

RECORDING REQUESTED BY AND
WHEN RECORDED SEND TO:

Real Estate Director
San Francisco Public Utilities Commission
525 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

WITH A CONFORMED COPY TO:

Director of Property
San Francisco Real Estate Division
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102

The undersigned hereby declares this instrument to be exempt from Recording Fees (CA Govt. Code § 27383) and Documentary Transfer Tax (CA Rev. & Tax Code § 11922 and S.F. Bus. & Tax Reg. Code § 1105)

Space above this line for Recorder's use only

STREETLIGHT LICENSE

This STREETLIGHT LICENSE ("**License**"), effective as of _____, 2018, is made between **GERALD F. SULLIVAN**, an individual ("**Licensor**"), and the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation (the "**City**"), by and through its **PUBLIC UTILITIES COMMISSION** (the "**SFPUC**").

RECITALS

- A.** Licensor owns the property commonly known as 10 Rockaway Avenue (Block 2916, Lot 15) in San Francisco ("**Licensor's Property**").
- B.** There are two rock columns in, or partially in, the Rockaway Avenue and Laguna Honda Boulevard public rights-of-way that Licensor owns. One is in the Laguna Honda Boulevard public right-of-way and the other is halfway in Licensor's Property and halfway in the Rockaway Avenue public right-of-way as shown on attached **Exhibit B** (the "**Rock Columns**").
- C.** Licensor and other community members requested that City install streetlights in the Rock Columns. City agrees to do so subject to the terms and conditions contained in this License.

LICENSE

NOW, THEREFORE, in consideration of the foregoing covenants, promises and undertakings, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and Licensor agree as follows:

1. Permission to Enter and Use. City may:

a. Enter and use the portion of Licensor's Property described on **Exhibit A** and shown on **Exhibit B** (the "**License Area**") to construct, reconstruct, operate, maintain, repair, inspect, remove, and replace, from time to time, underground electric power facilities and all necessary or desirable substructures, accessories and appurtenances thereto, including without limitation, wires, fibers, cables, conductors, conduits, switches and vaults (collectively, the "**Facilities**");

b. Place electrical facilities and equipment aboveground in the License Area when needed in connection with any emergency or repair work, as needed to maintain street lighting service ("**Temporary Facilities**"), provided that any such temporary aboveground facilities or equipment may be maintained only so long as needed to address the emergency or perform the repair work;

c. Install streetlight facilities in the Rock Columns;

d. Install streetlight facilities in a future rock column or install a streetlight pole in accordance with the terms of Section 7 (Future Streetlights and Rock Columns); and

e. Access the License Area and Rock Columns for all such purposes.

2. Ownership of the Facilities. City will own the Facilities and Temporary Facilities; and Licensor will have no right to use or connect to them, except in accordance with Section 10 (Surrender).

3. Exercise of City's Rights. City's rights under this License may be exercised by City's agents, contractors, subcontractors, suppliers, consultants, employees, or representatives, or by other authorized persons acting for or on behalf of City ("**City's Agents**"). Except in the event of an emergency, City will notify Licensor not less than ten (10) days before performing any work in the License Area that will disturb or remove surface improvements. If City must disturb or remove surface improvements during an emergency (as determined by City at its sole discretion), City will notify Grantor of such fact as soon as reasonably possible under the circumstances.

4. Term. The term of this License will commence as of the date first written above and will terminate upon either **(a)** minimum one (1) year's notice by Licensor; **(b)** upon thirty (30) days' notice by City; or **(c)** immediately upon notice by City in case of an emergency (as determined by City at its sole discretion). Without limiting any of its rights hereunder, City has the right to terminate this License in accordance with this Section, without cause and without any obligation to pay any consideration to Licensor.

5. No Obligation to Continue City's Use of Rock Columns. By entering into this License, or by exercising its rights under this License, City is not obligated to continue using the Rock Columns for streetlight purposes. City's lighting needs and policies may change over time.

6. Maintenance; Repair of Damage. City is not responsible to maintain the Rock Columns. Notwithstanding Section 8 (Liability; Indemnity), if a Rock Column is damaged or destroyed to a point that it becomes unusable (determined at City's sole discretion) for street lighting purposes, City has no obligation to repair or rebuild it. In case of such damage or destruction, City may install a new streetlight on a pole within the License Area or on a future rock column, in accordance with Section 7 (Future Streetlights and Rock Columns) to continue providing street lighting service. City will repair sidewalks to City

Department of Public Works standard paving in the public right-of-way following installation of, or other work on, the Facilities.

7. Future Streetlights and Rock Columns. City is not obligated to install a new streetlight in or near the License Area. Instead of installing a new streetlight on a pole within the License Area, City may install a streetlight in a future rock column constructed by or on behalf of Licensor. City will not be obligated to use a future rock column, but agrees to consider it. Any future rock column that Licensor proposes City use for streetlight purposes would need to meet City's design standards and be installed in a reasonable time after damage to or destruction of the relevant Rock Column (or any subsequent rock column). City's rights and responsibilities for the Rock Columns described in this License extend to any future rock columns in which City installs streetlight facilities.

