sole discretion, requested a minimum of seven (7) days before the commencement of the use; and (b) require the Permitted Occasional User to sign and deliver to the SFPUC and Tenant a license agreement (a “**POU License**”) on a form approved by the SFPUC and the City Attorney. The SFPUC shall approve or deny any request for a POU License so submitted within thirty (30) days of Tenant’s request. Any POU License issued to an authorized Permitted Occasional User pursuant to this Section, and any related consideration paid by any such Permitted Occasional User, shall not be subject to any prohibition against assignment or subleasing as set forth in **Section 16** [Assignment and Subletting], or the recapture provisions of **Section 16** [Assignment and Subletting] with respect to such authorized Permitted Occasional User. Notwithstanding any consent by City to a POU License issued by Tenant to any Permitted Occasional User, neither Tenant nor any guarantor shall be released from any obligation to be performed by Tenant under this Lease. Any POU License issued to a Permitted Occasional User that is not in compliance with this Section shall, at the option of City at its sole and absolute discretion, be void and, at City’s option, shall constitute a material Event of Default by Tenant under this Lease. No Permitted Occasional User shall have any right, title, or interest in or to any of the Premises other than the limited right to use the Premises as provided in this Section and in any related POU License, and no use of the Premises by any Permitted Occasional User or any POU License granted to a Permitted Occasional User pursuant to this Section shall be deemed to constitute a grant by City or Tenant of any estate or any interest in the Premises to such Permitted Occasional User. In addition, Tenant shall not perform any Alterations or in any way separately demise space for any Permitted Occasional User. Tenant will ensure that any Permitted Occasional User accessing or occupying the Premises complies with all terms and conditions of the applicable POU License, if any, and with all applicable laws at all times while on the Premises, as further defined in the POU License.

(c) **Gas Tank Operation**

For so long as Tenant provides transportation to its clients and patrons by gasoline powered vehicles leased or owned by Tenant (“**Gas Cars**”) and used in connection with the fulfillment of Tenant’s Principal Mission, Tenant may operate, use, maintain, and repair the existing single six thousand (6,000) gallon gas tank and gas dispensing system (the “**Gas Tank**”) for such Gas Cars used to provide transportation to Tenant’s clients and patrons; provided that, at all times during the Term that the Gas Tank is used or placed within the Premises, Tenant (i) obtains and keeps in force all necessary permits, approvals, consents, and licenses with respect to the operation, use, maintenance, repair, and/or presence of the Gas Tank on the Premises that are required by any applicable Laws or any local, state, federal or other governmental agency or entity with jurisdiction; (ii) causes the Gas Tank to be used and operated in compliance with all applicable Laws, (iii) maintains the environmental pollution liability insurance coverage required by **Section 19.1(g)** [Environmental Pollution Liability] below, and (iv) complies with the reasonable requirements of City intended to minimize risks and liabilities with respect to the use, operation, maintenance, and repair of the Gas Tank. Commencing on the Restated Lease Effective Date, Tenant shall use commercially reasonable efforts to replace all Gas Cars owned or leased by Tenant with electric-powered vehicles or other vehicles that use clean fuel. On the date (the “**Gas Termination Date**”) that (A) Tenant fully accomplishes such replacement or (B) otherwise ceases to use Gas Cars for the provision of transportation to its clients and patrons as allowed by this Section, Tenant shall give City notice of the occurrence of the Gas Termination Date, promptly cease use of the Gas Tank, and, within ninety (90) days of the Gas Termination Date, shall cause the Gas Tank to be removed pursuant to the provisions of **Section 22.1 (b)** [Removal of Gas Tank and Gas Systems].

7.2. Covenants Regarding Use

As a material inducement to City to enter into this Lease, Tenant covenants with City as follows:

(a) No Unlawful Uses or Nuisances

Tenant shall not use or occupy any of the Premises or any Improvements, or permit the use or occupancy of the Premises or any Improvements, in any unlawful manner or for any illegal purpose, or permit to be carried on any offensive, immoral, noisy or hazardous use, or any use in violation of the conditions of any certificate of occupancy. Tenant shall take all precautions to eliminate immediately any nuisances or hazards relating to its activities on or about the Premises or any Improvements permitted under this Lease.

(b) Covenant Against Waste

Tenant shall not cause or permit any waste, damage, or injury to the Premises.

(c) Covenant to Protect the SFPUC Facilities

At all times during the Term of this Lease, Tenant shall protect the SFPUC Facilities from any damage, injury, or disturbance. Tenant shall immediately notify City if Tenant or any of its Agents or Invitees damages, injures, or disturbs any of the SFPUC Facilities (including monuments). Without limiting any of its other rights under this Lease, City may take all actions it deems proper (including relocation of monuments) to repair at Tenant's sole expense any of the SFPUC Facilities damaged, injured, or disturbed by Tenant or any of its Agents or Invitees. Upon City's request, Tenant shall promptly remove or alter, to City's satisfaction and at Tenant's sole cost, any Improvements, Alterations, or Tenant's Personal Property placed on the Premises by or on behalf of Tenant as necessary to avoid interference with City's use of the Premises or any of the SFPUC Facilities for municipal utility purposes. Alternatively, subject to the SFPUC General Manager's approval at his or her sole discretion, Tenant may pay City for the costs determined by the SFPUC General Manager that City will incur as a result of such interference. City may adopt from time to time such rules and regulations with regard to Tenant's facilities and operations pursuant to this Lease as City may determine are necessary or appropriate to safeguard against corrosion of City's pipelines and any related SFPUC Facilities. Upon receipt of a copy of such rules and regulations, Tenant shall comply with all such rules and regulations.

(d) Covenant to Protect Water Courses

Tenant shall not cause any ponding on the Premises or any flooding on adjacent land. Tenant shall not engage in any activity that causes any change, disturbance, fill, alteration, or impairment to the bed, bank, or channel of any natural water course, wetland, or other body of water on, in, under, or about the Premises, nor shall Tenant engage in any activity that would pollute or degrade any surface or subsurface waters or result in the diminution or drainage of such waters.

(e) Covenant Against Dumping

Tenant shall not cause or permit the dumping or other disposal on, under, or about the Premises of landfill, refuse, Hazardous Material, or other materials that are unsightly or could pose a hazard to the human health or safety, native vegetation or wildlife, or the environment.

(f) Covenant to Protect Trees or Other Native Vegetation

Tenant shall not engage in or permit the cutting, removal, or destruction of trees or any other native vegetation on the Premises, without the SFPUC's prior written approval.

(g) No Tree Planting

Without City's prior, written consent, Tenant shall not plant any trees on the Premises, nor shall Tenant plant any other vegetation on the Premises except as otherwise expressly provided in this Lease.

(h) Covenant Against Hunting or Fishing

Tenant shall not engage in or permit any hunting, trapping, or fishing on or about the Premises, except for hunting or trapping for the purpose of controlling predators or problem animals by the appropriate use of selective control techniques approved in advance by City; provided such hunting and trapping is done in strict accordance with all applicable Laws. Whenever possible, all measures used for such control shall be limited in their application to the specific problem animals. Tenant shall not use poison bait, cyanide guns, traps, or other similar non-selective control techniques. In no event may Tenant use any prophylactic predator control measures. The restrictions of this Section applicable to the identification and control of predators and problem animals shall not apply to commensal rodents.

(i) Pesticides Prohibition

Tenant shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "Pesticide Ordinance") that (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (iii) require Tenant to submit to the SFPUC an integrated pest management ("IPM") plan that (A) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the terms of this Lease, (B) describes the steps Tenant will take to meet the City's IPM Policy described in Section 300 of the Pesticide Ordinance, and (C) identifies, by name, title, address, and telephone number, an individual to act as the Tenant's primary IPM contact person with the City. In addition, Tenant shall comply with Sections 303(a) and 303(b) of the Pesticide Ordinance.

(j) Weed Control

Tenant shall not introduce any noxious weeds on or about the Premises. Tenant shall control noxious weeds, provided that Tenant may use chemical herbicides only if such use complies with the requirements of Section 7.2(i) [Pesticides Prohibition].

(k) Maintenance of Paved Areas

Tenant shall keep all paved areas on the Premises open and in good repair and condition, ordinary wear and tear excepted.

(l) Covenant Against Burning

Tenant shall not burn any weeds, debris, or other substances on or about the Premises.

(m) No Off-Road Vehicles

Tenant shall not use or permit the use of off-road vehicles on any portion of the Premises except on existing roads and in the manner for which such roads are intended.

(n) Restrictions on Heavy Equipment and Vehicles

If at any time during the Term, City places pipelines or any other SFPUC Facilities

on or under any portion of the Premises, Tenant shall strictly adhere to the following restrictions when using vehicles and equipment within twenty feet (20') of such SFPUC Facilities:

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

(ii) The effects of vehicle and equipment loads to the pipe must not exceed the effects of the "AASHO Standard H-10 Loading." H-10 loading is defined as loading caused by a two-axle truck with a gross weight of ten tons (20,000 lbs.), axles fourteen feet (14') apart, and rear axle carrying eight tons (16,000 lbs.). Tenant shall be responsible to provide the SFPUC adequate evidence that Tenant's equipment and vehicles meet the foregoing requirements.

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

(iv) If the depth of the soil cover over any portion of the subterranean SFPUC Facilities (determined by potholing or other proof procedure) is less than the minimum stated in (i) above, unless an alternate method is approved by City all excavation and grading over the pipeline shall be performed manually. For any machinery equipment excavation and grading over and within twenty feet (20') on each side of the centerline of any of City's pipelines or other of the SFPUC Facilities (measured on the surface), Tenant shall submit a written proposal together with all supporting calculations and data to the SFPUC for its review and approval. In any case, the two feet (2') of soil around any City pipeline or other SFPUC Facilities shall be removed manually or by other methods approved by the SFPUC with due care as provided above.

(o) Watershed Management Plan

Tenant shall comply with any and all other regulations or requirements resulting from City's development of a watershed management plan, and any modifications or additions to such plan, provided that such regulations or requirements do not unreasonably interfere with Tenant's Permitted Use of the Premises under this Lease.

8. IMPROVEMENTS

8.1. Construction of Improvements

(a) Requirements for Improvements

Tenant shall not construct or install any Improvements nor make or permit any Alterations in, to or about the Premises, the cost of any project that exceeds One Hundred Thousand Dollars (\$100,000) without City's prior written consent in each instance, which City may give or withhold at its sole and absolute discretion. Subject to City's consent as provided above, any permitted Improvements or Alterations shall be done at Tenant's sole expense (a) in strict accordance with plans and specifications approved in advance by City in writing, (b) by duly licensed and bonded contractors or mechanics approved by City prior to the commencement of construction, (c) in a good and professional manner, (d) in strict compliance with all Laws, and (e) subject to all other conditions that City may reasonably impose, including, without limitation, provision of such completion security as City deems necessary. In no event shall the construction or installation of any such Improvements or the making of any Alterations impair City's access to,

or use or operation of, any portion of the SFPUC Facilities. Before the commencement of any work on the Premises to construct any permitted Improvements or make any permitted Alterations, at its sole expense, Tenant shall procure all required permits and approvals and shall promptly upon receipt deliver copies of all such documents to City. No material change from the plans and specifications approved by City may be made without City's prior consent. City and its Agents shall have the right to inspect the course of such construction at all times. Upon completion of such Improvements or Alterations, Tenant shall furnish City with a complete set of final as-built plans and specifications. Tenant shall require from each contractor and subcontractor performing any work on or about the Premises a policy of general public liability insurance, with such limits as may reasonably be required by City from time to time, but in any event not less than Two Million Dollars (\$2,000,000) combined single limit. Such insurance shall also be in compliance with the requirements set forth in Section 19.2(c) [General Requirements].

(b) Tenant's Alterations that Disturb or Remove Lead Based Paint

Tenant, on behalf of itself and its Agents or Invitees, shall comply with all requirements of the San Francisco Building Code, Section 3407, and all other applicable present or future Laws (including the requirements of any board of fire underwriters or other similar body, any directive or occupancy certificate issued pursuant to any Law by any public officer or officers acting in their regulatory capacity, and the California and United States Occupational Health and Safety Acts and their implementing regulations) when the work of improvement or alteration disturbs or removes exterior lead-based or "presumed" lead-based paint (as defined below). Tenant and its Agents or Invitees shall give City three (3) business days' prior, written notice of any disturbance or removal of exterior lead-based or presumed lead-based paint. Further, Tenant and its Agents or Invitees, when disturbing or removing exterior lead-based or presumed lead-based paint, shall not use or cause to be used any of the following methods: (i) acetylene or propane burning and torching; (ii) scraping, sanding, or grinding without containment barriers or a High Efficiency Particulate Air filter ("HEPA") local vacuum exhaust tool; (iii) hydroblasting or high-pressure wash without containment barriers; (iv) abrasive blasting or sandblasting without containment barriers or a HEPA vacuum exhaust tool; and (v) heat guns operating above 1,100 degrees Fahrenheit. Paint on the exterior of buildings built before December 31, 1978, is presumed to be lead-based paint unless lead-based paint testing, as defined in Section 3407 of the San Francisco Building Code, demonstrates an absence of lead-based paint on the exterior surfaces of such buildings. Under this Section, lead-based paint is "disturbed or removed" if the work of improvement or alteration involves any action that creates friction, pressure, heat or a chemical reaction upon any lead-based or presumed lead-based paint on an exterior surface so as to abrade, loosen, penetrate, cut through or eliminate paint from that surface. Notice to City under this Lease shall not constitute notice to the City's Department of Building Inspection required under Section 3407 of the San Francisco Building Code.

8.2. Ownership of Improvements

Except for Tenant's Personal Property (as described in the next section) or as otherwise provided in this Section, all Improvements or Alterations constructed on or affixed to the Premises by or on behalf of Tenant prior to the Restated Lease Effective Date, or thereafter pursuant to the terms and limitations of Section 8.1 [Construction of Improvements], shall be and remain City's property. Tenant may not remove any such property at any time during or after the Term unless City, at its sole option and without limiting any of the provisions of Section 8.1 [Construction of Improvements], requires as a condition to approval of any such Improvements or Alterations that Tenant to remove such Alterations or Improvements at the expiration or termination of this Lease pursuant to the provisions of Section 22.1 [Surrender of the Premises].

8.3. Tenant's Personal Property

All furniture, furnishings, and articles of movable personal property and equipment installed in the Premises by or for the account of Tenant that can be removed without structural or other material damage to the Premises (collectively, "Tenant's Personal Property") shall be and

remain the property of Tenant and may be removed by it subject to. At least ten (10) days before delinquency, Tenant shall pay all taxes levied or assessed upon Tenant's Personal Property and shall deliver satisfactory evidence of such payment to City.

8.4. Ownership of Gas Tank and Related Appurtenances.

Notwithstanding any other provision in this Lease to the contrary, the Gas Tank and any underground gasoline storage tanks, underground gas lines, and gasoline dispensers located within the Premises (collectively the "Gas Systems") constitute Tenant's Personal Property, and City has no ownership or operational interest in any part of the Gas Tank or any Gas Systems. Tenant hereby acknowledges and agrees that Tenant is the "owner and operator" of the Gas Tank and all Gas Systems for the purpose of applicable Laws. Upon City's request, Tenant shall provide City with a photocopy of the evidence maintained by Tenant to obtain certification of financial responsibility as required by any local or state agency or governmental authority having jurisdiction over the Gas Tank or Gas Systems, and upon request, Tenant shall provide City with any required updates to such evidence and certification of financial responsibility upon any change in the mechanism used to obtain such certification.

9. REPAIRS AND MAINTENANCE

9.1. Tenant Responsible for Maintenance and Repair

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

9.2. Utilities

City has no responsibility or liability of any kind with respect to any utilities that may be on or about the Premises. Tenant has the sole responsibility to locate such utilities and protect them from damage. Tenant shall make all arrangements directly with the utility companies for, and shall pay for, any and all utilities and services furnished to or used by it, including, without limitation, gas, electricity, water, sewage, telephone service, trash collection, and janitorial service, and for all deposits, and connection and installation charges. Tenant shall be responsible for installation and maintenance of all facilities required in connection with such utility services. Any and all utility improvements shall be subject to the provisions of **Section 8.1** [Construction of Improvements] and such improvements shall be deemed part of City's real property, and not personal property or trade fixtures of Tenant. During the Term, Tenant shall be obligated to repair and maintain any and all utility systems and improvements located on or within the Premises (except for the SFPUC Facilities) in good operating condition. City shall not be liable for any failure or interruption of any utility service furnished to the Premises, and no such failure or interruption shall entitle Tenant to any abatement in Rent or to terminate this Lease.

9.3. Maintenance of Fences

Tenant shall maintain in good condition and repair and its expense the existing fence along or about the property line of the Premises.

