

**THIS PRINT COVERS CALENDAR ITEM NO.:** 10.2

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Sustainable Streets – Transportation Engineering

**BRIEF DESCRIPTION:**

Approving various routine traffic and parking modifications.

**SUMMARY:**

- Under Proposition A, the SFMTA Board of Directors has authority to adopt parking and traffic regulations changes.
- Taxis are not exempt from any of these regulations.

**ENCLOSURE:**

1. SFMTAB Resolution

**APPROVALS:**

**DATE**

DIRECTOR OF DIVISION  
PREPARING ITEM \_\_\_\_\_

\_\_\_\_\_

EXECUTIVE DIRECTOR/CEO \_\_\_\_\_

\_\_\_\_\_

SECRETARY \_\_\_\_\_

\_\_\_\_\_

ADOPTED RESOLUTION  
BE RETURNED TO \_\_\_\_\_ Tom Folks \_\_\_\_\_

**ASSIGNED SFMTAB CALENDAR DATE:** \_\_\_\_\_

## PAGE 2.

### PURPOSE

To approve various routine traffic and parking modifications.

### GOAL

This action is consistent with the SFMTA 2008-2012 Strategic Plan.

Goal 1: Customer Focus – To provide safe, accessible, reliable, clean and environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First Policy.

Objective 1.1: Improve safety and security across all modes of transportation.

Goal 2: System Performance – To get customers where they want to go, when they want to be there.

Objective 2.4: Reduce congestion through major corridors.

Objective 2.5: Manage parking supply to align with SFMTA and community goals.

### ITEMS

- A. ESTABLISH – BLUE ZONE – 500 Townsend Street, north side, from 0 feet to 20 feet west of 6<sup>th</sup> Street (20-foot zone). **PH 6/24/11 Requested by Academy of Art University Employee.**
- B. REVOKE – (NON-COMPLIANT) BLUE ZONE – 318 Divisadero Street, east side, from 90.5 feet to 110.5 feet north of Page Street (20-foot zone). **PH 6/24/11 Requested by Resident.**
- C. ESTABLISH – BLUE ZONE – 300 Divisadero Street, east side, from 22 feet to 42 feet north of Page Street at meter #304 (20-foot zone). **PH 6/24/11 Requested by Resident.**
- D. ESTABLISH – 15 MILES PER HOUR SPEED LIMIT WHEN CHILDREN PRESENT –
  - 6th Avenue between Anza and Fulton streets;
  - 6th Avenue between Lake Street and Geary Boulevard;
  - 7th Avenue between Anza and Fulton streets;
  - 7th Avenue between Lake Street and Geary Boulevard;
  - 8th Avenue between Anza and California streets;
  - 9th Avenue between Balboa and California streets;
  - 14th Avenue between Anza and Fulton streets;
  - 17th Avenue between Balboa and Fulton streets;
  - 18th Avenue between Balboa and Fulton streets;
  - 25th Avenue between El Camino del Mar and California Street;
  - 29th Avenue between California Street and Geary Boulevard;
  - 30th Avenue between California Street and Geary Boulevard;
  - 30th Avenue between Clement and Cabrillo streets;
  - 32nd Avenue between Clement and Cabrillo streets;
  - 32nd Avenue between El Camino del Mar and Marvel Court;
  - 36th Avenue between Geary Boulevard and Balboa Street;
  - 37th Avenue between Geary Boulevard and Balboa Street;
  - Anza Street between 10th and 7th avenues;
  - Anza Street between 29th and 30th avenues;
  - Anza Street between 33rd and 32nd avenues;
  - Anza Street between 38th and 35th avenues;
  - Balboa Street between 33rd and 29th avenues;
  - Cabrillo Street between 19th and 16th streets;

