

**MUTUAL TERMINATION AGREEMENT
(LEASE L-13816 AND RELATED AGREEMENTS)**

This Mutual Termination Agreement (this "**Agreement**"), dated for reference purposes only as of [Insert Board of Supervisors approval date] is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**"), operating through the SAN FRANCISCO PORT COMMISSION ("**Port**"), as landlord, and Literacy for Environmental Justice, a California corporation, as tenant ("**Tenant**").

RECITALS

A. Port and Tenant entered into Port Lease No. L-13816 dated as of September 27, 2005 for reference purposes only, as revised by an Addendum to the Lease (together, the "**Lease**"), for that certain real property located at Heron's Head Park as more particularly described in the Lease (the "**Premises**") for a 10-year term ending on December 6, 2017. The Lease and Addendum were approved by Port Commission Resolution Nos. 05-64 and 07-63 and Board of Supervisors Resolution Nos. 60-06 and 553-07. Port and Tenant have entered into other agreements regarding the use of the Premises, including License No. 14831 for installation of a potable water supply line (the "**License**") and an Agreement Protecting the Public Interest in Certain Improvements and Development dated July 16, 2008 with the Port and California State Coastal Conservancy ("**SCC**") and a Letter Agreement Regarding Mayor's Office of Housing Division of Community Development Funding for Improvements at The EcoCenter at Heron's Head Park dated February 16, 2010 with the Port and the Mayor's Office of Housing, Division of Community Development ("**MOCD**") (the other agreements collectively, the "**Related Agreements**").

B. Tenant secured funding from the City and County of San Francisco Department of the Environment, the SCC, the MOCD, and other public and private sources to construct a green building demonstration project and environmental education center at Heron's Head Park. In accordance with the Lease, the License, and the Related Agreements, Tenant constructed improvements on the Premises, including site preparation and grading, and construction of an approximately 2,292 square foot building comprised of a large general assembly room, two bathrooms, two small office/storage rooms, and an indoor wastewater treatment system.

C. Port and Tenant now desire to terminate the Lease and the License. The parties are making this change so that the Port may seek a successor building operator to operate the EcoCenter and achieve the public benefit originally intended. As material consideration for this Agreement, each party will release the other party from all obligations and potential liabilities under or related to the Lease, including the related agreements, except for any obligations that expressly survive the Lease and the License and Tenant's indemnification obligations under this Agreement.

D. Tenant is in good standing.

E. All capitalized terms used in this Agreement but not otherwise defined shall have the meaning given to them in the Lease.

NOW THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, Port and Tenant hereby mutually agree as follows:

AGREEMENT

- 1. Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference as if fully set forth herein.
- 2. Lease Termination and Surrender.** Tenant shall surrender the Premises and all Improvements and Alterations thereon in compliance with Section 34 (Surrender and Quitclaim) of the Lease no later than 30 days after execution of this Agreement by Port ("**Termination Date**"). Port will

provide Tenant with 30 days advance written notice of the Termination Date, together with a fully executed counterpart of this Agreement, and Port and Tenant will conduct a joint exit inspection of the Premises to ensure proper surrender prior to the Termination Date.

3. Security Deposit, Capital Improvements Fee and Removal Fee. As a material part of the consideration for this Agreement, Tenant shall forfeit to Port the Security Deposit, Capital Improvements Fee and Removal Fee for the Lease. Port shall retain all such monies free of any claim by Tenant.

4. Continuing Rights and Obligations. From and after the Termination Date, neither Port nor Tenant shall have any rights or obligations to each other under the Lease or the License except for obligations that expressly survive termination or as set forth in this Agreement. Tenant acknowledges and agrees that Port may immediately lease the Premises to a new tenant or tenants in its sole discretion.

5. Tenant's Obligations.

5.1 Tenant shall, at its sole cost and expense, cooperate fully with Port in any matter that involves the termination of the Lease and the License, such as obligations under the Related Agreements, surrender of the Premises, provision of documents and reports, appearances before decision-making bodies and the like.

5.2 Tenant acknowledges that it received funding for construction of the EcoCenter and the activities conducted under the Lease, the License, and the Related Agreements from various third party funders, including but not limited to those listed in Recital B. With respect to such third party funders, Tenant shall, at its sole cost, fully cooperate with all efforts by the SCC, MOCD, and Port to identify a new tenant for the Premises under the Related Agreements.

5.3 Tenant shall indemnify, protect, defend, and hold harmless forever ("**Indemnify**" or "**Indemnification**") Port, City, including, but not limited to, all of their respective boards, commissions, departments, agencies, and other subdivisions, and their respective Agents (collectively, "**Indemnified Parties**") from, and, if requested, shall defend them, without cost to the Indemnified Parties, against any and all liabilities, injuries, losses, costs, claims, demands, rights, causes of action, judgments, settlements, damages, liens, fines, penalties and expenses, including without limitation, direct and vicarious liability of any kind for money damages, compensation, penalties, liens, fines, interest, attorneys' fees, costs, equitable relief, mandamus relief, specific performance, or any other relief direct or vicarious liability, damage, injury or loss ("**Claims**") directly or indirectly by any third party arising out of the Lease, License, the Related Agreements, or this Agreement regardless of whether liability without fault is imposed or sought to be imposed on the Indemnified Parties. The Indemnification obligations of Tenant set forth in this Agreement shall be enforceable 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 Agreement. The Indemnification obligations of Tenant set forth in this Agreement include all Claims, including loss predicated in whole or in part, upon the active or passive negligence of the Indemnified Parties. Except as specifically provided otherwise, the Indemnification obligations of Tenant set forth in this Agreement shall exclude claims, liability, damage or loss resulting solely and exclusively from the willful misconduct of the Indemnified Parties which is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on, Tenant, its Agents or Invitees.