9.4. No Right to Repair and Deduct

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

10. LIENS

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

11. COMPLIANCE WITH LAWS

11.1. Compliance with Laws

At no cost to City, Tenant shall promptly maintain the Premises, including any Improvements and Tenant's use of the Premises and operations thereon in strict compliance at all times with all present and future Laws, whether foreseen or unforeseen, ordinary as well as extraordinary. Such Laws shall include, without limitation, all Laws relating to health and safety and disabled accessibility including, without limitation, the Americans with Disabilities Act, 42 U.S.C. Sections 12101 et seq. and Title 24 of the California Code of Regulations, all present and future Environmental Laws (as defined in this Lease below), and all present and future life safety, fire sprinkler, seismic retrofit, and other building code requirements. The Parties acknowledge and agree that Tenant's obligation to comply with all laws as provided herein is a material part of the bargained-for consideration under this Lease. Tenant's obligation under this Section shall include, without limitation, Tenant's responsibility to make substantial or structural repairs and

alterations to the Premises (including any Improvements), regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term, the relative benefit of the repairs to Tenant or City, the degree to which the curative action may interfere with Tenant's Permitted Use of the Premises, the likelihood that the parties contemplated the particular Law involved, and whether the Law involved is related to Tenant's particular use of the Premises. Without limiting Section 5.2 [Net Lease], no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its obligations under this Lease, or shall give Tenant any right to terminate this Lease in whole or in part or to otherwise seek redress against City. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution, reduction, or suspension of payment of Rent, or to compel City to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

11.2. Regulatory Approvals

(a) Responsible Party

Tenant shall be solely responsible for obtaining any and all authorizations, approvals, or permits from governmental regulatory agencies with jurisdiction over the Premises necessary or desirable in connection with Tenant's use and occupancy of the Premises pursuant to this Lease, including Tenant's use, operation, maintenance, and repairs of the Gas Tank. Tenant shall not seek any regulatory approval without first obtaining City's written consent. Tenant shall bear all costs associated with applying for, obtaining, and maintaining any necessary or appropriate regulatory approval and shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval. Any fines or penalties levied as a result of Tenant's failure to comply with the terms and conditions of any regulatory approval shall be immediately paid and discharged by Tenant, and City shall have no liability, monetary or otherwise, for any such fines or penalties. Tenant shall Indemnify City and the other Indemnified Parties against all Losses arising in connection with Tenant's failure to obtain or comply with the terms and conditions of any regulatory approval.

(b) City Acting as Owner of Real Property

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

11.3. Compliance with City's Risk Management Requirements

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

11.4. Reports

Tenant shall submit a report and provide such documentation to City as City may from time to time request regarding Tenant's operations and evidencing compliance with this Lease and

all Laws.

12. FINANCING; ENCUMBRANCES; SUBORDINATION

12.1. Encumbrance of City's Fee Interest

The following provisions shall apply notwithstanding anything to the contrary contained in this Lease.

(a) Encumbrance by City

To the extent permitted by applicable Law, City may at any time sell or otherwise transfer or encumber its fee estate in any portion of the Premises provided that (i) any such sale or Encumbrance shall be subject and subordinate to all of the terms of this Lease and the leasehold estate created hereby, (ii) the right of possession of Tenant to the Premises shall not be affected or disturbed by any such sale or Encumbrance, or by the exercise of any rights or remedies by any purchaser or Encumbrancer arising out of any instrument reflecting such sale or Encumbrance so long as no Event of Default or Unmatured Event of Default is outstanding.

(b) Encumbrance By Tenant

Tenant shall not under any circumstances whatsoever Encumber in any manner any portion of (i) the Premises, (ii) the SFPUC Facilities, (iii) City's estate in the Premises or any adjoining property, or (iv) City's interest under this Lease.

12.2. Leasehold Encumbrances

Without limiting any provision of Section 16 [Assignment and Subletting], Tenant shall not Encumber this Lease, or assign or pledge assignment of the same as security for any debt, without first obtaining the written consent of City, which City may give or withhold at its sole discretion.

13. DAMAGE OR DESTRUCTION

13.1. Damage or Destruction to the Improvements

In the case of damage to or destruction of the Premises by fire or any other casualty, whether insured or uninsured, at its sole cost and with reasonable promptness and diligence, Tenant shall restore, repair, replace, or rebuild the Premises as nearly as possible to the same condition, quality, and class the Premises were in immediately before such damage or destruction, unless such damage or destruction was caused solely and directly by the negligence or willful misconduct of City or its Agents. With respect to any damage to or destruction by fire or any other casualty to any Improvements permitted by this Lease made by or on behalf of Tenant during the Term, at its option and at its sole cost, Tenant may, restore, repair, replace, or rebuild such Improvements to the condition such Improvements were in before such damage or destruction, subject to any changes made in strict accordance with the requirements of Section 8.1 [Construction of Improvements]. If Tenant does not notify City in writing within ninety (90) days after the date of such damage or destruction of Tenant's election to restore, repair, replace, or rebuild any such damaged or destroyed Improvements as provided above, then (a) either Party may elect to terminate this Lease by written notice to the other Party as of a date specified in such notice, which date shall be not less than thirty (30) nor more than sixty (60) days after such notice is given and (b) promptly after such notice is given, Tenant shall demolish such Improvements and remove them (including all debris) from the Premises in compliance with the provisions of Section 22.1 [Surrender of the Premises].

13.2. Abatement in Rent

In the event of any damage or destruction to the Premises or any permitted Improvements, there shall be no abatement in the Base Rent or Additional Charges payable pursuant to this Lease.

13.3. Waiver

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

_____ Tenant's Initials

14. INTENTIONALLY OMITTED.

15. EMINENT DOMAIN

15.1. General

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

15.2. Total Taking; Automatic Termination

If a total Taking of the Premises occurs, then this Lease shall terminate as of the Date of Taking.

15.3. Partial Taking; Election to Terminate

(a) If a Taking of any portion (but less than all) of the Premises occurs, then this Lease shall terminate in its entirety under either of the following circumstances: (i) if all of the following exist: (A) the partial Taking renders the remaining portion of the Premises untenable or unsuitable for continued use by Tenant, (B) the condition rendering the Premises untenable or unsuitable either is not curable or is curable but City is unwilling or unable to cure such condition, and (C) Tenant elects to terminate; or (ii) if City elects to terminate, except that this Lease shall not terminate if Tenant agrees to, and does, pay full Rent and Additional Charges, without abatement, and otherwise agrees to, and does, fully perform all of its obligations under this Lease.

(b) If a partial Taking of a substantial portion of the SFPUC Facilities or any of City's adjoining real property, but not the Premises, occurs, City shall have the right to terminate this Lease in its entirety.

(c) Either Party electing to terminate under the provisions of this Article 15 shall do so by giving written notice to the other Party before or within thirty (30) days after the Date of Taking, and thereafter this Lease shall terminate upon the later of the thirtieth day after such written notice is given or the Date of Taking.

15.4. Termination of Lease; Rent and Award

Upon termination of this Lease in its entirety pursuant to Section 15.2 [Total Taking; Automatic Termination], or pursuant to an election under Section 15.3 [Partial Taking; Election to Terminate], then: (a) Tenant's obligation to pay Rent shall continue up until the date of termination and thereafter shall cease, and (b) City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease), and Tenant shall have no claim against City for the value of any unexpired term of this Lease, provided that Tenant may make a separate claim for compensation, and Tenant shall receive any Award made specifically to Tenant, for (i) Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's Personal Property and (ii) the value of the Improvements at the time of the Taking in accordance with the following criteria: (A) if the Taking occurs during the period prior to the fifth (5th) anniversary of the Restated Lease Effective Date, Tenant may claim one hundred percent (100%) of the value of the Improvements at the time of the Taking in any Award made specifically to Tenant; (B) if the Taking occurs during the period after the fifth (5th) anniversary of the Restated Lease Effective Date and prior to the tenth (10th) anniversary of the Restated Lease Effective Date, Tenant may claim seventy-five percent (75%) of the value of the Improvements at the time of the Taking in any Award made specifically to Tenant; (C) if the Taking occurs during the period after the tenth (10th) anniversary of the Restated Lease Effective Date and prior to the fifteenth (15th) anniversary of the Restated Lease Effective Date, Tenant may claim fifty (50%) percent of the value of the Improvements at the time of the Taking in any Award made specifically to Tenant; (D) if the Taking occurs during the period after the fifteenth (15th) anniversary of the Restated Lease Effective Date and prior to the twenty-fifth (25th) anniversary of the Restated Lease Effective Date, Tenant may claim twenty-five (25%) percent of the value of the Improvements at the time of the Taking in any Award made specifically to Tenant; and (E) if the Taking occurs at any time during the Extension Term, Tenant shall not claim, and will not be entitled to claim any amount with respect to the value of the Improvements at the time of the Taking. City may make any claim with respect to the value of the Improvements at the time of any Taking that will not diminish or reduce the amount to be awarded to Tenant pursuant to the criteria set forth in the preceding sentence.

15.5. Partial Taking; Continuation of Lease

If a partial Taking of the Premises occurs and this Lease is not terminated in its entirety under Section 15.3 [Partial Taking; Election to Terminate], then this Lease shall terminate as to the portion of the Premises so taken, but shall remain in full force and effect as to the portion not taken, and the rights and obligations of the Parties shall be as follows: (a) Base Rent shall be reduced by an amount that is in the same ratio to the Base Rent as the area of the Premises taken bears to the area of the Premises before the Date of Taking, and (b) City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease). Tenant shall have no claim against City for the value of any unexpired Term of this Lease, provided that Tenant may make a separate claim for compensation. Tenant shall retain any Award made specifically to Tenant for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's Personal Property.

15.6. Temporary Takings

Notwithstanding anything to contrary in this Section, if a Taking occurs with respect to all or any part of the Premises for a limited period of time not in excess of sixty (60) consecutive days, this Lease shall remain unaffected thereby, and Tenant shall continue to pay Rent and to perform all of the terms, conditions and covenants of this Lease. In the event of such temporary Taking, and Tenant is paying Base Rent required by this Lease with respect to the period of such temporary Taking, then Tenant shall be entitled to receive that portion of any Award representing compensation for the use or occupancy of the Premises during the Term up to the total Base Rent

owing by Tenant for the period of the Taking, and City shall be entitled to receive the balance of any Award. If, however, Tenant is not required to pay any Base Rent pursuant to this Lease during the period of such temporary Taking, then City shall be entitled to receive the entirety of any Award.

16. ASSIGNMENT AND SUBLETTING

16.1. Restriction on Assignment and Subletting

Tenant shall not directly or indirectly (including, without limitation, by merger, acquisition, sale, or other transfer of any controlling interest in Tenant), voluntarily or by operation of Law, sell, assign, encumber, pledge, or otherwise transfer any part of its interest in or rights with respect to the Premises, the business, any Improvements, or its leasehold estate under this Lease (collectively, "Assignment"), or except as allowed pursuant to Section 7.1 [Tenant's Permitted Use], permit any portion of the Premises or any Improvements to be occupied by anyone other than itself, or sublet any portion of the Premises or any permitted Improvements thereon (collectively, "Sublease"), without the City's prior written consent in each instance, which City may withhold at its sole discretion. Any Assignment or Sublease, without City's prior consent, shall be voidable at the option of the City at its sole and absolute discretion; and City may terminate this Lease immediately by sending written notice to Tenant.

Tenant further agrees and understands that the intent and purpose of this Lease is to allow for the Permitted Use, and not for the purpose of creating an investment in property. Therefore, while Tenant may charge to an assignee, sublessee, or Permitted Occasional User an amount in excess of that Rent that is at the time being charged by City to Tenant, except for use fees or their equivalent paid by POUs pursuant to Section 7.1 [Tenant's Permitted Use], all rental income or other consideration received by Tenant that is attributable to the value of the leasehold estate created by this Lease over and above that Rent charged to Tenant by City shall be paid directly to City with no profit, direct or indirect, to Tenant attributable to the value of the leasehold estate created by this Lease.

16.2. Notice of Proposed Transfer

If Tenant desires to enter into an Assignment or a Sublease (other than the temporary use of the Premises by a Permitted Occasional User pursuant to the provisions of Section 7.1 [Tenant's Permitted Use]), then it shall give written notice (a "Notice of Proposed Transfer") to City of its intention to do so. The Notice of Proposed Transfer shall include a copy of the proposed Assignment or Sublease, identify the Transferee and state the terms and conditions under which Tenant is willing to enter into such proposed Assignment or Sublease, including a copy of the proposed Assignment or Sublease agreement. Tenant shall provide City with financial statements for the proposed Transferee and such additional information regarding the proposed Transfer as City may reasonably request.

16.3. City's Response

Within twenty (20) business days after City's receipt of the Notice of Proposed Transfer and any such additional information requested by City (the "Response Period"), by written notice to Tenant, City may elect to: (a) sublease the portion of the Premises specified in the Notice of Proposed Transfer on the terms and conditions set forth in such notice, except as otherwise provided in Section 16.4 [Sublease or Recapture Premises], or (b) terminate this Lease as to the portion (including all) of the Premises that is specified in the Notice of Proposed Transfer, with a proportionate reduction in Base Rent (a "Recapture").

If City declines to exercise either of the options provided in clauses (a) and (b) above, then Tenant shall be entitled for a period of ninety (90) days following the earlier of City's notice that it will not elect either such option or the expiration of the Response Period, to enter into such Assignment or Sublease, subject to the City's prior written approval of the proposed Transferee

and the terms and conditions of the proposed Transfer. The parties recognize and agree that the purpose of this Lease is to allow for the Permitted Use and not to create an investment in property, and therefore City may condition its consent to any Assignment or Sublease on the receipt of some or all of the consideration realized by Tenant under any such Assignment or Sublease (or the amount thereof attributable to the Premises if the transaction includes other properties) in excess of the Base Rent and Additional Charges payable pursuant to this Lease, after deducting the proportionate share of any reasonable broker's commissions or transaction costs incurred by Tenant. Tenant shall provide City with such information regarding the proposed Transferee and the proposed Assignment or Sublease as City may reasonably request.

Notwithstanding the foregoing, if following City's decline to exercise the foregoing options Tenant desires to enter into such Assignment or Sublease on terms and conditions materially more favorable to Tenant than those contained in the Notice of Proposed Transfer, then Tenant shall give City a new Notice of Proposed Transfer, which notice shall state the terms and conditions of such Assignment or Sublease and identify the proposed Transferee, and City shall again be entitled to elect one of the options provided in clauses (a) and (b) above at any time within fifteen (15) business days after City's receipt of such new Notice of Proposed Transfer.

If City elects either of the options provided in clauses (a) or (b) above, at its sole option, City shall be entitled to enter into a lease, sublease, or assignment agreement with respect to all or any portion of the Premises specified in such new Notice of Proposed Transfer with the proposed Transferee identified in Tenant's notice.

Notwithstanding the foregoing, if any Event of Default or Unmatured Event of Default by Tenant is outstanding under this Lease at the time of Tenant's Notice of Proposed Transfer, then City may elect by notice to Tenant to refuse to consent to Tenant's proposed Transfer and pursue any of its rights or remedies under this Lease or at Law or in equity.

16.4. Sublease or Recapture Premises

If City elects to Sublease or Recapture from Tenant as provided in Section 16.3 [City's Response], the following shall apply:

(a) Sublease

In the case of a Sublease, (i) City shall have the right to use the portion of the Premises covered by the Notice of Proposed Transfer (the "**Sublease Premises**") for any legal purpose, (ii) the rent payable by City to Tenant shall be the lesser of that set forth in the Notice of Proposed Transfer or the Rent payable by Tenant under this Lease at the time of the Sublease (or the amount thereof proportionate to the Sublease Premises if for less than the entire Premises), (iii) City may make alterations and improvements to the Sublease Premises as it may elect, and City may remove any such alterations or improvements, in whole or in part, before or upon the expiration of the Sublease, provided that City shall repair any damage or injury to the Sublease Premises caused by such removal, (iv) City shall have the right to further sublease or assign the Sublease Premises to any party, without the consent of Tenant, and (v) Tenant shall pay to City on demand any costs incurred by City in physically separating the Sublease Premises (if less than the entire Premises) from the balance of the Premises and in complying with any applicable Laws relating to such separation.

(b) Recapture

In the case of Recapture, (i) the portion of the Premises subject to the Recapture (the "**Recapture Premises**") shall be deleted from the Premises for all purposes under this Lease, and Tenant and City shall be relieved of all of their rights and obligations under this Lease with respect to the Recapture Premises except to the extent the same would survive the Expiration Date or other termination of this Lease pursuant to the provisions hereof, and (ii) City shall pay any cost incurred in physically separating the Recapture Premises (if less than the entire Premises) from the balance of the Premises and in complying with any applicable governmental Laws relating to such

separation.

16.5. Effect of Transfer

No (a) Sublease or Assignment by Tenant, (b) use by any Permitted Occasional User pursuant to Section 7.1 [Tenant's Permitted Use] above, nor (c) any consent by City to any such uses shall relieve Tenant, or any guarantor, of any obligation to be performed by Tenant under this Lease. Any Sublease or Assignment or use by any Permitted Occasional User that is not in compliance with this Lease shall, at City's option at its sole and absolute discretion, be void and, at City's option, shall constitute a material Event of Default by Tenant under this Lease. The acceptance of any Rent or other payments by City from a proposed Transferee or any Permitted Occasional User shall not constitute consent by City to any such Sublease, Assignment, or use or a recognition of any Transferee, or a waiver by City of any failure of Tenant or other transferor to comply with this Section.

16.6. Assumption by Transferee

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

16.7. Indemnity for Relocation Benefits

Without limiting the provisions of Section 16.6 [Assumption by Transferee], Tenant shall cause any Transferee to expressly waive entitlement to any and all relocation assistance and benefits in connection with this Lease. Tenant shall Indemnify City and the other Indemnified Parties for any and all Losses arising out of any relocation assistance or benefits payable to any Transferee.