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California Street between cul-de-sac and 31st Avenue (7000 block of California);  
Clement Street between 31st and 28th avenues;  
Lake Street between 26th and 23rd avenues;  
Beach Street between Broderick and Scott streets;  
Broderick Street between Sacramento and Bush streets;  
Chestnut Street between Buchanan Street and Mallorca Way;  
Clay Street between Maple Street and Arguello Boulevard;  
Divisadero Street between Bay and Jefferson streets;  
Fillmore Street between North Point and Lombard streets;  
Francisco between Franklin and Larkin streets;  
Green Street between Scott and Fillmore streets;  
North Point Street between Broderick and Scott streets;  
Polk between Chestnut and North Point streets;  
Sacramento Street between Maple Street and Arguello Boulevard;  
Vallejo Street between Fillmore and Laguna streets;  
Webster Street between Green and Pacific streets;  
Broadway Frontage Road from 220 feet west of Powell to Mason streets;  
Chestnut between Mason and Grant streets;  
Filbert between Mason and Kearny streets;  
Francisco between Grant and Mason streets;  
Frank Norris Street between Larkin and Polk streets;  
Jackson between Leavenworth and Polk streets;  
Jones between Chestnut and Greenwich streets;  
Jones between Pleasant and California streets;  
Kearny between Filbert and Union streets;  
Lombard between Taylor and Leavenworth streets;  
Merchant Street between Montgomery & Kearny streets;  
Powell between Bay and Lombard streets;  
Sacramento between Lyette Street and Sproule Lane;  
Taylor between Pleasant and Pine streets;  
Washington between Polk and Leavenworth streets;  
20th Avenue between Pacheco and Noriega streets;  
22nd Avenue between Taraval and Pacheco streets;  
24th Avenue between Taraval and Pacheco streets;  
24th Avenue between Wawona and Taraval streets;  
25th Avenue between Wawona and Taraval streets;  
30th Avenue between Moraga and Judah streets;  
31st Avenue between Moraga and Judah streets;  
34th Avenue between Ortega and Rivera streets;  
35th Avenue between Ortega and Rivera streets;  
37th Avenue between Noreiga and Lawton streets;  
37th Avenue between Santiago and Noriega streets;  
39th Avenue between Rivera and Quintara streets;  
40th Avenue between Kirkham and Moraga streets;  
40th Avenue between Vicente and Taraval streets;  
41st Avenue between Quintara and Noriega streets;  
41st Avenue between Rivera and Taraval streets;  
41st Avenue between Vicente and Taraval streets;

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41st Avenue between Yorba and Wawona streets;  
 42nd Avenue between Judah and Lawton streets;  
 42nd Avenue between Rivera and Taraval streets;  
 42nd Avenue between Sloat Boulevard and Ulloa Street;  
 43rd Avenue between Judah and Lawton streets;  
 Kirkham between 42nd & 44th avenues;  
 Lawton between 29th and 32nd avenues;  
 Lawton between 39th and 41st avenues;  
 Moraga between 37th and 38th avenues;  
 Ortega between 37th and 42nd avenues;  
 Pacheco between 33rd and 36th avenues;  
 Quintara between 20th and 25th avenues;  
 Quintara between 33rd and 36th avenues;  
 Rivera between 37th and 39th avenues;  
 Santiago between 22nd and 25th avenues;  
 Santiago between 40th and 43rd avenues;  
 Ulloa Street between 39th and 42nd avenues;  
 Vicente between 40th and 43rd avenues;  
 Vicente Street between 22nd and 26th avenues;  
 Wawona between 40th and 43rd avenues;  
 Alma Street between Belvedere and Stanyan streets;  
 Eddy Street between Steiner and Divisadero streets;  
 Ellis Street between Steiner and Divisadero streets;  
 Grattan Street between Belvedere and Stanyan streets;  
 Hayes Street between Fillmore and Steiner streets;  
 O'Farrell Street between Divisadero and Pierce streets;  
 Pierce Street between Eddy and McAllister streets;  
 Pierce Street between Hayes and Fell streets;  
 Scott Street between Post and Ellis streets;  
 Shrader Street between Parnassus Avenue and Rivoli Street;  
 Turk Street between Steiner and Scott streets;

**PH 7/1/11 Requested by SFMTA.**

- E. ESTABLISH – PARKING METER AREA 3, 1 HOUR PARKING, 9AM - 6PM, MONDAY TO SATURDAY – 25<sup>th</sup> Avenue, west side, from Geary Boulevard to 106 feet southerly (5 new meters). **PH 7/1/11 Requested by SFMTA.**
- F. ESTABLISH – STOP SIGN – Stopping Alpine Terrace at Waller Street, stopping the stem of this T-intersection. **PH 7/1/11 Requested by Citizen.**
- G. REVOKE – NO PARKING ANYTIME – Varney Place, both sides, from Third Street to 70 feet west of Jack London Alley. **PH 7/1/11 Requested by Resident.**
- H. ESTABLISH – TOW-AWAY, NO PARKING ANYTIME – Varney Place, both sides, from Third Street to Jack London Alley. **PH 7/1/11 Requested by Resident.**
- I. ESTABLISH – TOW AWAY, NO STOPPING ANYTIME – Taraval Street, south side, from 15th Avenue to 60-feet westerly (removes 3 metered spaces). **PH 7/1/11 Requested by SFMTA.**
- J. ESTABLISH – 45-DEGREE PARKING – Madrid Street, east side, from Russia Avenue to approximately 364' northerly. **PH 7/1/11 Requested by Excelsior Parking Summit Committee.**