8. Liability; Indemnity. City does not own the Rock Columns and does not accept any liability for them beyond liability for damage caused directly and solely by City or City's Agents' gross negligence or willful misconduct. Licensor will indemnify, defend, and hold harmless City, City's Agents, and each of them, from and against all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages, and liabilities of any kind (collectively, "**Losses**"), arising in any manner out of **(a)** any injury to or death of any person or damage to or destruction of any property occurring in, on, or about or in any way relating to the Rock Columns, or any part of them; **(b)** any failure by Licensor to faithfully observe or perform any of the terms, covenants, or conditions of this License; **(c)** the use of the License Area or Rock Columns by, or any activities conducted by, Licensor, its agents, its invitees, guests, or business visitors (collectively, "**Invitees**"), or third persons; or **(d)** any release or discharge, or threatened release or discharge, of any hazardous material caused or allowed by Licensor, its agents, or Invitees, on, in, under, or about the License Area, any improvements on the License Area, or into the environment; except solely to the extent of Losses resulting directly and solely from City's gross negligence or willful misconduct. The foregoing indemnity includes, without limitation, reasonable attorneys' and consultants' fees, investigation and remediation costs, and all other reasonable costs and expenses incurred by the indemnified parties. Licensor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim that actually or potentially falls within this indemnity provision even if the allegation is or may be groundless, fraudulent, or false, which obligation arises at the time the claim is tendered to Licensor by City and continues at all times thereafter. Licensor's obligations under this Section will survive the expiration or other termination of this License.

9. Restoration of License Area. City will exercise due care in accordance with industry custom and will use commercially reasonable efforts to minimize any disturbance to the License Area. If the surface is disturbed by City's use of the License Area, City will restore native backfill or the cost equivalent. Except as stated in Section 6 regarding sidewalk restoration, Pavingpaving, special finishes, structures, and surface improvements (including irrigation lines) removed or damaged in connection with City's activities performed in accordance with the terms of this License will not be replaced by City. City will not be held liable for any damage to plants or any other surface improvement aside from restoring native backfill or the cost equivalent in the License Area that may occur as a result of City's activities performed in accordance with the terms of this License.

10. Surrender. Upon termination of this License by either Licensor or City, City will not be obligated to remove the Facilities or Temporary Facilities from the License Area or Rock Columns. If City elects to leave the Facilities (or Temporary Facilities) within, on,

or under the License Area or within or on the Rock Columns, Licensor shall own and be responsible for such Facilities (or Temporary Facilities). However, City would have no obligation to provide electrical service to the Facilities.

11. Noninterference. Licensor must keep the License Area open and free from structures of any kind except hardscape and simple landscaping. Only City Department of Public Works standard paving or basic landscaping may be installed on the surface of the License Area, unless the SFPUC's General Manager or his or her designee approves an exception in writing. Low shrubs may be planted in the License Area, provided that their roots or underground growth will not damage the Facilities. No trees or tall plants may be planted, or otherwise permitted to grow, in the License Area. As part of City's initial installation of the Facilities, City may not remove, or require Licensor to remove, any tree existing on Licensor's Property as of the date of this License. However, City may later remove or require Licensor to remove trees or their roots from the License Area if City deems it necessary for repair, replacement or protection of the Facilities. The License Area may not be used for any purpose that would damage or interfere with the proper use, function, maintenance, repair, or replacement of the Facilities. The underground Facilities require a minimum 18" depth of cover. Licensor must not decrease the depth of cover over the underground Facilities.

12. No Joint Ventures or Partnership; No Authorization. This License does not create a partnership or joint venture between City and Licensor as to any activity conducted by the SFPUC on, in or relation to the License Area or Rock Columns. This License does not constitute authorization or approval by the SFPUC of any activity conducted by Licensor on, in, around or relating to the License Area or Rock Columns.

13. Notices. Except as otherwise expressly provided in this License, any notices given under this License will be effective only if in writing and given by delivering the notice in person, by sending it first class mail or certified mail with a return receipt requested, or nationally-recognized overnight courier that guarantees next day delivery and provides a receipt therefor, with postage prepaid, addressed as follows (or such alternative address as may be provided in writing):

City or the SFPUC: General Manager
San Francisco Public Utilities Commission
525 Golden Gate Avenue, 13th Floor
San Francisco, CA 94102

With a copy to: Real Estate Director
Re: Rockaway Streetlights
Real Estate Services Division
San Francisco Public Utilities Commission
525 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

and to: Real Estate and Finance Team
San Francisco City Attorney's Office
1 Dr. Carlton B. Goodlett Place, Room 234
San Francisco, CA 94102

Licensor: Mr. Gerald Sullivan
10 Rockaway Avenue
San Francisco, CA 94127

Correctly addressed notices given by a method that provides confirmation of delivery shall be deemed given on the earlier of confirmed delivery or confirmed attempted delivery.

14. Nonexclusive. This License is nonexclusive, and Licensor may convey additional rights and install additional subsurface utility lines within the License Area provided that such additional rights and lines do not unreasonably interfere with the Facilities and this License, and provided further that any additional subsurface utility lines in the License Area meet the California Public Utilities Commission standards for separation of utilities. Prior to granting any rights to third parties across the License Area, Licensor must obtain a determination of noninterference from the SFPUC General Manager or his or her designee.

15. Run with the Land. The provisions of this License will run with the land, burden the License Area, and bind and inure to the benefit of the respective successors and assigns of City and Licensor.

16. Insurance. City shall have no insurance obligations with respect to its use of the License Area or Rock Columns.

17. Governing Law. This License shall be governed by California law and City's Charter.

18. Attorneys' Fees. If either party commences an action against the other or a dispute arises under this License, the prevailing party shall be entitled to recover from the other reasonable attorneys' fees and costs. For purposes of this License and the indemnifications set forth in this License, reasonable attorneys' fees of City shall be based on the fees regularly charged by private attorneys in San Francisco with comparable experience notwithstanding City's use of its own attorneys.

[signatures on following page]

In witness whereof, this License is executed as of the date first written above.

LICENSOR:

GERALD F. SULLIVAN,
an individual

LICENSEE:

CITY AND COUNTY OF SAN
FRANCISCO,
a municipal corporation

By: _____

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

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By: _____

Shari Geller Diamant
Deputy City Attorney