16.8. IPM Plan and Form CMD-12B-101

As a condition to any Assignment or Sublease, the Transferee shall execute Form CMD 12B-101 (as such term is defined in Section 25.22 [Non Discrimination in City Contracts and Benefits Ordinance]) with supporting documentation and secure the CMD's approval of such form. As a condition to any Assignment or Sublease, the Transferee shall assume the IPM plan of Tenant or submit a new IPM plan in accordance with the requirements of Section 7.2(i) [Pesticides Prohibition] or obtain an exemption, through the SFPUC. Any transferee must also comply with all other provisions of this Lease, including but not limited to the insurance provisions.

17. DEFAULT; REMEDIES

17.1. Events of Default

Any of the following shall constitute an event of default ("Event of Default") by Tenant under this Lease:

(a) Rent

Any failure to pay any Rent or other sums as and when due, provided Tenant shall have a period of three (3) days from the date of written notice of such failure from City within which to cure any default in the payment of Rent or other sums; provided, however, that City shall not be required to provide such notice regarding Tenant's failure to make such payments when due more than twice during any calendar year, and any such failure by Tenant after Tenant has received two such notices in any calendar year from City shall constitute a default by Tenant under this Lease without any requirement on the part of City to give Tenant notice of such failure or an opportunity to cure except as may be required by Section 1161 of the California Code of Civil Procedure;

(b) Covenants, Conditions, and Representations

Any failure to perform or comply with any other covenant, condition, or representation made under this Lease, provided Tenant shall have a period of fifteen (15) days from the date of City's written notice of such failure within which to cure such default under this Lease, or, if such default is not capable of cure within such 15-day period, Tenant shall have a reasonable period to complete such cure if Tenant promptly undertakes action to cure such default within such 15-day period and thereafter diligently prosecutes the same to completion and Tenant uses its best efforts to complete such cure within sixty (60) days after the receipt of notice of default from City; provided, however, that upon the occurrence during the Term of two defaults of the same obligation City shall not be required to provide any notice regarding Tenant's failure to perform such obligation, and any subsequent failure by Tenant after Tenant has received two such notices shall constitute a default by Tenant under this Lease without any requirement on the part of City to give Tenant notice of such failure or an opportunity to cure;

(c) Vacation or Abandonment

Any vacation or abandonment of the Premises for more than fourteen (14) consecutive days; and

(d) Bankruptcy

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

17.2. Remedies

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

(a) Terminate Lease and Recover Damages

The rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate Tenant's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Base Rent and Additional Charges for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that Tenant proves could be reasonably avoided, as computed pursuant to subsection (b) of such Section 1951.2. City's efforts to mitigate the damages caused by Tenant's breach of this Lease shall not waive City's rights to recover damages upon termination.

(b) Continue Lease and Enforce Rights

The rights and remedies provided by California Civil Code Section 1951.4 (continuation of lease after breach and abandonment), which allows City to continue this Lease in effect and to enforce all of its rights and remedies under this Lease, including the right to recover Rent as it becomes due, for so long as City does not terminate Tenant's right to possession, if Tenant has the right to sublet or assign, subject only to reasonable limitations. For purposes hereof, none of the following shall constitute a termination of Tenant's right of possession: acts of maintenance or preservation; efforts to relet the Premises or the appointment of a receiver upon City's initiative to protect its interest under this Lease; or withholding consent to an Assignment or Sublease, or terminating an Assignment or Sublease, if the withholding or termination does not violate the rights of Tenant specified in subdivision (b) of California Civil Code Section 1951.4. If City exercises its remedy under California Civil Code Section 1951.4, City may from time to time sublet the Premises or any part thereof for such term or terms (which may extend beyond the Term) and at such rent and upon such other terms as City at its sole discretion may deem advisable, with the right to make alterations and repairs to the Premises. Upon each such subletting, Tenant shall be immediately liable for payment to City of, in addition to Base Rent and Additional Charges due under this Lease, the cost of such subletting and such alterations and repairs incurred by City and the amount, if any, by which the Base Rent and Additional Charges owing under this Lease for the period of such subletting (to the extent such period does not exceed the Term) exceeds the amount to be paid as Base Rent and Additional Charges for the Premises for such period pursuant to such subletting. No action taken by City pursuant to this **Section 17.2(b)** shall be deemed a waiver of any default by Tenant and, notwithstanding any such subletting without termination, City may at any time thereafter elect to terminate this Lease for such previous default.

(c) Appointment of Receiver

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

17.3. City's Right to Cure Tenant's Defaults

If Tenant defaults in the performance of any of its obligations under this Lease, then, at any time thereafter with three (3) days prior oral or written notice (except in the event of an emergency as determined by City), City may remedy such Event of Default for Tenant's account and at Tenant's expense. Tenant shall pay to City, as Additional Rent, promptly upon demand, all sums expended by City, or other costs, damages, expenses, or liabilities incurred by City, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such Event of Default. Tenant's obligations under this Section shall survive the termination of this Lease. Nothing in this Lease shall imply any duty of City to do any act that Tenant is obligated to perform under any provision of this Lease, and City's cure or attempted cure of Tenant's Event of Default shall not constitute a waiver of Tenant's Event of Default or any rights or remedies of City on account of such Event of Default.

17.4. Special Administrative Charges.

Without limiting City's other rights and remedies set forth in this Lease, at law or in equity, if Tenant (a) constructs or installs any Alteration or Improvement without the written approval of City as required by **Section 8** [Improvements] of this Lease, or (b) fails to make a repair required by **Section 9** [Repairs and Maintenance] on a timely basis, or (c) fails to provide evidence of the required insurance coverage described in **Section 19** [Insurance] below on a timely basis, then upon written notice from City of such failure or unauthorized action, Tenant shall pay, as an additional charge, the respective amount specified in the table below in consideration of City's administrative cost and expense in providing notice or performing inspections or such adjusted amounts as City, at its sole discretion, establishes from time to time during the course of the Term.

If Tenant fails to remove the unauthorized Alteration or Improvement and restore the Premises or perform the necessary repair or provide the necessary document, as applicable, within the time period set forth in such notice and City delivers to Tenant additional written notice requesting such document or evidence of such repair, or performs additional inspections to verify compliance, then Tenant shall pay to City, as an additional charge, the respective amount specified in the table below for each additional written notice City delivers to Tenant requesting such corrective action.

<u>Violation</u>	<u>Lease Section</u>	<u>Initial inspection and/or notice</u>	<u>Follow up inspection and/or notice</u>
Construction of Improvements or Alterations that are not approved by City	8	\$400.00	\$500.00
Failure to make required repairs	9	\$400.00	\$500.00
Failure to obtain/maintain insurance	19	\$400.00	\$500.00

Such administrative fees shall be due and payable as Additional Rent. The Parties agree that the charges set forth in this Section represent a fair and reasonable estimate of the administrative cost and expense that City will incur in connection with providing notices or performing inspections as set forth above 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 Lease, at law or in equity. City may increase such administrative fees from time to time, but in no event more than once in any calendar year.

18. WAIVER OF CLAIMS; INDEMNIFICATION

18.1. Waiver of Claims

City shall not be responsible for or liable to Tenant for, and, to the fullest extent allowed by Law, Tenant hereby waives, all rights against City and its Agents and releases City and its Agents from any and all Losses, including, but not limited to, incidental and consequential damages, relating to any injury, accident or death of any person or loss or damage to any property in or about the Premises from any cause whatsoever. Nothing in this Section shall relieve City from liability to the extent caused directly by the gross negligence or willful misconduct of City or its Agents, but City shall not be liable under any circumstances for any consequential, incidental, or punitive damages. Without limiting the foregoing:

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

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

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

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

18.2. Tenant's Indemnity

Tenant, on behalf of itself and its successors and assigns, shall Indemnify City and the other Indemnified Parties from and against any and all Losses incurred in connection with or arising directly or indirectly, in whole or in part, out of: (a) any accident, injury to, or death of a person, including, without limitation, Agents and Invitees of Tenant, or loss of or damage to property (including, without limitation, the SFPUC Facilities on or about the Premises, if any) howsoever or by whomsoever caused, occurring in or on the Premises; (b) any default by Tenant in the observation or performance of any of the terms, covenants, or conditions of this Lease to be observed or performed on Tenant's part; (c) the use, occupancy, conduct, or management, or manner of use, occupancy, conduct, or management by Tenant, its Agents, or Invitees, or any person or entity claiming through or under any of them, of the Premises or any Improvements; (d) the condition of the Premises or any Improvements; (e) any construction or other work undertaken by Tenant on or about the Premises or any Improvements whether before or during the Term of this Lease; or (f) any acts, omissions, or negligence of Tenant, its Agents, or Invitees, or of any trespassers, in, on, or about the Premises or any Improvements; all regardless of the sole negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on, the Indemnified Parties, except to the extent that such Indemnity is void or otherwise unenforceable under applicable Law in effect on or validly retroactive to the date of this Lease and further except only such Losses as are caused exclusively by the gross negligence and intentional wrongful acts and omissions of the Indemnified Parties. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any Loss. Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend City and the other Indemnified Parties from any claim that actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Tenant by City and continues at all times thereafter. Tenant's obligations under this Section shall survive the expiration or sooner termination of the Lease.

19. INSURANCE

19.1. Tenant's Insurance

Tenant shall procure and maintain throughout the Term of this Lease and pay the cost thereof, insurance in the following amounts and coverages:

(a) Property Insurance

Property insurance, on a special form, excluding earthquake and flood, for one hundred percent (100%) of the full insurable value of the Premises and the permitted Improvements, with any deductible not to exceed Ten Thousand Dollars (\$10,000) each

occurrence. Such insurance shall include City as loss payees as their respective interests may appear. With respect to the City's interest, such insurance shall, include rental interruption coverage in an amount equal to twelve months Base Rent. "Full insurable value" shall mean the actual replacement cost of the Improvements and the existing improvements; which are included in the Premises (excluding foundation and excavation costs but without deduction for physical depreciation). It shall be determined at inception and each renewal by Insurer selected and paid by Tenant and reasonably acceptable to City; provided, however, that City shall have the right, at any time, to ascertain the full insurable value at its own expense, except that in the event such full insurance value exceeds the value of the then existing amount of insurance coverage procured by Tenant, Tenant shall pay the expense of determining the full insurable value.

(b) Boiler and Machinery Insurance

Boiler and Machinery insurance, commercial form, covering damage to pressure vessels, heating and air conditioning systems, electrical apparatus and similar property in an amount not less than One Million Dollars (\$1,000,000) each accident, including City as loss payee as their respective interests may appear, with any deductible not to exceed Ten Thousand Dollars (\$10,000) each accident.

(c) Commercial General Liability Insurance

Commercial General Liability Insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence combined single limit for bodily injury and property damage, including contractual liability, broad-form property damage, independent contractors, liquor liability, personal injury, products, and completed operations.

(d) Builder's Risk Insurance

Builder's Risk Insurance, on an all-risk form, including earthquake and flood, for one hundred percent (100%) of the completed value of any Improvements, Alterations, or other new construction, including materials in transit and storage off-site, in the event that such construction is beyond the scope of coverage in the property policy for remodeling or renovation. Such policy shall include as named insureds Tenant, City, any contractor in connection with such construction and subcontractors of all tiers, with any deductible not to exceed Ten Thousand Dollars (\$10,000) each occurrence.

(e) Worker's Compensation Insurance

Worker's Compensation Insurance in statutory amounts, with employer's liability coverage not less than One Million Dollars (\$1,000,000) each accident.

(f) Business Automobile Liability

Business Automobile liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including owned and non-owned and hired vehicles as applicable, if Tenant uses or causes to be used any vehicles in connection with its use of the Premises.

(g) Environmental Pollution Liability

So long as the Gas Tank is located on the Premises, Tenant shall maintain in force environmental pollution liability insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence combined single limit (true occurrence form), including coverages for on-site or off-site third party claims for bodily injury and property damage, or such higher limits as may be reasonably required by City's Risk Manager. In addition, if Tenant intends to or

is required to perform any Hazardous Material Remediation on or about the Premises, then Tenant shall first notify City of the proposed work and following City's approval, Tenant or its contractor shall maintain in force, throughout the performance and completion of the Remediation, environmental pollution liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit (true occurrence form), including coverages for on-site or off-site third party claims for bodily injury and property damage, or such higher limits as may be reasonably required by City's Risk Manager based upon the scope of work.

(h) Other Insurance

City reserves the right to change amounts and types of insurance as Permitted Use of the Premises may change from time to time.

19.2. General Requirements

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

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

(b) Should any of the 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 be double the occurrence or claims limits specified above.

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

(i) Name the City and County of San Francisco, its officers, agents, and employees, as additional insureds, as their respective interests may appear in connection with this Lease.

(ii) That such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Lease, and that insurance applies separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limit of liability.

(iii) All insurance policies required to be maintained by Tenant under this Lease shall be endorsed to provide thirty (30) days' (10 days' in the case of cancellation for nonpayment of premium) prior written notice of cancellation for any reason, intended non-renewal, or reduction in coverage to both Tenant and City. Notice to City shall be mailed to the address(es) for City set forth in the Basic Lease Information.

19.3. Proof of Insurance

Tenant shall deliver to City certificates of insurance and additional insured policy endorsements from insurers in a form satisfactory to City, evidencing the coverages required pursuant to this Lease, on or before the Commencement Date, together with complete copies of the policies promptly upon City's request, and Tenant shall provide City with certificates or policies thereafter at least ten (10) days before the expiration dates of expiring policies. In the event Tenant shall fail to procure such insurance, or to deliver such policies or certificates, City may, at its option, procure the same for the account of Tenant, and the cost thereof shall be paid to City within five (5) days after delivery to Tenant of bills therefor.

19.4. Review of Insurance Requirements

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

19.5. No Limitation on Indemnities

Tenant's compliance with the provisions of this Section shall in no way relieve or decrease Tenant's indemnification obligations under Section 18.2 [Tenant's Indemnity] and Section 23.2 [Tenant's Environmental Indemnity], or any of Tenant's other obligations or liabilities under this Lease.

19.6. Lapse of Insurance

Notwithstanding anything to the contrary in this Lease, City may elect, at City's sole and absolute discretion, to terminate this Lease upon the lapse of any required insurance coverage by written notice to Tenant.

19.7. Tenant's Personal Property

Tenant may, at its expense, insure Tenant's Personal Property.

19.8. Waiver of Subrogation

Notwithstanding anything to the contrary contained in this Lease, City and Tenant (each a "Waiving Party") each waives any right of recovery against the other party for any loss or damage sustained by such other party with respect to the Premises or the contents of the same or any operation on or about the Premises, whether or not such loss is caused by the fault or negligence of such other party, to the extent such loss or damage is covered by insurance that is required to be purchased by the Waiving Party under this Lease or is actually covered by insurance obtained by the Waiving Party. Each Waiving Party shall cause its insurers to issue appropriate waiver of subrogation rights endorsements to all policies relating to the Property or the Premises; provided, the failure to obtain any such endorsement shall not affect the above waiver.

20. ACCESS BY CITY

20.1. Access to Premises by City

(a) General Access

City reserves for itself and its designated Agents, the right to enter the Premises and any portion thereof at all reasonable times upon not less than forty-eight (48) hours' oral or written notice to Tenant (except in the event of an emergency) for any purpose.

(b) Emergency Access

In the event of any emergency (as reasonably determined by City) that results in City's need to use or access the Premises, at its sole option and without notice, City may enter the Premises and alter or remove Tenant's Personal Property on or about the Premises. City shall have the right to use any and all means City considers appropriate to gain access to any portion of the Premises in any such emergency. In such case, City shall not be responsible for any damage or injury to any such property, nor for the replacement of any such property and any such emergency entry shall not be deemed to be a forcible or unlawful entry onto or a detainer of, the Premises, or

an eviction, actual or constructive, of Tenant from the Premises or any portion thereof.

(c) No Liability

City shall not be liable in any manner, and Tenant hereby waives any claims, for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of City's entry onto the Premises, except to the extent damage results directly from the gross negligence or willful misconduct of City or its Agents.

(d) No Abatement

Tenant shall not be entitled to any abatement in Rent if City exercises any rights reserved in this Section.

(e) Minimize Disruption

City shall use its reasonable good faith efforts to conduct any activities on the Premises allowed under this Section in a manner that, to the extent practicable, will minimize any disruption to Tenant's Permitted Use under this Lease.

20.2. Pipeline and Utility Installations

Without limiting **Section 20.1** [Access to Premises by City], at all times, City shall have the right to enter upon the Premises upon forty-eight (48) hours' advance written or oral notice (except in cases where emergency access is required pursuant to **Section 20.1(b)** [Emergency Access] above), to use, install, construct, repair, maintain, operate, replace, inspect, and remove the SFPUC Facilities or any other public utility facilities. City shall bear the expense of any such activities, unless the need is occasioned by the acts, omissions, or negligence of Tenant, its Agents or Invitees. City shall not be responsible for any temporary loss or disruption of Tenant's use of the Premises occasioned by any such facility installations or other activities but City shall use reasonable good faith efforts to minimize any damage to the Improvements and any disruption or interference with Tenant's use of the Premises as contemplated by this Lease.

20.3. Roadways

City and its Agents shall have the right to enter upon and pass through and across the Premises on any existing or future roadways and as City otherwise determines necessary or appropriate for purposes of the SFPUC Facilities.