- K. ESTABLISH – STOP SIGNS – Stopping Ocean Avenue at Otsego Ave., making this intersection an all-way STOP. **PH 7/1/11 Requested by Citizens.**
- L. REMOVE – BUS ZONE – Ocean Avenue, north side, from 0 feet to 100 feet west of Otsego Avenue. **PH 7/1/11 Requested by SFMTA.**
- M. ESTABLISH – BUS ZONE – Ocean Avenue, north side, from 0 feet to 120 feet east of Otsego Avenue. **PH 7/1/11 Requested by SFMTA.**
- N. ESTABLISH – NO RIGHT TURN ON RED – Cargo Way, eastbound, turning onto Mendell Street; and Mendell Street, northbound, turning onto Cargo Way. **PH 7/1/11 Requested by SFPort.**
- O. ESTABLISH – CROSSWALK – Market Street, north side at 14th and Church Street (Currently closed). **PH 7/1/11 Requested by Castro Community Benefit District.**
- P. ESTABLISH – NO LEFT TURN – 14th Street, eastbound at Church Street. **PH 7/1/11 Requested by Castro Community Benefit District.**
- Q. ESTABLISH – TOW-AWAY NO STOPPING ANYTIME – 14th Street, south side, from Church Street to 108 feet westerly; and Church Street, east side, from 14th Street to 20 feet northerly. **PH 7/1/11 Requested by Castro Community Benefit District.**
- R. RESCIND – BUS ZONE – 14th Street, south side, from Church Street to 60 feet westerly. **PH 7/1/11 Requested by Castro Community Benefit District.**
- S. RESCIND – YELLOW ZONE – 14th Street, south side, from 60 feet to 108 feet westerly. **PH 7/1/11 Requested by Castro Community Benefit District.**
- T. ESTABLISH – YELLOW ZONE – 14th Street, south side, from 146 feet to 194 feet westerly. **PH 7/1/11 Requested by Castro Community Benefit District.**
- U. ESTABLISH – FLAG STOP – 14th Street, south side, from Church Street to 60 feet west of Church Street. **PH 7/1/11 Requested by Castro Community Benefit District.**
- V. ESTABLISH – TOW-AWAY NO STOPPING EXCEPT PERMITTED CAR SHARE VEHICLES – Taylor Street, west side, from Pacific Ave, 7 feet to 26 feet northerly (19 foot zone); Polk Street, west side, from Greenwich Street, to 17 feet southerly; Clay Street, north side, from Fillmore Street, 10 feet to 19 feet easterly (9 foot zone removes general metered space #2442); Valencia Street, west side, from 17th Street, 18 feet to 37 feet northerly (19 foot zone removes metered space #554); and Harriet Street, west side, from Howard Street, 227 feet to 245 feet southerly (18 foot zone outside 36/38 Harriet). **PH 7/1/11 Requested by SFMTA.**

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

RESOLUTION No. \_\_\_\_\_

WHEREAS, The San Francisco Municipal Transportation Agency has received a request, or identified a need for traffic modifications as follows:

- A. ESTABLISH – BLUE ZONE – 500 Townsend Street, north side, from 0 feet to 20 feet west of 6<sup>th</sup> Street.
- B. REVOKE – (NON-COMPLIANT) BLUE ZONE – 318 Divisadero Street, east side, from 90.5 feet to 110.5 feet north of Page Street.
- C. ESTABLISH – BLUE ZONE – 300 Divisadero Street, east side, from 22 feet to 42 feet north of Page Street at meter #304.
- D. ESTABLISH – 15 MILES PER HOUR SPEED LIMIT WHEN CHILDREN PRESENT –
  - 6th Avenue between Anza and Fulton streets;
  - 6th Avenue between Lake Street and Geary Boulevard;
  - 7th Avenue between Anza and Fulton streets;
  - 7th Avenue between Lake Street and Geary Boulevard;
  - 8th Avenue between Anza and California streets;
  - 9th Avenue between Balboa and California streets;
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  - 18th Avenue between Balboa and Fulton streets;
  - 25th Avenue between El Camino del Mar and California Street;
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  - 30th Avenue between California Street and Geary Boulevard;
  - 30th Avenue between Clement and Cabrillo streets;
  - 32nd Avenue between Clement and Cabrillo streets;
  - 32nd Avenue between El Camino del Mar and Marvel Court;
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  - Anza Street between 33rd and 32nd avenues;
  - Anza Street between 38th and 35th avenues;
  - Balboa Street between 33rd and 29th avenues;
  - Cabrillo Street between 19th and 16th streets;
  - California Street between cul-de-sac and 31st Avenue;
  - Clement Street between 31st and 28th avenues;
  - Lake Street between 26th and 23rd avenues;
  - Beach Street between Broderick and Scott streets;
  - Broderick Street between Sacramento and Bush streets;
  - Chestnut Street between Buchanan Street and Mallorca Way;
  - Clay Street between Maple Street and Arguello Boulevard;
  - Divisadero Street between Bay and Jefferson streets;
  - Fillmore Street between North Point and Lombard streets;
  - Francisco between Franklin and Larkin streets;
  - Green Street between Scott and Fillmore streets;
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Polk between Chestnut and North Point streets;  
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Pacheco between 33rd and 36th avenues;  
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Quintara between 33rd and 36th avenues;  
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- Q. ESTABLISH – TOW-AWAY NO STOPPING ANYTIME – 14th Street, south side, from Church Street to 108 feet westerly; and Church Street, east side, from 14th Street to 20 feet northerly.
- R. RESCIND – BUS ZONE – 14th Street, south side, from Church Street to 60 feet westerly.
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WHEREAS, The public has been notified about the proposed modifications and has been given the opportunity to comment on those modifications through the public hearing process; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors, upon recommendation of the Executive Director/CEO and the Director of the Sustainable Streets Division does hereby approve the changes.

I hereby certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of

\_\_\_\_\_.

\_\_\_\_\_  
Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency

**THIS PRINT COVERS CALENDAR ITEM NO. 10.3**

**MUNICIPAL TRANSPORTATION AGENCY  
City and County of San Francisco**

**DIVISION:** Finance and Information Technology

**BRIEF DESCRIPTION:**

Resolution authorizing the San Francisco Municipal Transportation Agency to rescind \$978,408 in Regional Measure 2 funds from the New Jersey Transit PCC Project and reallocate those funds to supplement the funding for a new project known as the “Historic Car Rehabilitation –16 ex-SEPTA PCCs and 3 MUNI PCCs Project.”

**SUMMARY:**

- On March 2, 2004, Bay Area voters passed Regional Measure 2 (RM-2), raising the toll on the seven State-owned toll bridges in the San Francisco Bay Area by \$1.00, effective July 1, 2004. Under the Regional Traffic Relief Plan, this extra dollar provides transit operating assistance and funding to specified capital projects within the region that reduce congestion or make improvements to travel in the toll bridge corridors. The Metropolitan Transportation Commission (MTC) allocates RM-2 funds.
- The SFMTA has received \$8,910,000 in RM2 funds to purchase and partially rehabilitate 11 New Jersey Transit Presidential Conference Cars (PCCs) used to provide the F-Line rail car service along the city’s northeast waterfront (NJ Transit PCC Project).
- The SFMTA has successfully completed the project to partially rehabilitate 11 New Jersey Transit Presidential Conference Cars and has achieved a \$978,408 savings in the RM-2 grant account.
- The SFMTA is requesting the Metropolitan Transportation Commission (MTC) to rescind \$978,408 in RM2 funds from the New Jersey Transit PCC Project and reallocate those funds to supplement the funding for a new project known as the “Historic Car Rehabilitation –16 ex-SEPTA PCCs and 3 MUNI PCCs Project”.
- The objective of the new project is to increase the reliability of 19 PCCs by performing an end-of-life overhaul that adds 20 years of service life to the vehicles.

**ENCLOSURES:**

1. SFMTAB Resolution

**APPROVALS:**

**DATE**

DEPUTY OF DIVISION

PREPARING ITEM \_\_\_\_\_

FINANCE: \_\_\_\_\_

EXECUTIVE DIRECTOR/CEO \_\_\_\_\_

SECRETARY \_\_\_\_\_

ADOPTED RESOLUTION

TO BE RETURNED TO

Elias Girma

**ASSIGNED SFMTA CALENDAR DATE:** \_\_\_\_\_

## **PURPOSE**

The purpose of this calendar item is to request MTC to rescind \$978,408 in Regional Measure 2 funds from the NJ Transit PCC Project and reallocate those funds to supplement the funding for the Historic Car Rehabilitation –16 ex-SEPTA PCCs and 3 MUNI PCCs Project.