In addition to Tenant's obligation to Indemnify the Indemnified Parties, Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend the Indemnified Parties from any Claim which actually or potentially falls within the Indemnification obligations of Tenant set forth in this Agreement, even if the allegations are or may be groundless, false or fraudulent. Tenant's obligation to defend shall arise at the time such Claim is tendered to Tenant by the Indemnified Parties and shall continue at all times thereafter until resolved.

6. Tenant's Waiver. As a material part of the consideration for this Agreement, Tenant, on behalf of itself and its Agents, hereby fully and irrevocably releases, discharges, and covenants not to sue or to pay the attorneys' fees and other litigation costs of any party to sue, Port, or any and all of Port's Agents with respect to any and all Claims of any kind for money damages, compensation, penalties, liens, fines, interest, attorneys' fees, costs, equitable relief, mandamus relief, specific performance, or any other relief of any kind or nature whatsoever, whether known or unknown, suspected or unsuspected, which have existed or may have existed, or which do exist, or which hereafter may exist, and which arise out of or are in any way related to any of the transactions, occurrences, acts or omissions related to the Lease, the License, the Related Agreements, or this Agreement. Tenant acknowledges that the parties are entering into this Agreement at its request, that it is not being displaced from the Premises by any action of Port and, therefore, that Tenant is not entitled to relocation benefits under any statute or law providing for relocation benefits and waives any claims for relocation benefits in relation to the Lease and the License.

Tenant understands and expressly accepts and assumes the risk that any facts concerning the Claims released in this Agreement might be found later to be other than or different from the facts now believed to be true, and agrees that the releases in this Agreement shall remain effective. Therefore, with respect to the Claims released in this Agreement, Tenant waives any rights or benefits provided by Section 1542 of the Civil Code, which reads as follows:

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
BY PLACING ITS INITIALS BELOW, TENANT SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THE VALIDITY OF THE RELEASE MADE ABOVE AND THE FACT THAT TENANT WAS REPRESENTED BY COUNSEL WHO EXPLAINED THE CONSEQUENCES OF THE RELEASE AT THE TIME THIS AGREEMENT WAS MADE, OR THAT TENANT HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, BUT DECLINED TO DO SO.

Initials: WB PMR

Tenant

7. No Representation or Warranty by Port. Nothing contained herein shall operate as a representation or warranty by Port of any nature whatsoever.

8. Entire Agreement. This Agreement contains all of the representations and the entire agreement between the parties with respect to the subject matter of this Agreement. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to the subject matter of the Agreement are superseded in their entirety by this Agreement. No prior drafts of this Agreement or changes between those drafts and the executed version of this Agreement shall be introduced as evidence in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider such drafts in interpreting this Agreement.

9. Miscellaneous. This Agreement shall bind, and shall inure to the benefit of, the successors and assigns of the parties hereto. This Agreement is made for the purpose of setting forth certain rights and obligations of Tenant and the Port, and no other person shall have any rights hereunder or by reason hereof as a third party beneficiary of otherwise. This Agreement may be executed in counterparts with the same force and effect as if the parties had executed one instrument, and each such counterpart shall constitute an original hereof. No provision of this Agreement that is held to be inoperative, unenforceable or invalid shall affect the remaining provisions, and to this end all provisions hereof are hereby declared to be severable. In the event of any inconsistencies between the terms of this Agreement and the Lease, the License, or the Related Agreements, the terms of this Agreement shall prevail. Time is of the essence of this

Agreement. This Agreement shall be governed by the laws of the State of California. Neither this Agreement nor any of the terms hereof may be amended or modified except by a written instrument signed by all the parties hereto.

10. Effective Date. The Effective Date of this Agreement is the date of Port's execution as indicated below.

[SIGNATURES ON FOLLOWING PAGE]

PORT: CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation,
operating by and through the SAN FRANCISCO PORT COMMISSION

By: _____

Susan Reynolds
Deputy Director, Real Estate

Dated: _____

TENANT: Literary for Environmental Justice, a California corporation

By: _____

Its: EXECUTIVE DIRECTOR

Dated: 10/8/2013

By: _____

Its: BOARDMEMBER

Dated: 10/8/13

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____

Rona H. Sandler
Deputy City Attorney

Agreement Prepared By: Carol Bach, Environmental & Regulatory Affairs Manager,
Planning & Development Division cb (Initial) and

Jeff Bauer, Senior Leasing Manager,
Real Estate Division [Signature] (Initial)

Port Commission Resolution No. _____

Board of Supervisors Resolution No. _____