21. ESTOPPEL CERTIFICATES

Either Party shall, from time to time during the Term upon not less than twenty (20) days' prior written notice from the other Party, execute, acknowledge and deliver to the other Party, or such persons or entities designated by such other Party, a statement in writing certifying: (a) the Expiration Date of this Lease, (b) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), (c) that there are no known defaults under this Lease (or if so, specifying the same), and (d) the dates, if any, to which the Rent has been paid. Any such certificate shall be in the form attached as **Exhibit C**, and may be relied upon by the other Party or any prospective purchaser or Encumbrancer of its estate. The General Manager shall be authorized to execute, acknowledge, and deliver any such certificates of City.

22. SURRENDER

22.1. Surrender of the Premises

(a) Surrender Obligations

Upon the Expiration Date or upon the effective date of any earlier termination of this Lease, at its sole cost, Tenant shall surrender to City the Premises in a broom-clean condition and free of all Tenant's Personal Property, equipment, lumber, building materials, debris, or hazards (except for any Tenant's Personal Property, equipment, lumber, or building materials that the General Manager agrees are to remain part of the Premises). At its sole expense, Tenant shall repair any damage to the Premises resulting from the removal of any such items... In addition, in the event that, during the Term, City conditions its approvals of any Alterations or the installation of further Improvements on Tenant's agreement to remove some or all of the Improvements at the time of the expiration or earlier termination of this Lease, then Tenant shall also remove any such Improvements subject to such agreement. Tenant shall obtain any and all necessary permits and approvals in connection with any such repairs or removals required under this Lease, including, without limitation, any environmental permits, and execute any manifests or other documents necessary to complete the demolition, removal, or restoration work required by this Lease, if any. Tenant's obligations under this Section shall survive the Expiration Date or other termination of this Lease. Any items of Tenant's Personal Property remaining on or about the Premises after the Expiration Date of this Lease or other termination of this Lease may, at City's option, be deemed abandoned and in such case City may dispose of such property in accordance with Section 1980 et seq. of the California Civil Code or in any other manner allowed by Law. If Tenant fails to surrender the Premises to City on the Expiration Date or earlier termination of the Term as required by this Section, Tenant shall Indemnify City against all Losses resulting therefrom, including, without limitation, Losses made by a succeeding tenant resulting from Tenant's failure to surrender the Premises.

(b) Removal of Gas Tank and Gas Systems

Unless waived in writing by City, upon the earlier of the (i) date that is ninety (90) days after the Gas Termination Date, (ii) the expiration or earlier termination of this Lease, or (iii) such other date mutually agreed upon in writing by City and Tenant, Tenant shall remove the Gas Tank and any and all Gas Systems then present on the Premises in accordance with all Environmental Laws, and shall Remediate any Releases of Hazardous Materials relating to the use of the Gas Tank or such Gas Systems, in accordance with all Environmental Laws. Upon the removal of the Gas Tank and any such Gas Systems, Tenant shall repave over the areas where such removal occurred and shall comply with all procedures required by any governmental agencies or authorities monitoring the removal including any and all mitigation requirements.

(c) No Relocation Rights or Benefits

Except as specifically provided in Article 15 [Eminent Domain], Tenant hereby waives any and all rights, benefits, or privileges of the California Relocation Assistance Law, California Government Code Sections 7260 et seq., and the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. Sections 4601 et seq., or under any similar law, statute, or ordinance now or hereafter in effect.

22.2. Automatic Reversion

Upon the Expiration Date or earlier termination of this Lease, the Premises shall automatically, and without further act or conveyance on the part of Tenant or City, become the property of City, free and clear of all liens and Encumbrances and without payment therefor by City and shall be surrendered to City upon such date. Upon or at any time after the date of termination of this Lease, if requested by City, Tenant shall promptly deliver to City, without charge, a quitclaim deed to the Premises suitable for recordation and any other instrument

reasonably requested by City to evidence or otherwise effect the termination of Tenant's leasehold estate under this Lease and to effect such transfer or vesting of title to the Premises or any permitted Improvements or Alterations that City agrees are to remain part of the Premises pursuant to the provisions of Section 8.2 [Ownership of Improvements].

23. HAZARDOUS MATERIALS

23.1. No Hazardous Materials

Tenant covenants and agrees that neither Tenant nor any of its Agents or Invitees shall cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated, or disposed of in, on, or about the Premises or any Improvements or transported to or from the Premises or any Improvements with the sole exceptions that Tenant may (a) keep and use such substances in the Premises in such reasonably limited amounts as are customarily used for the Permitted Use specified in the Basic Lease Information and provided further that such limited amounts are at all times handled, used, and disposed of in accordance with applicable Laws and (b) operate and use the Gas Tank so long as it complies with all of its obligations under this Lease, including the requirements stated in Section 7.1(c) [Gas Tank Operation] above. Tenant shall immediately notify City if and when Tenant learns or has reason to believe there has been any Release of Hazardous Material in, on, or about the Premises or any Improvements. City may from time to time request Tenant to provide adequate information for City to determine that any Hazardous Material permitted under this Lease is being handled in compliance with all applicable Environmental Laws, and Tenant shall promptly provide all such information. Without limiting the provisions of Section 20 [Access by City], City and its Agents shall have the right to inspect the Premises for Hazardous Material and compliance with the provisions of this Lease at all reasonable times upon reasonable advance oral or written notice to Tenant (except in the event of an emergency).

23.2. Tenant's Environmental Indemnity

If Tenant breaches any of its obligations contained in Section 23.1 [No Hazardous Materials], or, if any act or omission or negligence of Tenant or any of its Agents or Invitees results in any Release of Hazardous Material in, on, under or about the Premises (including any Improvements thereon) or any other City property, without limiting Tenant's general Indemnity contained in Section 18.2 [Tenant's Indemnity], Tenant, on behalf of itself and its successors and assigns, shall Indemnify City and the Indemnified Parties, and each of them, from and against all Hazardous Materials Claims arising during or after the Term of this Lease and relating to such Release. The foregoing Indemnity includes, without limitation, all costs associated with the Investigation and Remediation of Hazardous Material and with the restoration of the Premises or any other City property to its prior condition including, without limitation, fines and penalties imposed by regulatory agencies, natural resource damages and losses, and revegetation of the Premises or other City property. Without limiting the foregoing, if Tenant or any of Tenant's Agents or Invitees, causes or permits the Release of any Hazardous Materials in, on, under or about the Premises or any other City property, Tenant shall, immediately, at no expense to City, take any and all appropriate actions to return the Premises or other City property affected thereby to the condition existing prior to such Release and otherwise Investigate and Remediate the Release in accordance with all Environmental Laws. Tenant shall provide City with written notice of and afford City a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, permit, approvals, or other compromise or proceeding involving Hazardous Material.

23.3. Exiting Corrective Actions

The Parties acknowledge that, as of the Restated Lease Effective Date, in conjunction with the SFPUC pursuant to a Corrective Action Plan Request and SFPUC's Ground Water Use Plan for the Westside Basin (the "Remediation Criteria"), Tenant is engaged in the ongoing

remediation of a Release ("the "UST Release") that occurred because of, or from, the presence on the Premises of two (2) underground storage tanks that were previously placed on the Property during the course of Tenant's occupancy of the Premises pursuant to the Original Lease, but have since been removed. Notwithstanding the provisions of Section 23.1 [No Hazardous Materials] above, so long as Tenant continues to comply with all of its obligations and responsibilities pursuant to or arising under the Remediation Criteria and fulfills as they arise any Tenant obligations imposed by applicable Laws with respect to the UST Release, Tenant shall not be deemed to be in default of its obligations pursuant Section 23.1 [No Hazardous Materials] above with respect to the continued presence on or about the Premises of any Hazardous Materials resulting from the UST Release.

24. SECURITY DEPOSIT

Tenant shall pay to City upon execution of this Lease the sum, if any, specified for the security deposit in the Basic Lease Information as security for the faithful performance of all terms, covenants, and conditions of this Lease. City may (but shall not be required to) apply any such security deposit in whole or in part to remedy any damage to the Premises or the SFPUC Facilities caused by Tenant, its Agents, or Invitees, to pay any fines assessed against Tenant under this Lease, or for any other failure of Tenant to perform any other terms, covenants, or conditions contained in this Lease, without waiving any of City's other rights and remedies under this Lease or at Law or in equity. Should City use any portion of any such security deposit to cure any Event of Default by Tenant or pay any fine of Tenant, then Tenant shall immediately replenish the security deposit to the original amount, and Tenant's failure to do so within five (5) days of City's notice shall constitute a material Event of Default under this Lease. City's obligations with respect to any security deposit are solely that of debtor and not trustee. City shall not be required to keep any security deposit separate from its general funds, and Tenant shall not be entitled to any interest on such deposit. The amount of the security deposit shall not be deemed to limit Tenant's liability for the performance of any of its obligations under this Lease.

25. GENERAL PROVISIONS

25.1. Notices

Except as otherwise expressly provided in this Lease, any notice given pursuant to or in connection with this Lease shall be effective only if in writing and given by delivering the notice in person, or by sending it first-class mail or certified mail with a return receipt requested or reliable commercial overnight courier, return receipt requested, with postage prepaid, to: (a) Tenant (i) at Tenant's address set forth in the Basic Lease Information, if sent before Tenant's taking possession of the Premises, or (ii) at the Premises if sent on or subsequent to Tenant's taking possession of the Premises, or (iii) at any place where Tenant or any Agent of Tenant may be found if sent subsequent to Tenant's vacating, abandoning or surrendering the Premises; or (b) City at City's address set forth in the Basic Lease Information; or (c) to such other address as either City or Tenant may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Section at least ten (10) days before the effective date of such change. A properly addressed notice transmitted by one of the foregoing methods shall be deemed received upon confirmed delivery, attempted delivery, or rejected delivery. Neither party may give official or binding notice by e-mail or telefacsimile and, accordingly, the effective time of a notice shall not be affected by the receipt, before receipt of the original, of an e-mailed or telefacsimile copy of the notice.

25.2. No Implied Waiver

No failure by either Party to insist upon the strict performance of any obligation under this Lease or to exercise any right, power or remedy arising out of a breach, irrespective of the length of time for which such failure continues, no acceptance of full or partial Base Rent or Additional Charges during the continuance of any such breach, or possession of the Premises before the

expiration of the Term by any Agent of City, shall constitute a waiver of such breach or of a Party's right to demand strict compliance with such term, covenant, or condition or operate as a surrender of this Lease. No express written waiver of any default or the performance of any provision of this Lease shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision of this Lease shall not be deemed to be a waiver of a subsequent default or performance. The consent of a Party given in any instance under the terms of this Lease shall not relieve the other Party of any obligation to secure the consent of the Party who previously consented in any other or future instance under the terms of this Lease.

25.3. Amendments

Neither this Lease nor any term or provision of this Lease may be changed, waived, discharged, or terminated, except by a written instrument signed by the Parties.

25.4. Authority

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

25.5. Joint and Several Obligations

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

25.6. Interpretation of Lease

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

25.7. Successors and Assigns

Subject to the provisions of Article 16 [Assignment and Subletting], the terms, covenants, and conditions contained in this Lease shall bind and inure to the benefit of City and Tenant and, except as otherwise provided in this Lease, their personal representatives and successors and assigns; provided, however, that upon any sale, assignment, or transfer by City named in this Lease (or by any subsequent landlord) of its interest in the Premises as owner or lessee, including any transfer by operation of Law, City (or any subsequent landlord) shall be relieved from all subsequent obligations and liabilities arising under this Lease subsequent to such sale, assignment,

or transfer.

25.8. Brokers

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

25.9. Severability

If any provision of this Lease or the application thereof to any person, entity, or circumstance shall be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Lease shall be valid and be enforceable to the fullest extent permitted by Law, except to the extent that enforcement of this Lease without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this Lease.

25.10. Governing Law

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

25.11. Entire Agreement

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

25.12. Attorneys' Fees

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

with respect to appeals, mediations, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees were incurred. The term "costs" shall mean the costs and expenses of counsel to the parties, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, and others not admitted to the bar but performing services under the supervision of an attorney.

25.13. Holding Over

Any holding over after the expiration of the Term with the express consent of City shall be construed to automatically extend the Term of this Lease on a month-to-month at such Base Rent as determined by City as part of its consent, and shall otherwise be on the terms and conditions in this Lease specified so far as applicable (except for those pertaining to the Term). Any holding over without City's consent shall constitute a default by Tenant, shall be at a Base Rent determined by City at its sole and absolute discretion by applying a market-derived yield rate to the highest fair market value of the fee interest in the Premises based on the highest and best use of the Premises determined on an average per square foot or per acre basis, as appropriate, and the prevailing market rate for space of comparable size, location and use within San Francisco and San Mateo Counties and shall entitle City to exercise any or all of its remedies as provided in this Lease, notwithstanding that City may elect to accept one or more payments of Rent.

25.14. Time of Essence

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

25.15. Cumulative Remedies

All rights and remedies of either Party set forth in this Lease shall be cumulative, except as may otherwise be provided in this Lease.

25.16. Survival of Indemnities

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

25.17. Relationship of Parties

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

25.18. Transfer by City

If City sells or otherwise transfers the Premises, City shall be released from its obligations under this Lease arising on or after the date of such sale or transfer and Tenant shall look solely to

the successor-in-interest to City. Upon a sale of the Premises by City, Tenant shall attorn to the purchaser or transferee, such attornment to be effective and self-operative without the execution of any further instruments on the part of the parties to this Lease. This Lease shall not be deemed to constitute any commitment by City, or create any priority or right in favor of Tenant, with regard to any future sale or other disposition of all or any part of the Premises.

25.19. Recording

Tenant shall not record this Lease nor any memorandum or short form of this Lease in the Official Records.

25.20. Non-Liability of City Officials, Employees, and Agents

No elective or appointive board, commission, member, officer, employee, or other Agent of City shall be personally liable to Tenant, its successors, and assigns, in the event of any default or breach by City or for any amount that may become due to Tenant, its successors and assigns, or for any obligation of City under this Lease.

25.21. Wages and Working Conditions

With respect to the construction of the Improvements and any Alterations, any employee performing services for Tenant shall be paid not less than the highest prevailing rate of wages (as determined under Section 6.22(E) of the San Francisco Administrative Code for work in San Francisco, and as determined in the local jurisdiction if in a different county), 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 the county in which the Premises are located. Tenant shall require any contractor to provide, and shall deliver to City upon request, certified payroll reports with respect to all persons performing labor in the construction of any Improvements or Alterations to the Premises.

25.22. Non-Discrimination in City Contracts and Benefits Ordinance

(a) Covenant Not to Discriminate

In the performance of this Lease, Tenant shall not discriminate against any employee of, any City employee working with Tenant, or applicant for employment with Tenant, 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.

(b) Subleases and Other Subcontracts

Tenant shall include in all Subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such Subtenant or other subcontractor in substantially the form of subsection (a) above. In addition, Tenant shall incorporate by reference in all subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subtenants and other subcontractors to comply with such provisions. Tenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

(c) Non-Discrimination in Benefits

Tenant does not as of the date of this Lease and will not during the term of this

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

(d) Condition to Lease

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

(e) Incorporation of Administrative Code Provisions by Reference

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

25.23. Requiring Health Benefits for Covered Employees

Unless exempt, Tenant shall 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 in this Lease by reference and made a part of this Lease as though fully set forth in this Lease. The text of the HCAO is currently available on the web at <http://www.sfgov.org/olse/hcao>. Capitalized terms used in this Section and not defined in this Lease shall have the meanings assigned to such terms in Chapter 12Q.

(a) For each Covered Employee Tenant shall provide the applicable health benefit set forth in Section 12Q.3 of the HCAO. If Tenant 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 Tenant meets the requirements of a "small business" as described in Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with part (a) above.

(c) Tenant's failure to comply with the requirements of the HCAO shall constitute a material breach by Tenant of this Lease. If, within thirty (30) days after receiving City's written notice of a breach of this Lease for violating the HCAO, Tenant fails to cure such breach or, if such breach cannot reasonably be cured within such thirty (30)-day period, Tenant fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, 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 City.

(d) Any Sublease or Contract regarding services to be performed on the Premises entered into by Tenant shall require the Subtenant or Contractor and Subcontractors, as applicable, to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Tenant shall notify the Purchasing Department when it enters into such a Sublease or Contract and shall certify to the Purchasing Department that it has notified the Subtenant or Contractor of the obligations under the HCAO and has imposed the requirements of the HCAO on the Subtenant or Contractor through written agreement with such Subtenant or Contractor. Tenant shall be responsible for ensuring compliance with the HCAO by each Subtenant, Contractor and Subcontractor performing services on the Premises. If any Subtenant, Contractor or Subcontractor fails to comply, City may pursue the remedies set forth in this Section against Tenant based on the Subtenant's, Contractor's, or Subcontractor's failure to comply, provided that the Contracting Department has first provided Tenant with notice and an opportunity to cure the violation.

(e) Tenant shall not discharge, reprimand, penalize, reduce the compensation of, or otherwise discriminate against, any employee for notifying 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.

(f) Tenant 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.

(g) Tenant shall keep itself informed of the requirements of the HCAO, as they may change from time to time.

(h) Upon request, Tenant shall provide reports to City in accordance with any reporting standards promulgated by City under the HCAO, including reports on Subtenants, Contractors, and Subcontractors.

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

25.24. Notification of Limitations on Contributions

Through its execution of this Lease, Tenant 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 (a) the 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. Tenant 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. Tenant further acknowledges that the prohibition on contributions applies to each Tenant; each member of Tenant's board of directors, and Tenant's chief executive officer, chief financial officer, and chief operating officer; any person with an ownership interest of more than twenty percent (20%) in Tenant; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Tenant. Additionally, Tenant acknowledges that Tenant must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Upon City's request, Tenant shall provide to City the

names of each person, entity, or committee described above.