## **GOAL**

The SFMTA will further the following goal of the Strategic Plan through acceptance of this fund:

- Goal 4 - Financial Capacity: To ensure financial stability and effective resource utilization
  - Objective 4.2 - Ensure efficient and effective use of resources

## **EXPLANATION**

On March 2, 2004, voters in San Francisco, Alameda, Contra Costa, Marin, San Mateo, Santa Clara and Solano Counties jointly passed Regional Measure 2 (RM-2), which raises an estimated \$125 million each year to implement the Regional Traffic Relief Plan. The Regional Traffic Relief Plan provides transit operating assistance and funding for specified capital projects within the region that reduce congestion or make improvements to travel in the toll bridge corridors. Funding for the Regional Traffic Relief Plan derives from a \$1.00 increase, effective July 1, 2004, in tolls on the region's seven state-owned toll bridges. As the transportation planning, coordinating and financing agency of the nine-county Bay Area, the Metropolitan Transportation Commission (MTC) allocates RM-2 funds.

The SFMTA has received \$8,910,000 in RM2 funds to purchase and partially rehabilitate 11 New Jersey Transit Presidential Conference Cars (PCCs) used to provide the F-Line rail car service along the city's northeast waterfront (NJ Transit PCC Project). The SFMTA has successfully completed this project and has achieved a \$978,408 savings in the RM2 grant account.

The SFMTA is requesting the MTC to rescind \$978,408 in FY 2010-2011 RM2 funds from the NJ Transit PCC Project and reallocate those funds to supplement the budget for the "Historic Car Rehabilitation –16 ex-SEPTA PCCs and 3 MUNI PCCs Project".

This action authorizes the SFMTA, through its Executive Director/CEO (or his or her designee), to accept and expend \$978,408 in FY 2010-2011 RM-2 capital funds from the MTC.

## **ALTERNATIVES CONSIDERED**

The vehicle rehabilitation work proposed for the "Historic Car Rehabilitation –16 ex-SEPTA PCCs and 3 MUNI PCCs Project" is the most appropriate project to use the remaining \$978,408 because this project is similar to the one that was completed. In addition, by using this fund we will insure timely project implementation and avoid delay associated with applying for new grants.

**FUNDING IMPACT**

There will be no impact on funding as the funds will be reallocated from the NJ Transit PCC Project to the Historic Car Rehabilitation –16 ex-SEPTA PCCs and 3 MUNI PCCs Project.

**OTHER APPROVALS RECEIVED OR STILL REQUIRED**

The City Attorney's Office has reviewed this calendar item.

**RECOMMENDATION**

Staff recommends that the Board approve the attached Resolution authorizing the San Francisco Municipal Transportation Agency to rescind \$978,408 in Regional Measure 2 funds from the New Jersey Transit PCC Project and reallocate those funds to supplement the funding for a new project known as the "Historic Car Rehabilitation –16 ex-SEPTA PCCs and 3 MUNI PCCs Project."

MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS  
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION No. \_\_\_\_\_

WHEREAS, SB 916 (Chapter 715, Statutes 2004), commonly referred to as Regional Measure 2, identifies projects eligible to receive funding under the Regional Traffic Relief Plan; and

WHEREAS, The Metropolitan Transportation Commission (MTC) is responsible for funding projects eligible for Regional Measure 2 funds, pursuant to Streets and Highways Code Section 30914(c) and (d); and

WHEREAS, MTC has established a process whereby eligible transportation project sponsors may submit allocation requests for Regional Measure 2 funding; and

WHEREAS, Allocations to MTC must be submitted consistent with procedures and conditions as outlined in Regional Measure 2 Policy and Procedures; and

WHEREAS, The Municipal Transportation Agency of the City and County of San Francisco (SFMTA) is an eligible sponsor of transportation project(s) using Regional Measure 2, Regional Traffic Relief Plan funds; and

WHEREAS, The SFMTA has received \$8,910,000 in RM2 funds to purchase and partially rehabilitate 11 New Jersey Transit Presidential Conference Cars (PCCs) used to provide the F-Line rail car service along the city's northeast waterfront (NJ Transit PCC Project); and

WHEREAS, The SFMTA has successfully completed the NJ Transit PCC Project and has achieved a \$978,408 savings in the RM-2 grant account; and

WHEREAS, The SFMTA is requesting the MTC to rescind \$978,408 in RM2 funds from the NJ Transit PCC Project and reallocate those funds to supplement the budget for a new project known as the Historic Car Rehabilitation –16 ex-SEPTA PCCs and 3 MUNI PCCs Project (19 PCCs Project); and

WHEREAS, MTC has requested that any changes to funding allocations be approved by the recipient's governing board; and