25.25. No Relocation Assistance; Waiver of Claims

Tenant acknowledges that it will not be a displaced person at the time this Lease is terminated or expires by its own terms, and Tenant fully RELEASES, WAIVES, AND DISCHARGES forever any and all claims, demands, rights, and causes of action (including, without limitation, consequential and incidental damages) against, and covenants not to sue, City, its departments, commissions, officers, directors, and employees, and all persons acting by, through or under each of them, under any Laws, including, without limitation, any and all claims for relocation benefits or assistance from City under federal and state relocation assistance laws (including, but not limited to, California Government Code Section 7260 et seq.), except as otherwise specifically provided in this Lease with respect to a Taking.

25.26. MacBride Principles - Northern Ireland

The provisions of San Francisco Administrative Code §12F are incorporated in this Lease by this reference and made part of this Lease. By signing this Lease, Tenant confirms that it 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.

25.27. Conflicts of Interest

Through its execution of this Lease, Tenant acknowledges that it is familiar with the provisions of Sections 15.103 of the San Francisco Charter, Article III, Chapter 2 of the 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 that would constitute a violation of said provision and agrees that if Tenant becomes aware of any such fact during the term of this Lease, Tenant shall immediately notify the City.

25.28. Charter Provisions

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

25.29. Tropical Hardwood and Virgin Redwood Ban

City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Tenant shall not provide any items to the construction of the Improvements or the Alterations, or otherwise in the performance of this Lease that are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Tenant fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Tenant shall be liable for liquidated damages for each violation in any amount equal to Tenant's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

25.30. Prohibition of Tobacco Sales and Advertising

Tenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on the Premises. This advertising prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (a) communicate the health hazards of cigarettes and tobacco products, or (b) encourage people not to smoke or to stop smoking.

25.31. Prohibition of Alcoholic Beverage Advertising

Tenant acknowledges and agrees that no advertising of alcoholic beverages is allowed on the Premises. 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, selling or distributing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (a) communicate the health hazards of alcoholic beverages, (b) encourage people not to drink alcohol or to stop drinking alcohol, or (c) provide or publicize drug or alcohol treatment or rehabilitation services.

25.32. Consents, Approvals, Elections, and Options

Except as otherwise provided by applicable Law, any consent or approval required by City or the SFPUC, or any election or option exercisable by the SFPUC, may be given or exercised by the SFPUC's General Manager at his or her sole discretion. No consent, approval, election, or option shall be effective unless evidenced by a written instrument.

25.33. Counterparts

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

25.34. Disclosure

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

25.35. Food Service Waste Reduction

Tenant shall comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in the San Francisco Environment Code, Chapter 16, including the remedies provided therein, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated in this Lease by reference and made a part of this Permit as though fully set forth in this Lease. This provision is a material term of this Lease. By entering into this Lease, Tenant agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine. Without limiting City's other rights and remedies, Tenant agrees that the sum of One Hundred Dollars (\$100.00) liquidated damages for the first breach, Two Hundred Dollars (\$200.00) liquidated damages for the second breach in the same year, and Five Hundred Dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Lease was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Tenant's failure to comply with this provision.

25.36. Cooperative Drafting

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

this Lease.

25.37. Bottled Drinking Water

Unless exempt, Tenant agrees to comply fully with and be bound by all of the provisions of the San Francisco Bottled Water Ordinance, as set forth in San Francisco Environment Code Chapter 24, including the administrative fines, remedies, and implementing regulations provided in that statute, as the same may be amended from time to time. The provisions of Chapter 24 are incorporated by reference and made a part of this Lease as though fully set forth.

25.38. Criminal History in Hiring and Employment Decisions

(a) Unless exempt, Tenant agrees to comply with and be bound by all of the provisions of San Francisco Administrative Code Chapter 12T (Criminal History in Hiring and Employment Decisions; "Chapter 12 T"), which are hereby incorporated as may be amended from time to time, with respect to applicants and employees of Tenant who would be or are performing work at the Premises. Chapter 12T, and the provisions of this Section, shall not apply to the extent, however, that its or their application to Tenant would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

(b) Tenant shall incorporate by reference the provisions of Chapter 12T in all subleases of some or all of the Premises, and shall require all Subtenants to comply with such provisions. Tenant's failure to comply with the obligations in this Subsection shall constitute a material breach of this Lease.

(c) Tenant and any Subtenants 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: (i) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (ii) participation in or completion of a diversion or a deferral of judgment program; (iii) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (iv) a Conviction or any other adjudication in the juvenile justice system; (v) a Conviction that is more than seven years old, from the date of sentencing; or (vi) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

(d) Tenant and any Subtenants 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 Subsection (c) above. Tenant and Subtenants 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.

(e) Tenant and any Subtenants shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Tenant or subtenant at the Premises, that the Tenant or subtenant will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(f) Tenant and any Subtenants shall post the notice prepared by the Office of Labor Standards Enforcement ("OLSE"), available on OLSE's website, in a conspicuous place at the Premises and at other workplaces within San Francisco where interviews for job opportunities at the Premises occur. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the Premises or other workplace at which it is posted.

(g) Tenant and any Subtenants understand and agree that upon any failure to

comply with the requirements of Chapter 12T, City may pursue any rights or remedies available under Chapter 12T or this Lease, including but not limited to a penalty of \$50 for a second violation and \$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 Lease.

(h) If Tenant has any questions about the applicability of Chapter 12T, it may contact the City's Real Estate Division for additional information. City's Real Estate Division may consult with the Director of the City's Office of Contract Administration who may also grant a waiver, as set forth in Section 12T.8.

25.39. Vending Machines; Nutritional Standards

Tenant shall not install or permit any vending machine on the Premises without City's prior written consent. Any permitted vending machine must comply with the food nutritional and calorie labeling requirements set forth in San Francisco Administrative Code section 4.9-1(c), as may be amended from time to time (the "Nutritional Standards Requirements"). Tenant shall incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the Premises or for the supply of food and beverages to that vending machine. Failure to comply with the Nutritional Standards Requirements or to otherwise comply with this Section shall be deemed a material breach of this Lease. Without limiting City's other rights and remedies under this Lease, City shall have the right to require the immediate removal of any vending machine on the Premises that is not permitted or that violates the Nutritional Standards Requirements.

25.40. All-Gender Toilet Facilities

If applicable, Tenant shall comply with San Francisco Administrative Code Section 4.1-3 requiring at least one all-gender toilet facility on each floor of any new building on City-owned land and within existing buildings leased by the City where extensive renovations are made. An "all-gender toilet facility" means a toilet that is not restricted to use by persons of a specific sex or gender identity by means of signage, design, or the installation of fixtures, and "extensive renovations" means any renovation where the construction cost exceeds 50% of the cost of providing the toilet facilities required by this section. If Tenant has any question about applicability or compliance, Tenant should contact SFPUC's Real Estate Director for guidance.

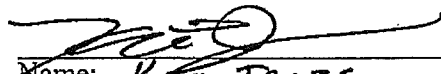
NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, TENANT ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THE TERMS AND CONDITIONS OF THIS LEASE UNLESS AND UNTIL A RESOLUTION OF THE SFPUC HAS BEEN DULY ADOPTED AND A RESOLUTION OR ORDINANCE OF THE BOARD OF SUPERVISORS HAS BEEN DULY ENACTED APPROVING THIS LEASE AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY AND THE MAYOR APPROVES THE SAME. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY UNDER THIS LEASE ARE CONTINGENT UPON PASSAGE OF SUCH RESOLUTIONS OR ORDINANCE, AND THIS LEASE SHALL NOT BE EFFECTIVE UNLESS AND UNTIL THE SFPUC AND THE BOARD OF SUPERVISORS APPROVE THIS LEASE, EACH AT THEIR SOLE AND ABSOLUTE DISCRETION, AND IN ACCORDANCE WITH ALL APPLICABLE LAWS.

[SIGNATURES ON FOLLOWING PAGES]

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

TENANT:

POMEROY RECREATION & REHABILITATION CENTER,
a California not-for-profit corporation

By: 
Name: Ken Jones
Its: Interim CEO

By: _____
Name: _____
Its: _____

CITY:

CITY AND COUNTY OF SAN FRANCISCO, a
municipal corporation

AUTHORIZED BY

SAN FRANCISCO PUBLIC UTILITIES COMMISSION

By: HARLAN L. KELLY, JR.
Its: General Manager
San Francisco Public Utilities Commission

Resolution No. _____

Adopted: _____

Attested: _____
Secretary

Board of Supervisors Resolution No.

Adopted _____

APPROVED AS TO FORM:

DENNIS J. HERRERA

City Attorney

By: 
Richard Handel
Deputy City Attorney

EXHIBIT A

Legal Description of Premises

All that certain real property located at 207 Skyline Boulevard in San Francisco, California, described as follows:

A portion of SFPUC Parcel 55 between Herbst Road and Skyline Boulevard according to SFPUC records and as shown on attached drawing Exhibit B.

EXHIBIT C

Form of Estoppel Certificate

LANDLORD ESTOPPEL CERTIFICATE

RE: Amended And Restated Lease, dated _____, 2016 (the "Lease"), by and between the City and County of San Francisco, a municipal corporation, acting by and through its Public Utilities Commission ("City") and Pomeroy Recreation and Rehabilitation Center, a California corporation ("Tenant"), relating to certain property located in San Francisco County, California (the "Premises")

Ladies and Gentlemen:

The undersigned hereby confirms, represents and warrants to Tenant that:

1. Attached to this letter is a true and correct copy of the Lease;
2. The Expiration Date of the Lease is _____;
3. The Lease is in full force and effect and, except as shown in the attachments to this Certificate, has not been assigned, modified, supplemented, or amended in any way;
4. The Lease represents the entire agreement between Tenant and City with respect to the Premises;
5. To City's knowledge, on this date, there are no known defaults under this Lease and no event has occurred, that, with the giving of notice, the passage of time or both, would constitute a default by City or Tenant under the Lease except as set forth in the attached Schedule A;
6. All rent amounts due and owing to date have been paid, and no rental, other than for the current month, has been paid in advance except as set forth in Schedule A;
7. The undersigned executing this estoppel certificate represents and warrants that he or she is duly authorized to execute this certificate on City's behalf.

The truth and accuracy of the certifications contained in this letter may be relied upon by Tenant and the addressee set forth above, and their successors and assigns.

Very truly yours

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

By: _____
Name:
Title:
Date: _____

TENANT ESTOPPEL CERTIFICATE

RE: Amended and Restated Lease, dated _____, 2016 (the "Lease"), by and between the City and County of San Francisco, a municipal corporation, acting by and through its Public Utilities Commission ("City") and Pomeroy Recreation & Rehabilitation Center a California corporation ("Tenant"), relating to certain property located in San Francisco County, California (the "Premises")

Ladies and Gentlemen:

The undersigned hereby confirms, represents and warrants to City that:

1. Attached to this letter is a true and correct copy of the Lease;
2. Tenant has accepted possession of the Premises under the Lease;
3. The Expiration Date of the Lease is _____;
4. The Lease is in full force and effect and, except as shown in the attachments to this Certificate, has not been assigned, modified, supplemented, or amended in any way;
5. The Lease represents the entire agreement between Tenant and City with respect to the Premises;
6. To Tenant's knowledge, on this date, there are no known defaults under this Lease and no event has occurred, that, with the giving of notice, the passage of time or both, would constitute a default by City or Tenant under the Lease except as set forth in the attached Schedule A;
7. All rent amounts due and owing to date have been paid, and no rental, other than for the current month, has been paid in advance except as set forth in Schedule A;
8. The undersigned executing this estoppel certificate represents and warrants that he or she is duly authorized to execute this certificate on behalf of Tenant.

The truth and accuracy of the certifications contained in this letter may be relied upon by City and the addressee set forth above, and their successors and assigns.

Very truly yours

Pomeroy Recreation & Rehabilitation Center, a California not-for-profit corporation


By: 
Name: Ken Jones
Title: Interim CEO
Date: 8/1/16

EXHIBIT D

Depiction of Existing Improvements

Existing improvements are depicted in the following six (6) sets of drawings prepared by Tenant's architects on file at the Premises:

Project Number 9-14: "PRRC Original Building," Herzka and Knowles, February 8, 1972. AIA. A1, A2, A5, A6, A7, A8, A9, A10, S1, S2, S3, S4, S5.1, S5.2, S6, S7, S8, S9, S5.3.

Project Number 88022-01: "Day and Respite Care Addition" H+K Associates Architects, February 2, 1980. 1, L1, L2, A1, AZ, A3, A4, A5, A6, A7

Project Number 9-14-4: "Pool Building," Hertzka and Knowles Architects, AIA, December 14, 1983. A1, A2, A3, A4, A5, A6, A7, A8, A9, A10, A11, M1, M2, M3, M4, M5, M6, M7, M8, M9, S1, S2, S3, S4, S5, S6, S7, S8, S9, E1, E2, E3.

Project Number 8211: "Remodel and Addition to the Recreation Center for the Handicapped Daily Skills Center" Marques Corp., February 11, 1983. A0.1, A0.2, A1.2, A1.2, A1.3, A2.1, A2.2, A2.3, A3.1, A5.1, A5.2, A5.3, A5.4, A5.5, A6.1, A6.2, A8.1, A9. **Project Number 87026-01:** "Multipurpose Porch," H+K Associates Architects, January 5, 1990. A1, A3, A4, A5, A6, S1, S2, M1, M2, E1.

Project Number 93023: "Push Playground," Hertzka and Knowles, November 11, 1994. Exiting Garden, Playground Equipment Plan, Amphitheater Detail, 1, A2, P1, P2

CITY AND COUNTY OF SAN FRANCISCO

JOSEPH L. ALIOTO, MAYOR

RECREATION CENTER FOR THE HANDICAPPED LEASE

San Francisco, California

PUBLIC UTILITIES COMMISSION

Marvin E. Cardoza, President Oliver M. Rousseau, Vice President

Joseph J. Riviny - Commissioner
H. Welton Flynn - Commissioner
Louis A. Patri - Commissioner

John D. Crowley
General Manager of Public Utilities

1971

I N D E X

<u>Section No.</u>	<u>Page</u>
1. Premises	1
2. Term	2
3. Rental	2
4. Use and Operation of Premises	2
5. Improvements	3
6. Fire Insurance	4
7. Delivery by City of Possession	5
8. Maintenance and Repairs	5
9. Taxes and Assessments	6
10. Signs	7
11. Waste	7
12. Pipelines and Monuments	7
13. Utilities	7
14. No Partnership	7
15. Lessee as Independent Contractor	8
16. Labor and Materials	8
17. Inspection of Demised Premises	8
18. Mechanics' and Other Liens	8
19. No Liability Outside of Terms of Contract	9
20. Waiver by Lessee	9
21. Indemnity	10
22. Remedies of Lessor on Default	10
23. Condemnation	12
24. Bankruptcy or Reorganization Proceedings	12
25. Assignment or Subletting	13
26. Liability and Property Damage Insurance	13
27. Consents	14
28. No Liability Outside of Terms of Lease	14
29. No Waiver or Subsequent Breaches or Defaults	14
30. Surrender of Possession	15
31. Holding Over	15
32. Compliance with Laws and Regulations	15
33. Notices	16
34. Conflict of Interest	16
35. Applicability of Fiscal Provisions of Charter	16
36. Successors and Assigns	16
37. Agreement Made in California	17
38. Time Is Of The Essence	17

PUBLIC UTILITIES COMMISSION
SAN FRANCISCO WATER DEPARTMENT
RECREATION CENTER FOR THE HANDICAPPED LEASE

THIS INDENTURE OF LEASE, made and entered into in the City and County of San Francisco, State of California, this 9th day of February, 1971, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (hereinafter referred to as "City"), by and through City's Public Utilities Commission (hereinafter referred to as "Commission"), Lessor, and RECREATION CENTER FOR THE HANDICAPPED, INC., a non-profit California corporation, (hereinafter referred to as "Lessee"), Lessee;

W I T N E S S E T H:

WHEREAS, City owns the hereinafter described real property located in the City and County of San Francisco, State of California; and

WHEREAS, Commission has found that use of said land adjacent to Fleishhacker Pool would be beneficial to provide recreation for handicapped persons within the City and County of San Francisco; and

WHEREAS, Lessee desires to lease said land in order to offer an opportunity to the handicapped to participate in selective recreational, social and related activities;

NOW, THEREFORE, in consideration of the covenants and agreements herein contained and of the payment of moneys by Lessee as herein required, the parties hereto mutually agree as follows:

1. PREMISES

City hereby leases to Lessee, and Lessee hereby hires and takes from City, for the purposes herein enumerated, and upon the terms and conditions herein set forth, all that real property situated in the City and County of San Francisco, State of California, shown on San Francisco Water Department Drawing No. B-3146, attached hereto and made a part hereof.

2. TERM

The term of this lease shall be for a period of twenty-five (25) years, commencing on the date of execution hereof.

Lessee shall have an option for an additional twenty-five (25) year term provided: (1) Lessee gives Commission written notice at least one year prior to the expiration of the lease term of its extension for an additional twenty-five (25) year period; (2) Lessee is not in default in any of the terms and conditions of this lease; (3) said lease has not terminated for any cause.