WHEREAS, The revised allocations in Regional Measure 2 funds between the NJ Transit PCC Project and the 19 PCCs Project is contained in the document entitled "Initial Project Report and Cash Flow Plan" which describes the purpose, schedule, budget, expenditure and cash flow plan for the 19 PCCs Project; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the SFMTA, through its Executive Director/CEO (or his or her designee), to rescind \$978,408 in Regional Measure 2 funds from the New Jersey Transit PCC Project and reallocate those funds to supplement the budget for a new project known as the "Historic Car Rehabilitation –16 ex-SEPTA PCCs and 3 MUNI PCCs Project"; and, be it further

RESOLVED, That the SFMTA Board approves the Initial Project Report (IPR), which will be submitted to the MTC with this resolution; and be it further

RESOLVED, That the SFMTA Board approves the Cash Flow Plan, which will be submitted to the MTC with this resolution; and be it further

RESOLVED, That the SFMTA and its agents shall comply with the provisions of the Metropolitan Transportation Commission's Regional Measure 2 Policy Guidance (MTC Resolution No. 3636); and, be it further

RESOLVED, That the SFMTA Board certifies that the project is consistent with the Regional Transportation Plan; and, be it further

RESOLVED, That the Executive Director/CEO (or his or her designee) shall transmit a copy of this resolution and all pertinent documents to MTC in conjunction with this request for Regional Measure 2 funds; and, be it further

RESOLVED, That the SFMTA Board authorizes the Executive Director/CEO (or his or her designee) to make non-substantive changes or minor amendments to the IPR and /or Cash Flow Plans as he/she deems appropriate; and, be it further

RESOLVED, That the SFMTA Board authorizes the Executive Director/CEO (or his or her designee) to furnish whatever additional information may be requested by MTC in connection with this request; and, be it further

RESOLVED, That the SFMTA Board authorizes the Executive Director/CEO (or his or her designee) to execute any and all agreements necessary to complete the reallocation of funds;

I certify that the foregoing resolution was adopted by Municipal Transportation Agency Board of Directors at its meeting of \_\_\_\_\_.

---

Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency

**THIS PRINT COVERS CALENDAR ITEM NO. : 10.**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Capital Programs & Construction

**BRIEF DESCRIPTION:**

Authorizing the Executive Director/CEO to execute San Francisco Municipal Transportation Agency (SFMTA) Contract No. 1241, Muni Metro Subway Fire Alarm & Detection System Upgrade, to US Electric Technologies, Inc., located at 1065 Folsom Street, San Francisco, California 94103, as the lowest responsive and responsible bidder, in amount not to exceed \$572,000, and for a term not to exceed 210 calendar days.

**SUMMARY:**

- The project consists of upgrading the fire alarm & detection systems at the Castro Muni Metro Station, Church Muni Metro Station and Church Traction Power Substation. The Church Muni Metro Station and Church Traction Power Substation will be combined into one fire alarm & detection system since the facilities are connected. This upgrade will conform to the latest to San Francisco Fire Department and National Fire Alarm Codes.
- Three bids were received and publicly opened on June 16, 2011.
- Staff recommends the Executive Director/CEO to execute Contract No. 1241 to US Electric Technologies, Inc. as the lowest responsive and responsible bidder, in the amount of \$572,000.
- Federal and local sources are providing funds for the work under this contract.

**ENCLOSURES:**

1. SFMTAB Resolution
2. Project Budget & Financial Plan

**APPROVALS:**

**DATE**

DIRECTOR OF DIVISION  
PREPARING ITEM

\_\_\_\_\_

\_\_\_\_\_

FINANCE

\_\_\_\_\_

\_\_\_\_\_

EXECUTIVE DIRECTOR/CEO

\_\_\_\_\_

\_\_\_\_\_

SECRETARY

\_\_\_\_\_

\_\_\_\_\_

ADOPTED RESOLUTION  
BE RETURNED TO

\_\_\_\_\_ Jessie Katz \_\_\_\_\_

**ASSIGNED SFMTAB CALENDAR DATE:** \_\_\_\_\_

## **PAGE 2.**

### **PURPOSE**

The purpose of this calendar item is authorizing the Executive Director/CEO to execute SFMTA Contract No. 1241, Muni Metro Subway Fire Alarm and Detection System Upgrade to the lowest responsive and responsible bidder, US Electric Technologies.