3. RENTAL

Lessee promises and agrees to pay to City and City will accept as rental for the demised premises, payable annually, in advance, the sum of One Dollar (\$1.00), the first payment to be made upon the execution of this lease.

All rentals under this lease shall be paid to City by mailing or delivering a valid check therefor to the office of the Chief Accountant, San Francisco Water Department, Room 600, 425 Mason Street, San Francisco, California 94101. Said rental payments shall be in lawful money of the United States of America, free from all claims, demands, set-offs or counterclaims of any kind against City.

4. USE AND OPERATION OF PREMISES

It is the intention of City and it is understood and agreed by Lessee that the demised premises shall be used only for the construction, furnishing, operation and maintenance of a structure for the use of the Recreation Center for the Handicapped to operate a recreation center for severely handicapped and mentally retarded persons residing in the City and County of San Francisco. Lessee shall at all times during the term hereof actively use the demised premises for those

purposes and shall not at any time leave the demised premises vacant without the written consent of the City.

5. IMPROVEMENTS

Subject to the conditions herein set forth, and subject to the prior written approval of the General Manager and Chief Engineer, San Francisco Water Department (hereinafter referred to as "Manager"), Lessee shall have the right at its own cost and expense, to construct or erect on the demised premises a building or structure and fixtures it may consider necessary or useful in connection with or related to its activities and thereafter to alter, modify or enlarge the same. Any such building, structure and fixtures, and all such alterations, modifications or enlargements, shall be in conformity with the surrounding area and shall meet all City and County building codes and ordinances as well as all applicable State regulations. Before commencing the construction of any such building or structure, or any alterations, modifications or enlargements, Lessee shall first draw plans and specifications in accordance with the direction of and subject to the approval of Manager with regard to the nature, location and style of construction. In addition, Lessee shall submit plans and specifications therefor to Commission, which shall thereafter either approve, disapprove or require such modifications as may be necessary to meet City's architectural and structural requirements. Said plans, as approved by Commission, shall also be subject to approval by City's Art Commission. Upon the completion of said construction, or of any alterations, modifications or enlargements thereto, Lessee shall furnish City with two (2) complete sets of detailed plans and specifications of the work as completed. City agrees that such plans and specifications shall not be made available to any third party except as required by law, without the consent of Lessee. In the event of construction or alteration, City shall have the right to enter and post and maintain upon the demised premises notices of nonresponsibility. Any permanent building, structure, improvement or fixtures hereafter constructed or placed upon the demised premises, and all alterations, modifications

and enlargements thereof and improvements therein, shall not be deemed trade fixtures but shall become part of the demises premises, subject to Lessee's right of possession, use and occupancy during the term of this lease in accordance with the terms and conditions thereof. Any building, structure or fixtures of every kind and nature which may be made, installed or attached to said premises shall be the property of City with title thereto passing to City upon termination of this lease and shall remain on and be surrendered with the premises as a part thereof at the expiration of this lease or the extension thereof.

Lessee shall have no right to remove or demolish in whole or in part any structure or improvement upon the demised premises except upon the prior written consent or request of Commission to do so. Commission may, in its discretion request, or condition its consent on the obligation of Lessee to replace the same by another building or improvement. It is hereby expressly understood and agreed that any and all tools, devices, appliances, furniture, furnishings and equipment of every kind and nature hereafter so placed or installed by Lessee in or about any of said demised premises shall, as between City and Lessee, be and remain the personal property of Lessee, notwithstanding the same are or may be attached, affixed or annexed to the land or the floors. Lessee shall have the right to remove said personal property provided that upon said removal Lessee shall repair at its own expense any damage resulting therefrom and leave the demised premises in a clean and neat condition.

6. FIRE INSURANCE

Lessee shall keep and maintain fire insurance, accompanied by the extended coverage endorsement now customarily issued by fire insurance companies in San Francisco, naming City as insured or additional insured for the full replacement value and a 90% average clause upon any structure, building or fixtures on the demised premises herein. Said policy or policies shall be in such amount

or amounts as determined by Commission and in an insurance company, or companies, meeting with the written approval of City's Controller and in form approved by the City Attorney. Should any said permanent structure, building or fixtures be damaged or destroyed by fire or other risks under said extended coverage endorsement, all sums paid under said policy or policies shall be used for the repair or reconstruction of said structure, building or fixtures, or for such other purpose mutually agreed upon by Commission and Lessee. Neither City nor Lessee shall be under any obligation with respect to repair or reconstruction except the devotion of the insurance proceeds as herein provided. Any renewal of said policy or policies shall provide that thirty (30) days prior written notice of cancellation of, or material change in, said policy shall be given to City at the office of Manager.

7. DELIVERY BY CITY OF POSSESSION

In the event of the inability of City to deliver possession of all the premises at the time of commencement of the term of this lease, City shall not be liable for any damage caused thereby, nor shall this lease thereby become void or voidable, nor shall the term herein specified be in any way extended, but in such event Lessee shall be liable only for that part of the premises which City can deliver possession.

8. MAINTENANCE AND REPAIRS

Lessee has examined and inspected and knows the condition of the premises and every part thereof and will receive and accept said premises in its same present condition, except only as may otherwise be provided in this lease. Lessee shall maintain the premises, and every part thereof, in good repair and order, and in good and safe condition, reasonable wear and tear excepted, and shall make all necessary repairs thereto, at its own cost and expenses, and shall not permit trash or rubbish to accumulate; all of which shall be done to the satisfaction of Manager.

9. TAXES AND ASSESSMENTS

A. As a part of the consideration for this lease and as additional rent hereunder, Lessee covenants and agrees to bear, pay and discharge promptly as the same become due and before delinquency, including but not limited to real and personal property and possessory interest taxes, any and all taxes, assessments, rates, charges, license fees, municipal liens, levies, excises or imposts, whether general or special, or ordinary or extraordinary, of every name, nature and kind whatsoever, including all governmental charges of whatsoever name, nature or kind which may be levied, assessed, charged or imposed, or may be or become a lien or charge upon the property hereby leased, or any part thereof, or upon the leasehold of Lessee, or upon the estate hereby created, or upon City by reason of its ownership of the fee underlying this lease.

B. All of the aforesaid taxes, assessments, charges, imposts and levies of whatsoever nature which shall relate to a fiscal year during which the term of this lease shall commence or terminate shall be prorated between City and Lessee.

C. If at any time during the term of this lease any governmental subdivision shall undertake to create an improvement or special assessment district the proposed boundaries of which shall include the property leased hereunder, Lessee shall be entitled to appear in any proceeding relating thereto and to exercise all rights of a landowner to have the demised premises excluded from such district or to determine the degree of benefit to the demised premises resulting therefrom. However, City retains to itself an independent right, but shall be under no obligation, to appear in any such proceeding for the purpose of seeking inclusion of the premises in or exclusion of the premises from any such district or of determining the degree of benefit therefrom to the premises. The party receiving any notice or other information relating to the proposed creation of any such district, the proposed boundaries of which include the property leased hereunder, shall promptly advise

the other party in writing of such receipt.

D. If any tax, assessment, charge, levy or impost made against the premises to finance such a special improvement shall be payable in installments over a period of time extending beyond the term of this lease, Lessee shall only be required to pay such installments thereof as shall become due and payable during the term of this lease.

10. SIGNS

Lessee may install and maintain at its own cost and expense identification, directional, and other signs on the demised premises. Location, size and wording of each such sign shall be subject to the prior written approval of Manager.

11. WASTE

Lessee shall not commit any waste of the demised premises nor suffer any waste to be committed thereon.

12. PIPELINES AND MONUMENTS

Lessee shall be liable for the adequate protection of any pipelines and appurtenances and any of City's monuments located on the demised premises. Monuments damaged or disturbed shall be repaired and relocated by City at Lessee's expense.

13. UTILITIES

Lessee shall install on the premises any necessary utilities and facilities and agrees to pay promptly, when due and payable, all charges for water, gas, electricity, heat and other services furnished to or used by Lessee and its tenants, in, on or about the premises, in addition to the rents herein reserved.

14. NO PARTNERSHIP

Nothing herein contained shall make, or be construed to make, the City or the Lessee a partner of the other, nor shall this lease be construed to create a partnership or joint venture between the City and the Lessee.

15. LESSEE AS INDEPENDENT CONTRACTOR

Lessee enters into this agreement as an independent contractor and not as an agent or employee of City, as the word "employee" is defined in the Workmen's Compensation Act of the State of California and Lessee will, upon request, furnish to Commission adequate evidence of provision for Workmen's Compensation Insurance, Social Security and Unemployment Compensation.

16. LABOR AND MATERIALS

All labor to be performed and materials furnished in the construction by and operations of Lessee hereunder shall be at the cost and expense of Lessee, and City shall not be chargeable with, nor liable for, any part thereof. Lessee agrees to give Manager not less than ten (10) days' written notice in advance of commencement of any construction work upon the demised premises and City shall have the right to enter the demised premises for the purpose of posting signs of nonresponsibility, which signs shall remain posted thereon until work has been completed.

17. INSPECTION OF DEMISED PREMISES

City shall also be entitled to, at all reasonable times, to go upon and into the leased premises to inspect the same and to inspect the performance by Lessee of the terms and conditions of this lease.

18. MECHANICS' AND OTHER LIENS

A. Lessee covenants and agrees to keep the demised premises, and every part thereof, free and clear of and from any and all mechanics; materialmen's and other liens for work or labor done, services performed or materials contributed, used or furnished, to be used in or about the premises for or in connection with any operations of Lessee, any alteration, improvement or repairs or additions which Lessee may make or permit or cause to be made, or any work construction, by, for or permitted by Lessee on or about

the premises, and at all times promptly and fully to pay and discharge any and all claims upon which any such lien may or could be based, and to save and hold City, and all of the premises and all buildings and improvements thereon free and harmless of and from any and all other liens and claims of liens and suits or other proceedings pertaining thereto.

B. No mechanics' or materialmen's liens or mortgages, deeds of trust, or other liens of any character whatsoever created or suffered by Lessee shall in any way, or to any extent, affect the interest or rights of City in the demised premises, or attach to or affect its title to or rights in the premises.

19. NO LIABILITY OUTSIDE OF TERMS OF CONTRACT

It is agreed that all duties, obligations and liabilities of either of the parties hereto must necessarily be founded upon the terms of this lease, that any liability under this lease or in connection with the transaction consummated by this lease is exclusively that of each of the principals appearing respectively as Lessor and Lessee and that any Commissioner, servant, agent, officer or employee of either party is not to be held liable for any act, neglect, default or alleged misrepresentation or statement.

20. WAIVER BY LESSEE

Lessee hereby expressly waives any and all claims for loss, liability or damage against City sustained by reason of any defect, deficiency, failure or impairment of any improvements or services to or in the demised premises, including, but not limited to, the water supply system, wires leading to or inside the demised premises, gas electricity, telephone, sewer or other utility services which may occur from time to time for any cause or from any loss resulting from gas, gasoline, oil, water or other fluid, or from any other force whatsoever, and Lessee hereby expressly releases and discharges City, members of Commission, and the officers, agents and employees of City from any claims arising from any of the causes aforesaid.

21. INDEMNITY

Lessee agrees to defend, indemnify and hold harmless City, the members of Commission, and all of City's officers, agents and employees from and against any liability, judgment or claim for loss for injury to or death of any person, or damage to property caused by any act or omission to act of Lessee, its agents, servants and employees, or any kind or nature arising directly or indirectly out of the use of, occupancy of, or operations of Lessee on the demised premises. Each party hereto shall give to the other prompt and timely notice of any claim made, or suit instituted, coming to its knowledge which in any way, directly or indirectly, contingently or otherwise, affects or might affect either, and both shall have the right to participate in the defense of same to the extent of its own interest.

22. REMEDIES OF LESSOR ON DEFAULT

A. It is mutually agreed that the letting hereunder is upon and subject to the terms, covenants and conditions hereof, and Lessee covenants, as a material part of the consideration for this lease, to keep and perform each and all of said terms, covenants and conditions by it to be kept or performed, and that this lease is made upon the condition of such performance.

B. In the event of breach of any term, covenant or condition of this lease by Lessee, then City, notwithstanding other rights or remedies it may have, shall have the immediate right of re-entry and may remove all persons and property from the premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of Lessee. Should City elect to re-enter, as herein provided, or should it take possession pursuant to any notice provided by law, Lessee's interest shall immediately terminate, and full title and right thereto shall vest in City, and City may either terminate this lease or it may from time to time, without terminating this lease, re-let said

premise or any part thereof for such term or terms (which may be for a term extending beyond the term of this lease) and at such rental or rentals and upon such other terms and conditions as City in its sole discretion may deem advisable with the right to make alterations and repairs to said premises; upon each such re-letting (a) Lessee shall be immediately liable to pay to City, in addition to any indebtedness other than rent due hereunder, the cost and expenses of such re-letting and of such alterations and repairs, incurred by City, and the amount, if any, by which the rent reserved in this lease for the period of such re-letting (up to but not beyond the terms of this lease) exceeds the amount agreed to be paid as rent for the demised premises for such period of such re-letting; or (b) at the option of City, rents received by City from such re-letting shall be applied: First, to the payment of any indebtedness, other than rent due hereunder from Lessee to City; second, to the payment of any costs and expenses of such re-letting and of such alterations and repairs; third, to the payment of rent due and unpaid hereunder and the residue, if any, shall be held by City and applied in payment of future rent as the same may become due and payable hereunder. If Lessee has been credited with any rent to be received by such re-letting under option (a), and such rent shall not be promptly paid to City by the new tenant, or if such rentals received from such re-letting under option (b) during any month be less than that to be paid during that year by Lessee hereunder, Lessee shall pay any such deficiency to City. Such deficiency shall be calculated as of the first day of each month and paid within fifteen (15) days thereafter. No such re-entry or taking possession of said premises by City shall be construed as an election on its part to terminate this lease unless a written notice of such intention be given to Lessee or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding any such re-letting without termination, City may at any time thereafter elect to terminate this lease for such previous breach. Should

City at any time terminate this lease for any breach, in addition to any other remedy it may have, it may recover from Lessee all damages it may incur by reason of such breach, including reasonable attorney fees, court costs and other costs of recovering the premises and including the worth at the time of such termination of the excess, if any, of the amount of rent and charges equivalent to rent reserved in this lease for the remainder of the stated term over the then reasonable rental value of the premises for the remainder of the stated term, all of which amounts shall be immediately due and payable from Lessee to City.

23. CONDEMNATION

In the event of condemnation by any public body other than City during the existence of this lease, the lease shall terminate at the option of either party hereto, and Lessee hereby waives and surrenders any rights founded upon the existence of this lease to any compensation in said condemnation proceedings, except that Lessee shall be entitled to seek to recover as against the condemnor an amount equal to the value of its leasehold interest and improvements, and City shall have no claim thereto.

24. BANKRUPTCY OR REORGANIZATION PROCEEDINGS

In the event that Lessee shall file a voluntary petition in bankruptcy or that proceedings in bankruptcy shall be instituted against Lessee and Lessee is thereafter adjudicated bankrupt pursuant to such proceedings, or that the court shall take jurisdiction of Lessee and its assets pursuant to proceedings brought under the provisions of any Federal Reorganization Act, or that a receiver of Lessee's assets shall be appointed, or in the event that Lessee executes an assignment for the benefit of its own creditors, City shall have the right to terminate this lease forthwith. Such termination shall, in such instance, be deemed to occur upon the happening of any of said events and from thenceforth Lessee shall have no rights in or to the demised premises, or to any of the

rights herein conferred, and City shall have the right to take possession of said recreational facility forthwith. In any such events, the interest of Lessee herein shall not pass as an asset for administrative or other judicial control of said proceedings.

25. ASSIGNMENT OR SUBLETTING

Lessee shall not assign this lease or any interest therein and shall not sublet the demised premises or any part thereof, or any right or privilege appurtenant thereto, or mortgage or encumber any leasehold interest as security for any funds borrowed, or to extend or renew any loan, for purposes of construction, or in connection with fixtures and equipment or to serve as operating capital or for any other purpose without the written consent of Commission first had and obtained. Any such assignment, subletting or encumbrance without such consent shall be void and shall, at the option of City, terminate this lease and a consent to one assignment, subletting, encumbrance, occupation or use by another person shall not be deemed a consent to any subsequent assignment, subletting, encumbrance, occupation or use by another person. Nor shall this lease, or any interest therein, be assignable as to the interest of Lessee by operation of law, without the written consent of City.

26. LIABILITY AND PROPERTY DAMAGE INSURANCE

Lessee shall, throughout the period of this lease or any extension thereof, at its own cost and expense, procure and maintain in full force and effect an insurance policy or policies, including products and automobile liability, in protection of and naming as insured or additional insureds, City, Commission and its members, and all officers, servants, agents and employees of City in a company or companies approved by the Controller of City and in form satisfactory to the City Attorney of City, insuring said parties against loss or liability for damages for bodily injury, death or property damage occasioned by reason of the contemplated construction or operations of Lessee upon, in, about and around said demised premises, with minimum liability limits of \$1,000,000 for bodily injury or death of any one or more persons or for property damage resulting

from any one occurrence or event. As an alternative to the foregoing provision, Lessee may file with Commission a duly executed certificate by an insurance company whose identity is approved by said Controller and in form satisfactory to said City Attorney to the effect that existing insurance is extended in favor of City and the above named parties covering such liabilities of the nature and extent heretofore stated, and said certificate shall be re-executed when policies are renewed so as to evidence maintenance of said insurance in said limits in favor of City and the above named parties. Said policy or certificate shall contain a cross-liability provision or endorsement and a provision or endorsement that a written notice of cancellation or of any material change in said policy shall be delivered to Commission ten (10) days in advance of the effective date thereof. Certified duplicate policies of said insurance policy or the policy referred to in said certificate shall be filed with Commission forthwith following the date of execution of this lease. Lessee agrees to increase forthwith the aforesaid liability limits and amounts to those determined and if demanded in writing by Commission but said increases must be reasonable and justifiable by Commission.

27. CONSENTS

No consent or approval by the City, its officers or agents, permitted or required under the terms of this lease, shall be valid or be of any validity whatsoever, unless the same shall be in writing signed by the parties by or on whose behalf such consent is executed.

28. NO LIABILITY OUTSIDE OF TERMS OF LEASE

It is agreed that all duties, obligations and liabilities of either of the parties hereto must necessarily be founded upon the terms of this lease.

29. NO WAIVER OR SUBSEQUENT BREACHES OR DEFAULTS

The failure of City at any time to insist upon a strict

from any one occurrence or event. As an alternative to the foregoing provision, Lessee may file with Commission a duly executed certificate by an insurance company whose identity is approved by said Controller and in form satisfactory to said City Attorney to the effect that existing insurance is extended in favor of City and the above named parties covering such liabilities of the nature and extent heretofore stated, and said certificate shall be re-executed when policies are renewed so as to evidence maintenance of said insurance in said limits in favor of City and the above named parties. Said policy or certificate shall contain a cross-liability provision or endorsement and a provision or endorsement that a written notice of cancellation or of any material change in said policy shall be delivered to Commission ten (10) days in advance of the effective date thereof. Certified duplicate policies of said insurance policy or the policy referred to in said certificate shall be filed with Commission forthwith following the date of execution of this lease. Lessee agrees to increase forthwith the aforesaid liability limits and amounts to those determined and if demanded in writing by Commission but said increases must be reasonable and justifiable by Commission.

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No consent or approval by the City, its officers or agents, permitted or required under the terms of this lease, shall be valid or be of any validity whatsoever, unless the same shall be in writing signed by the parties by or on whose behalf such consent is executed.

28. NO LIABILITY OUTSIDE OF TERMS OF LEASE

It is agreed that all duties, obligations and liabilities of either of the parties hereto must necessarily be founded upon the terms of this lease.

29. NO WAIVER OR SUBSEQUENT BREACHES OR DEFAULTS

The failure of City at any time to insist upon a strict

performance of any of the terms, conditions and covenants herein shall not be deemed a waiver of any subsequent breach or default in the terms, conditions and covenants herein contained.

30. SURRENDER OF POSSESSION

Lessee agrees to yield and deliver to City possession of the demised premises, at the termination of this lease or of any extension thereof, or as otherwise herein provided, in good condition and in accordance with the express obligations hereunder, and shall execute and deliver to City a good and sufficient document of relinquishment, if and when requested.

31. HOLDING OVER

Any holding over after the expiration of the term provided for in this lease, with the consent of City, shall be construed to be a tenancy from month to month, at the annual rental provided for in this lease, and otherwise on the same terms and conditions set forth in this agreement.

32. COMPLIANCE WITH LAWS AND REGULATIONS

Lessee agrees to keep the demised premises, and all fixtures and equipment, clean, neat, safe, sanitary and in good order at all times. All health or sanitary regulations and building, electrical, health and fire codes adopted by the county, state or other duly constituted legal authority shall be fully met by Lessee, and Lessee shall give access for inspection purposes to any duly authorized representative of any of said legal authorities.

Lessee agrees that the business as conducted under this agreement will be operated in strict compliance with all laws of the United States, the State of California, applicable laws of the City and County of San Francisco, or any legal authority having jurisdiction, and all rules and regulations issued pursuant to the laws of the sovereignties or agencies hereinabove mentioned. Lessee further agrees to submit a report or reports or convey such information regarding its operations as Manager may require at any time.

33. NOTICES

All notices to be given to Lessee may be given in writing personally or by depositing the same in the United States mail, postage prepaid, and addressed to Lessee at the demised premises, whether or not Lessee has departed from or abandoned or vacated the premises. A further copy of any notice to Lessee shall be mailed to it at any address to be designated in writing by Lessee.

All notices required to be given to City hereunder shall be given by registered or certified mail, addressed to: General Manager and Chief Engineer, San Francisco Water Department, 425 Mason Street, San Francisco, California, 94102, or any other address to be designated in writing by City.

34. CONFLICT OF INTEREST

Lessee states that it is familiar with the provisions of Sections 222 and 222.1 of the San Francisco Charter and certifies that it knows of no facts which constitute a violation of said sections; it further certifies that it has made a complete disclosure to Commission of all facts bearing upon any possible interest, direct or indirect, which it believes any member of Commission or other officer or employee of the City and County of San Francisco presently has or will have in this contract or in the performance thereof, or in any portion of the profits thereof. Wilful failure to make such disclosure, if any, shall constitute grounds for termination of this lease by City.

35. APPLICABILITY OF FISCAL PROVISIONS OF CHARTER

All terms of this lease shall be governed by and shall be subject to the fiscal and budgetary provisions of the Charter of the City and County of San Francisco.

36. SUCCESSORS AND ASSIGNS

Subject to the provisions hereof relating to assignment, this lease shall bind and inure to the successors and assigns of the parties hereto.

37. AGREEMENT MADE IN CALIFORNIA

This agreement shall be deemed to be made in and shall be construed in accordance with the laws of the State of California.

38. TIME IS OF THE ESSENCE

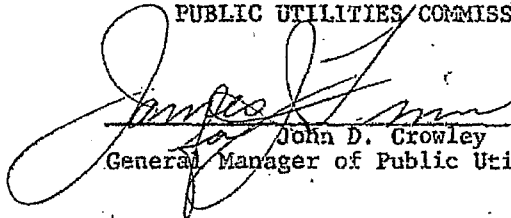
Time is of the essence of this lease.

IN WITNESS WHEREOF, the parties hereto have caused this lease to be executed in quintuplicate as of the day and year first hereinabove written.

LESSOR

CITY AND COUNTY OF SAN FRANCISCO
a municipal corporation,

PUBLIC UTILITIES COMMISSION


John D. Crowley
General Manager of Public Utilities

APPROVED AS TO FORM:


THOMAS M. O'CONNOR,
City Attorney

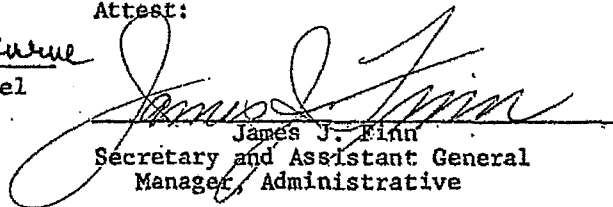
Authorized by Public Utilities
Commission

Resolution No. **71-0049**

Adopted: FEBRUARY 9 1971

Attest:

By 
Public Utilities Counsel


James J. Finn
Secretary and Assistant General
Manager, Administrative

LESSEE

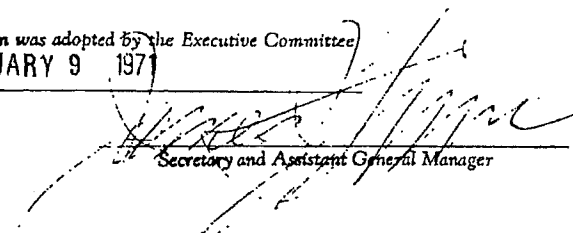
RECREATION CENTER FOR THE HANDICAPPED

By 
Michael Des...

PUBLIC UTILITIES COMMISSION
CITY AND COUNTY OF SAN FRANCISCO
RESOLUTION No. **71-0049**

RESOLVED, that this Commission hereby approves and authorizes execution of that lease for recreational purposes for the handicapped, copies of which lease are on file with Commission's Secretary, covering real property located in the City and County of San Francisco, as shown on San Francisco Water Department Drawing No. B-3146, to RECREATION CENTER FOR THE HANDICAPPED, INC., a non-profit California corporation for a term of 25 years, commencing upon the execution date of said lease, with an option for an additional 25-year term, at a rental of \$1.00 per year, and subject to all the other terms and conditions contained in said lease.

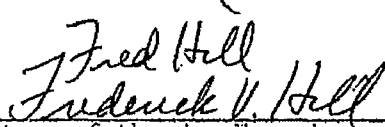
I hereby certify that the foregoing resolution was adopted by the Executive Committee
at its meeting of FEBRUARY 9 1971

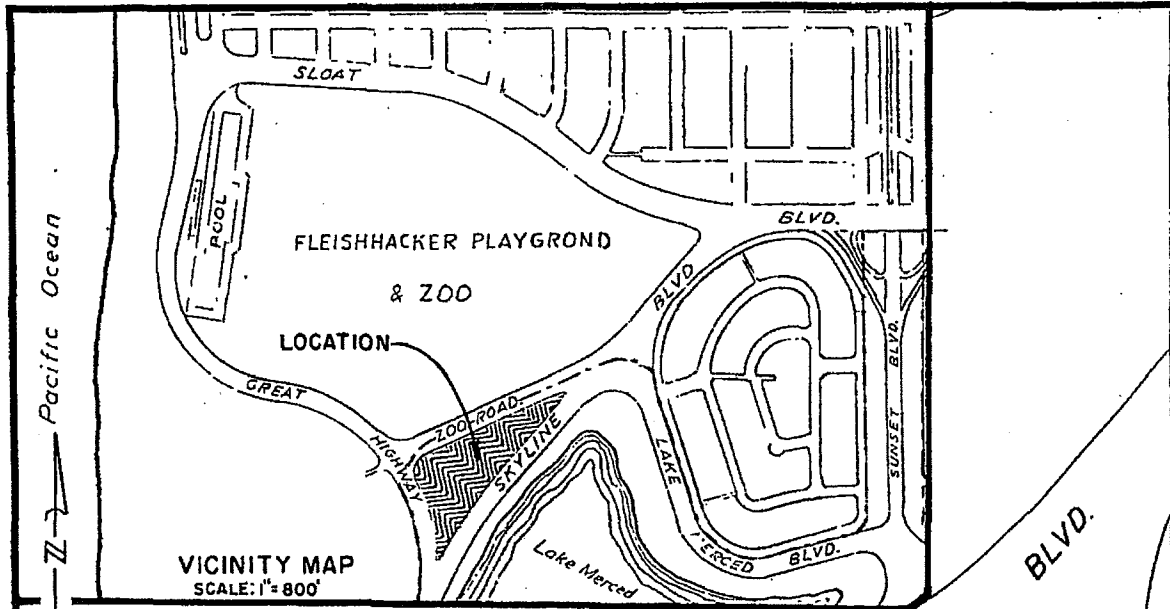

Secretary and Assistant General Manager

RESOLUTION AUTHORIZING EXECUTION OF INDENTURE OF LEASE

BE IT RESOLVED: that R. R. Zellick, Vice President and a Director of this non-profit Corporation, be and is hereby authorized and empowered for and on behalf of and in the name of this Corporation, and as its corporate act and deed, to enter into an indenture of lease dated the 9th day of February, 1971, with the CITY AND COUNTY OF SAN FRANCISCO, a Municipal Corporation, by and through said City's Public Utilities Commission, as Lessor, said indenture of lease to provide, among other provisions, for a term of twenty-five (25) years at an annual rental of one dollar (\$1.00), with a renewal option vested in the Lessee for an additional term of twenty-five (25) years under the same terms and conditions; and to include the right of the Lessee to construct a building and other improvements under terms as specifically set forth in said indenture of lease.

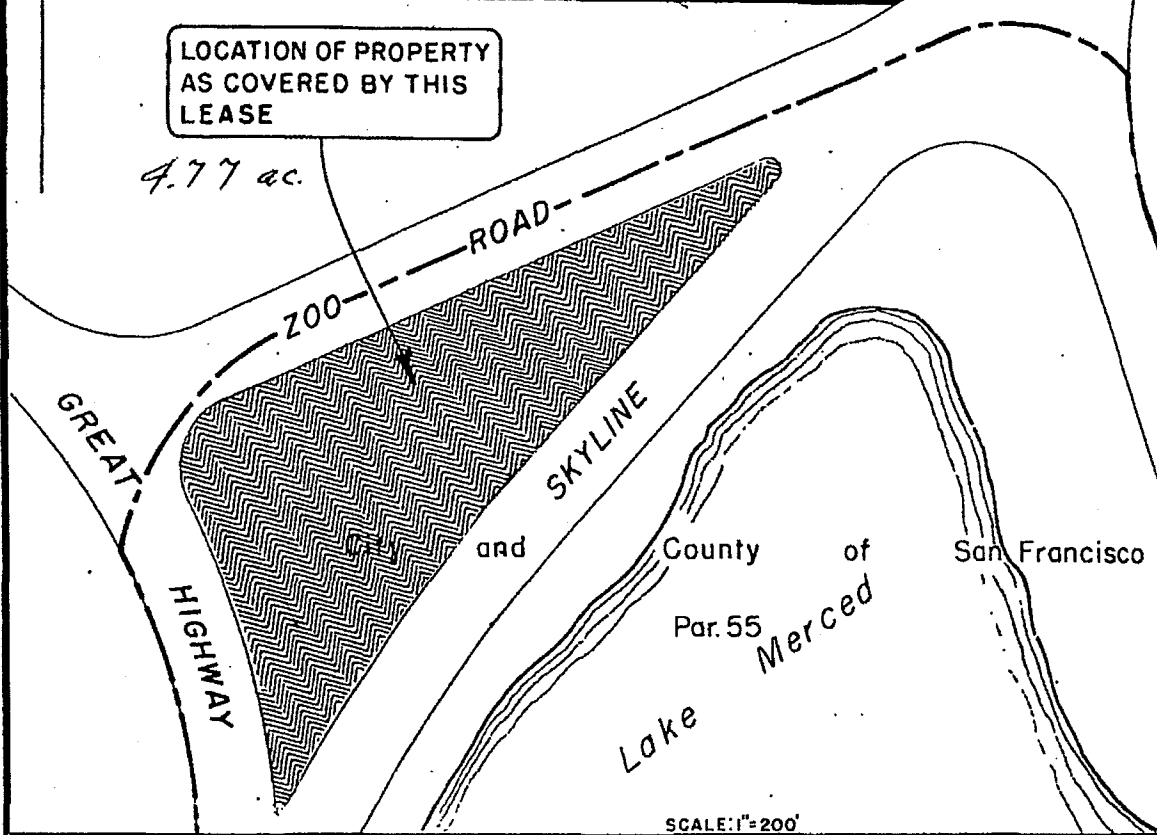
I, Fred Hill, Secretary of the San Francisco Recreation Center for the Handicapped, Inc., a non-profit California corporation, accredited and existing under the laws of the State of California, do hereby certify and declare that the foregoing is a full, true and correct copy of the Resolution duly passed and adopted by the Board of Directors of said Corporation at a meeting of said Board duly and regularly called, noticed and held at the office of said Corporation on the 18th day of February, 1971, at which meeting a quorum of the Board of Directors was present and voted in favor of said Resolution; and that said Resolution is now in full force and effect. In testimony whereof, I have hereunto set my hand and affixed the corporate seal of said Corporation this 18th day of February, 1971.


Secretary of the San Francisco
Recreation Center for the Handicapped, Inc.,
a non-profit California corporation.



LOCATION OF PROPERTY
AS COVERED BY THIS
LEASE

4.77 ac.