### **GOAL**

Contract No. 1241 would assist in the implementation of the following goals, objectives and initiatives in the SFMTA Strategic Plan:

- Goal 1: Customer Focus: To provide safe, accessible, clean, environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First Policy
- Objective 1.1 Improve safety and security across all modes of transportation
  - Objective 1.4 Improve accessibility across transit services
  - Objective 1.5 Increase percentage of trips using more sustainable modes (such as transit, walking, bicycling, rideshare)
- Goal 2: System Performance: To get customers where they want to go, when they want to be there
- Objective 2.1 Improve transit reliability to meet 85% on-time performance standard
  - Objective 2.2 Ensure efficient transit connectivity and span of service
  - Objective 2.3 Fulfill bicycle and pedestrian network connectivity
  - Objective 2.4 Reduce congestion through major corridors
- Goal 5: SFMTA Workforce: To provide a flexible, supportive work environment and develop a workforce that takes pride and ownership of the agency's mission and vision and leads the agency into an evolving, technology-driven future
- Objective 5.1 Increase resources available to employees in performing their jobs (tools, staff hours, etc.)
  - Objective 5.2 Improve facilities in which people are working
  - Objective 5.3 Improve internal communication and employee satisfaction

### **DESCRIPTION**

#### Background

This project has been prioritized in the 2008 SFMTA Capital Investment Program (CIP) under Infrastructure – Rehabilitation. Capital projects are prioritized using a four-step process that groups and orders projects by program, project criteria, schedule, readiness and funds availability.



Scope of Work

The work involves voluntarily upgrading the facilities (Castro Station, Church Station, and Church Traction Power Substation) to the fire alarm and detection requirements of the San Francisco Fire Code (2007 edition) and NFPA 72 (National Fire Alarm Code, 2002 edition, which is currently adopted by San Francisco Fire Department) and connecting the fire alarm and detection systems at both Church Station and Church Traction Power Substation into one system.

This project will utilize a non-proprietary fire alarm system. A non-proprietary fire alarm system is one for which the parts, supplies, programming, and all other portions and aspects of the systems are available from multiple independent and competitive dealers.

The time allotted to substantially complete construction of the project is 210 calendar days from the date of the written Notice to Proceed for the work. Liquidated damages are \$2,000 per calendar day for failure to complete the work on time and \$500 per calendar day of delay to complete the remaining work.

Bid Opening & Bids Received

On June 16, 2011, SFMTA's Capital Programs and Construction Division received and publicly opened three bid proposals.

The three bid proposals received were as follows:

Bidders		Bid Price
1	US Electric Technologies, Inc. 1605 Folsom Street San Francisco, CA 94103	\$572,000
2	L C General Engineering & Construction, Inc. 1596 Hudson Avenue San Francisco, CA 94124	\$626,580
3	Bass Electric 856 Folsom Street San Francisco, CA 94107	\$855,678

The engineer's estimate for the work was \$890,000.

Staff reviewed the three bid proposals and determined that US Electric Technologies, Inc. is the lowest responsive and responsible bidder.

The Contract Compliance Office reviewed the bid proposals and confirmed that US Electric Technologies, Inc. will meet the Small Business Enterprise (SBE) participation goal of 12 percent established for this contract and will commit to meeting the Non-discrimination Equal Employment Requirements of the contract. US Electric Technologies, Inc. is in compliance with Chapter 12B, the Equal Benefits Provision of the San Francisco Administrative Code.

## **PAGE 4.**

Section 6.6(A) of the San Francisco Administrative Code requires all contracts that are fully or partially funded by federal or state grants to be executed by the Executive Director/CEO within 120 days from the date bids are received. Such time may only be extended prior to execution of the contract by the Executive Director/CEO and only upon (a) written agreement of the apparent responsible bidder with the lowest responsive bid; (b) approval by resolution of the board or commission concerned; and (c) any necessary approvals of the federal, state or other governmental funding agency.

## **ALTERNATIVES CONSIDERED**

The project team held discussions with Maintenance staff concerning whether the work should be done by in-house staff. The preference was to have a contractor perform the work because we have no in-house experience and contractors have enough crews with electrical and fire alarm and detection system installation expertise to complete the work in a timely manner with minimal impact to Operations. Staff determined that contracting out was the practical alternative.

## **FUNDING IMPACT**

Funding for the entire project comes from a combination of federal and local funds. All funding for this project has been secured.

The budget and financial plan for this project is presented in Enclosure 2 of the calendar item.

## **OTHER APPROVALS RECEIVED OR STILL REQUIRED**

The City Attorney has reviewed this report.

No other approvals from any other agency are required for the execution of this contract by the Executive Director/CEO.