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

LEASE TO RECREATION CENTER FOR HANDICAPPED

PARCEL 55

EXIBIT "A"

SAN FRANCISCO

APPROVED	SCALE AS SHOWN	BY	DR.	DRAWING NO.
APPROVED		TR. A.O.	CH.	B-3146
GENERAL MANAGER AND CHIEF ENGINEER		DATE 5-16-68	REVISED 1-19-71	

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 16-0195

WHEREAS, The City and County of San Francisco (City) owns certain real property presently under the jurisdiction of the San Francisco Public Utilities Commission (SFPUC) consisting of a portion of SFPUC Parcel No. 55 located at 207 Skyline Boulevard in San Francisco, California (Premises), near Lake Merced; and

WHEREAS, The City, by and through the SFPUC and the Recreation Center For the Handicapped, Inc., a California not-for-profit corporation (Original Tenant), entered into a 25-year Indenture of Lease dated February 9, 1971 (Original Lease) at a rental rate of \$1 per year, with an option to extend the lease term for a 25-year period; and

WHEREAS, The Original Tenant built improvements, including a swimming pool complex, on the Premises and has occupied the Premises pursuant to the Original Lease to operate a recreational and rehabilitation center for persons with disabilities and for related services and programs; and

WHEREAS, The Original Tenant exercised its option to extend the Original Lease term for a period of 25 years and the Original Lease expires on February 8, 2021; and

WHEREAS, the Original Tenant's successor-in-interest, the Pomeroy Recreation and Rehabilitation Center (Tenant), seeks a new 25-year lease with an option to extend the lease term for an additional 25-year period of 25 (Amended Lease); and

WHEREAS, Tenant's programs are considered an important community benefit; and

WHEREAS, Under the revised Real Estate Guidelines adopted by SFPUC Resolution No. 15-0013, any non-profit entity with a charitable purpose may be eligible for discounted rates for the use of land or improvements owned by the SFPUC; and

WHEREAS, Any capital improvements that the lessee may contemplate in the future are unknown at this time, no CEQA review is required at this time. At the time that any improvements are known, the lessee would be required to consult with the City Department of Building Inspection and potentially such improvements may require CEQA review; and

WHEREAS, Tenant is a non-profit entity with a charitable purpose and has met all other requirements under Resolution No. 15-0013; and

WHEREAS, Tenant's use benefits the SFPUC's primary utility purpose under Section 5.3.2 of the 2015 Real Estate Guidelines by relieving the SFPUC of the costs of maintaining and securing the Premises; and

WHEREAS, The SFPUC desires to enter into the Amended Lease, allowing Tenant to continue its existing use of the Premises; now, therefore, be it

RESOLVED, That this Commission hereby approves the terms and conditions of the Amended Lease; and be it

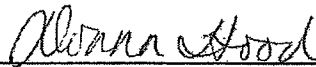
FURTHER RESOLVED, That this Commission hereby authorizes the SFPUC General Manager to seek approval by the Board of Supervisors and Mayor of the Amended Lease and, upon such approval, to execute the Amended Lease; and be it

FURTHER RESOLVED, That, upon approval by Board of Supervisors and Mayor, this Commission authorizes the SFPUC General Manager and the City's Director of Property to take any and all other steps they or the City Attorney believe are in the best interest of the City; do not materially increase the obligations or liabilities of the City; are necessary or advisable to effectuate the purposes and intent of this resolution; and are in compliance with all applicable laws, including the City Charter; and be it

FURTHER RESOLVED, That this Commission hereby ratifies, approves and authorizes all actions heretofore taken by any City official in connection with this Amended Lease; and be it

FURTHER RESOLVED, That, upon approval by the Board of Supervisors and Mayor, this Commission hereby authorizes the SFPUC General Manager to enter into any amendments or modifications to the Lease, including without limitation, the exhibits, that the General Manager determines, in consultation with the City Attorney, are in the best interest of the City; do not materially increase the obligations or liabilities of the City; are necessary or advisable to effectuate the purposes and intent of the Amended Lease or this resolution; and are in compliance with all applicable laws, including the City Charter.

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of September 13, 2016.



Secretary, Public Utilities Commission

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 15-0013

WHEREAS, San Francisco Charter Sections 8B.121 and 4.132 provide that the San Francisco Public Utilities Commission (SFPUC) has exclusive charge of, among other things, its real property assets; and

WHEREAS, The SFPUC has a duly appointed General Manager and pursuant to San Francisco Charter Section 4.126, the General Manager is responsible for the administration and management of the department; and

WHEREAS, The Real Estate Services Division (RES) of the SFPUC, among other things, administers real property under the SFPUC's jurisdiction (SFPUC Property) having income-producing potential; and

WHEREAS, On March 13, 2012 by Resolution No. 12-0043, this Commission approved the Real Estate Services Guidelines (2012 Guidelines). The 2012 Guidelines established a high-level manual for RES focusing on critical policy objectives governing the use of certain SFPUC Property; and

WHEREAS, Resolution No. 12-0043 contemplated that the Real Estate Director would ask this Commission to amend the 2012 Guidelines from time to time; and

WHEREAS, On March 12, 2013 by Resolution No. 13-0041, this Commission approved revised Real Estate Guidelines (2013 Guidelines); and

WHEREAS, Since 2013, SFPUC policy and procedures have changed to the extent that the 2013 Guidelines no longer reflect current commercially standard rental valuation methods or SFPUC operations, obligations and practices; and

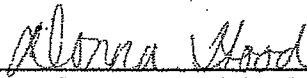
WHEREAS, RES revised the 2013 Guidelines (2015 Guidelines) to reflect (a) changes in SFPUC policy for approval of leases and licenses; (b) updated standard commercial lease and license rental valuation practices; (c) revised City Attorney forms of leases and licenses; and (d) changes designed to allow RES greater efficiency and flexibility in the management of SFPUC property;

WHEREAS, Approval of the proposed Policy and Policy Amendment would not fall within the definition of a "project" under California Environmental Quality Act (CEQA) Guidelines Section 15378 because there would be no direct or indirect physical change in the environment. And, individual applications for revocable license or lease to use SFPUC Right of Way would be subject to environmental review under CEQA prior to issuance of any license or lease in compliance with the proposed Policy and Policy Amendment; now, therefore, be it

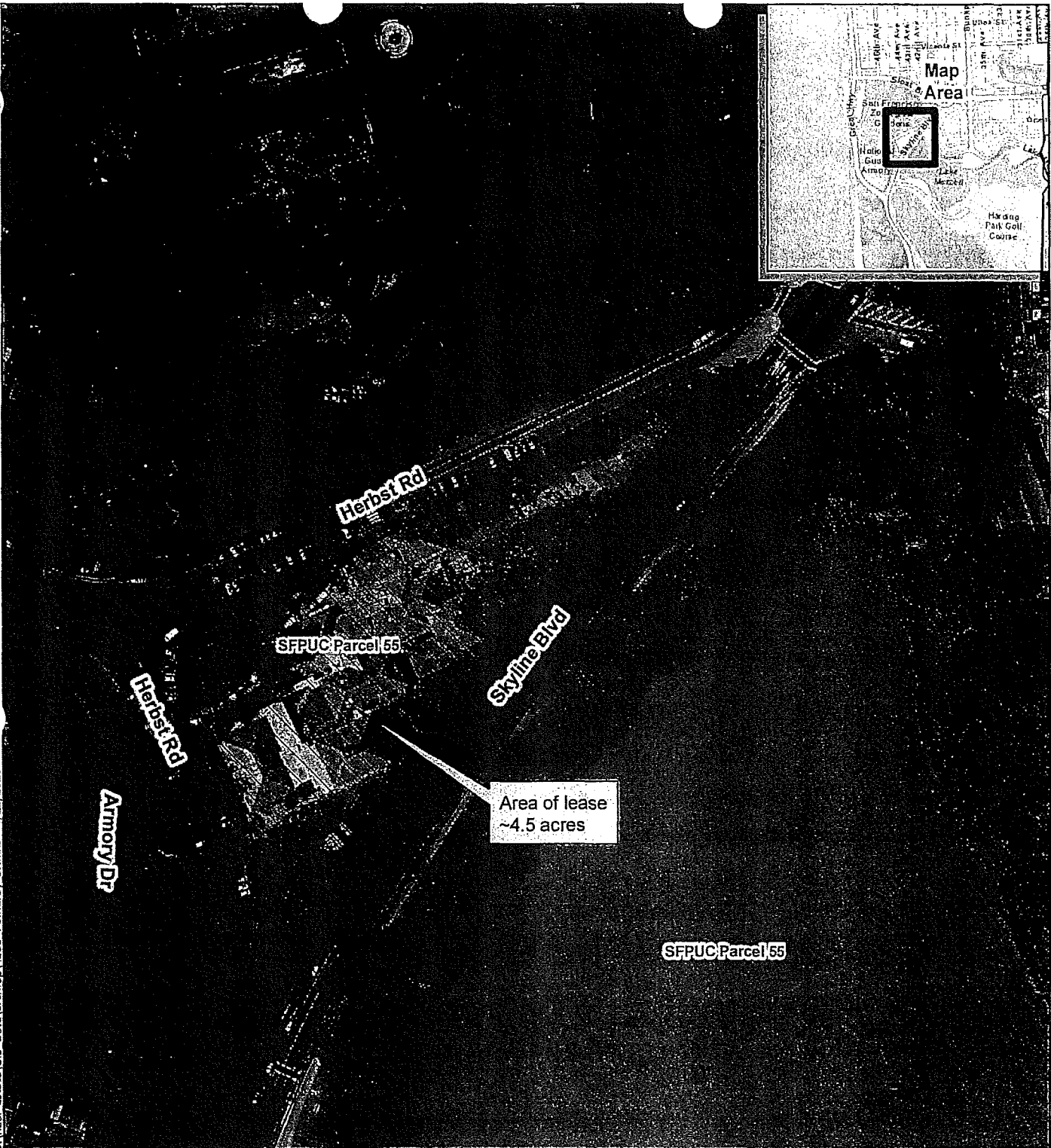
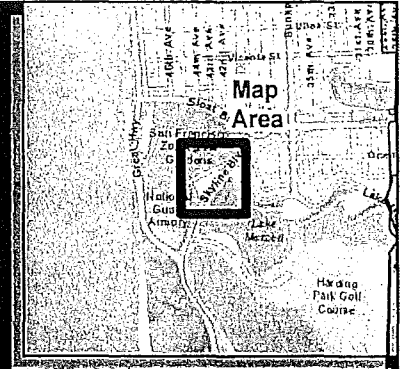
RESOLVED, That this Commission hereby approves the 2015 Guidelines dated January 13, 2015 and the City Attorney-approved legal forms of leases and licenses on file with the SFPUC Secretary; and be it

FURTHER RESOLVED, That this Commission authorizes the General Manager, the Real Estate Director and the City Director of Property to take any and all other steps they, in consultation with the City Attorney, determine are in the best interest of the City; do not materially increase the obligations or liabilities of the City or materially diminish the benefits to the City; are necessary or advisable to effectuate the purposes and intent of this Resolution; and are in compliance with all applicable laws, including the City Charter.

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of January 13, 2015.



Secretary, Public Utilities Commission



Legend

 Area of lease

 SFPUC Pipelines

 SFPUC Parcels (Fee Owned)

 SFPUC Parcels (Easement / Road)

 Tax Assessor Parcels




Hetch Hetchy
Regional Water System
San Francisco Public Utilities Commission
Real Estate Services

Exhibit B
Lease 4333
to Pomeroy Center
San Francisco

Date: 4/22/16 Author: J.Lukins

The City does not guarantee that the information is accurate or complete. The City is not responsible for any damages arising from the use of data. Users should verify the information before making project commitments.



Scale 1:2,400
 Feet
0 100 200

Introduction Form

By a Member of the Board of Supervisors or the Mayor

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

2017 MAY -9 PM 1:12

Time Stamp
or meeting date

I hereby submit the following item for introduction (select only one):

BY *ZLB*

- 1. For reference to Committee. (An Ordinance, Resolution, Motion, or Charter Amendment)
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning "Supervisor inquires"
- 5. City Attorney request.
- 6. Call File No. from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Question(s) submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission Youth Commission Ethics Commission
- Planning Commission Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative Form.

Sponsor(s):

Yee, Farrell *, Ferrer*

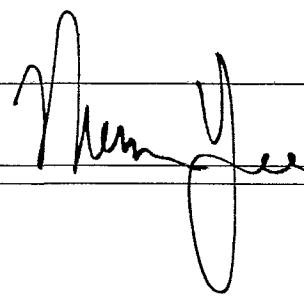
Subject:

Real Property Lease Amendment and Restatement - Pomeroy Recreation and Rehabilitation Center, a California no-for-profit corporation - 207 Skyline Boulevard, San Francisco, California - \$0

The text is listed below or attached:

Attached

Signature of Sponsoring Supervisor:



For Clerk's Use Only:



SFPUC - Water Enterprise

File #170574
Received in Committee
7/13/17
fn.

Pomeroy Recreation and Rehabilitation Center

25-year Amended and Restated Lease,
with option to extend for an additional 25 years,
with no rent

July 13, 2017

Tony Bardo, Assistant Real Estate Director



Pomeroy Recreation and Rehabilitation Center Complex





SFPUC Property Description

- Location: 207 Skyline Boulevard, situated on the shores of Lake Merced in San Francisco
- Land Area: 4.5 acres
- Improvements: The Pomeroy Center constructed the improvements between 1972 and 1984 at its own cost.

The improvements consist of 64,418 square feet of building space, including an administrative building, an auditorium, a gymnasium, a pool, and a day and respite-care facility.

Pomeroy Center Mission Statement



The Center's mission is to provide recreational, vocational and educational opportunities for people with disabilities through programs and services that encourage self-expression, promote personal achievement, and lead to greater independence.



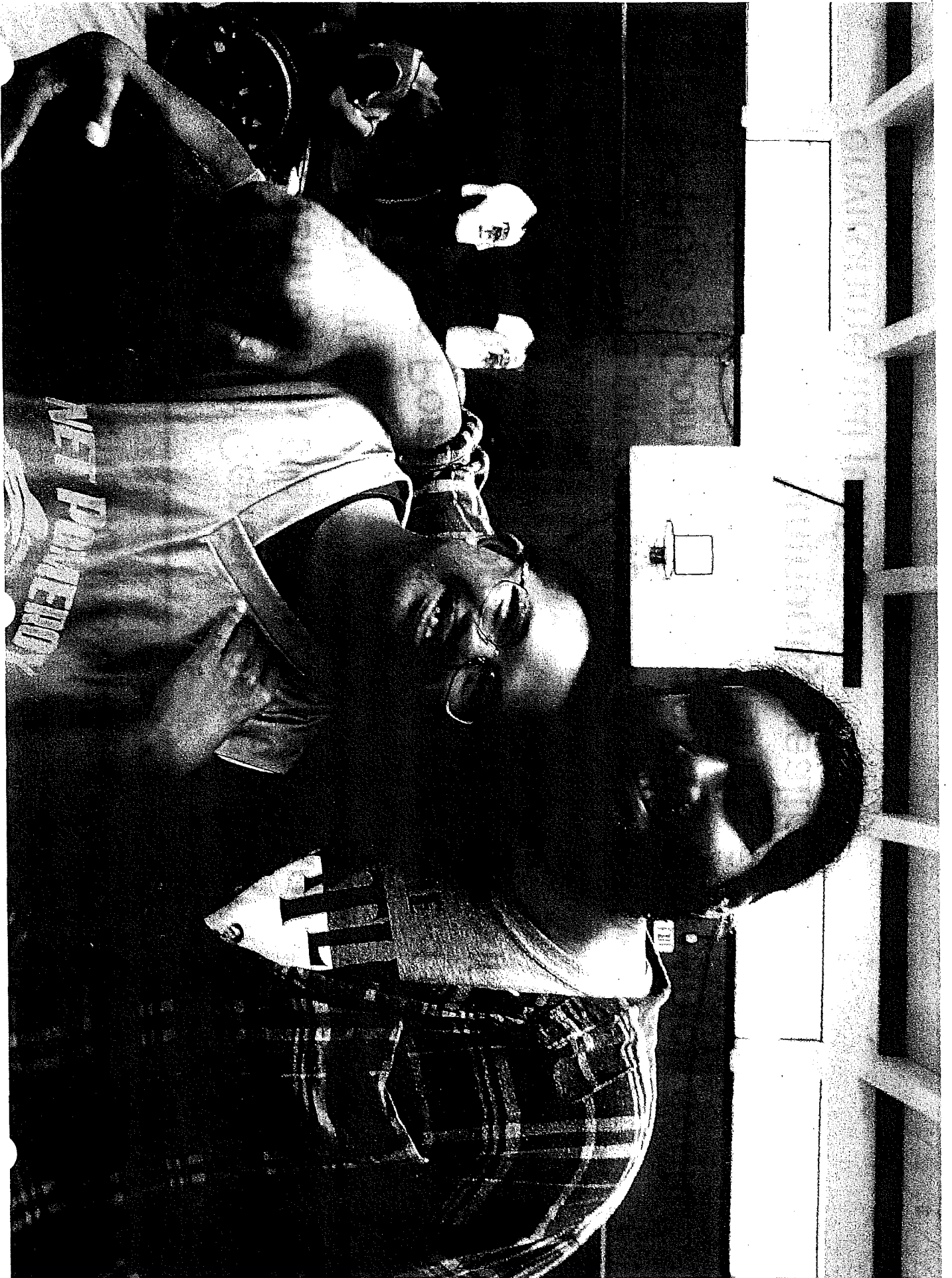
Pomeroy Center Background

- Providing recreational, vocational and educational opportunities for people with disabilities since 1971
- Currently serving 287 adults, 75 children and teens with disabilities
- In 2016, provided 1,920 hours of occupational therapy and weekly access to 1,130 swimmers (300 therapeutic)
- Staff by 120 employees (80 full-time and 40 part-time), with over 900 volunteers



Pomeroy Center Program Funding in 2016

- Golden Gate Regional Center of the Federal Medicaid Program (\$3,231,000)
- The State of California (\$1,056,000)
- Private Donations (\$1,587,000)
- City funding (\$148,000)
 - The San Francisco Department of Children, Youth and Families
 - San Francisco Childcare Subsidy Support
 - The Children's Council of San Francisco
 - The San Francisco Department of the Environment.





Why Amend the Lease vs. Competitive Bid?

- To permit the Center to benefit from its \$12 million investment in the facility, and make future capital improvements
- To secure Pomeroy's future and avoid risk of permanent disruption of its programs if forced to relocate
- Pomeroy's programs are consistent with the SFPUC's Community Benefits Policy which seeks to promote, among other things, educational programming, community health, and environmental justice.



Basic Lease Terms

	Original Lease	Amended Lease
Commencement Date	February 1971	February 1971
Expiration Date	February 2021	July 2042 (estimate)
Renewal Options	None remaining	One 25-year
Annual Rent	\$1.00	\$0.00, plus 50% of net income (unlikely)
Expenses	Tenant pays 100%	Tenant pays 100%
City Funded Improvements	None	None
Tenant Funded Improvements (not required)	\$12 million	TBD
Other Terms		Replace existing fleet with clean-fuel vehicles

2831