## **RECOMMENDATION**

Staff recommends that the SFMTA Board of Directors authorizes the Executive Director/CEO to execute SFMTA Contract No. 1241, Muni Metro Subway Fire Alarm & Detection System Upgrade, to US Electric Technologies, Inc., as the lowest responsive and responsible bidder, for a contract amount not to exceed \$572,000, and for a term not to exceed 210 calendar days.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

RESOLUTION No. \_\_\_\_\_

WHEREAS, San Francisco Municipal Transportation Agency (SFMTA) Contract No. 1241, Muni Metro Subway Fire Alarm and Detection System Upgrade, is identified in the latest SFMTA Short Range Transit Plan under Infrastructure - Rehabilitation of the Capital Investment Program; and,

WHEREAS, The work to be performed under this project will upgrade the fire alarm and detection system at the Castro Muni Metro Station, Church Muni Metro Station and Church Traction Power Substation, in compliance with current San Francisco Fire Department and National Fire Alarm Codes; and,

WHEREAS, On June 16, 2011, the SFMTA received and publicly opened three bid proposals in response to its invitation for bids; and,

WHEREAS, The SFMTA determined that US Electric Technologies, Inc., located at 1065 Folsom Street, San Francisco, California 94103, is the lowest responsive and responsible bidder, in the amount of \$572,000; and,

WHEREAS, The SFMTA Contract Compliance Office reviewed the bid proposals and confirmed that US Electric Technologies, Inc. will meet the Small Business Enterprise participation goal of 12 percent established for this contract and will commit to meeting the Non-discrimination Equal Employment Requirements of the contract; and

WHEREAS, The project is funded by federal grants (80%) and by local funding sources (20%); now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director/CEO to execute SFMTA Contract No. 1241, Muni Metro Subway Fire Alarm and Detection System Upgrade, to US Electric Technologies, Inc., as the lowest responsive and responsible bidder, in an amount not to exceed \$572,000, and for a term not to exceed 210 calendar days.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of \_\_\_\_\_.

\_\_\_\_\_  
Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency

**ENCLOSURE 2**

**Contract No. 1241**

**Muni Metro Subway Fire Alarm & Detection System Upgrade  
Project Budget and Financial Plan**

**PROJECT BUDGET**

<b>Category</b>	<b>Budget</b>
Conceptual Engineering Phase Staff Support (SFMTA and Other Dept. Services)	\$119,000
Detail Design Phase Staff Support (SFMTA and Other Dept. Services)	\$345,000
Construction Phase Construction Contract, Contingency and Staff Support	\$1,411,000
<b>Total Cost</b>	<b>\$1,875,000</b>

**FINANCIAL PLAN**

<b>Project Funding Source</b>	<b>Amount</b>
Federal Grant	\$1,500,000
AB664 Bridge Toll	\$375,000
<b>Total</b>	<b>\$1,875,000</b>

**THIS PRINT COVERS CALENDAR ITEM NO.: 10.5**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Finance and Information Technology

**BRIEF DESCRIPTION:**

Authorize the Executive Director/CEO to request the City’s Director of Property to submit legislation to the City's Board of Supervisors to approve the proposed Phelan Plaza Lease Agreement (Lease) by and between the City and County of San Francisco (City), acting by and through the San Francisco Municipal Transportation Agency (SFMTA), and the San Francisco Community College District (College) for a term of 75 years and to execute the Lease if approved by the City's Board of Supervisors and Mayor.

**SUMMARY:**

- SFMTA operates a bus loop on certain City real property under its jurisdiction, which is located at the intersection of Phelan Avenue and Ocean Avenue (City Property).
- The SFMTA Board authorized the sale of City Property related to the redevelopment of the Phelan Loop to the Redevelopment Agency for the construction of a mixed-use building with affordable housing on November 17, 2009, and April 20, 2010 under Resolution No. 09-196 and Resolution No. 10-051, and the City's Board of Supervisors and Mayor authorized such sale on March 16, 2011 under Ordinance No. 49-11.
- If City and College approve the exchange of property, a public plaza on the City Property would create a natural gateway to the relocated southern entrance to College's Ocean Campus.
- In accordance with the City's Balboa Park Station Area Plan, which contemplates the construction of a public plaza on portion of City Property, the Lease requires SFMTA to design and construct a public plaza (Plaza Improvements) once certain conditions described in the Lease are fully satisfied, including the relocation of the existing bus loop, and requires College to manage and maintain the Plaza Improvements and the Plaza Parcel at its sole cost, without any rent payments made to SFMTA.

**ENCLOSURES:**

1. Resolution
2. Phelan Plaza Lease Agreement
3. Exhibit A (Plaza Parcel, Housing Parcel, Relocated Bus Loop)
4. Exhibit B (Existing Bus Loop and City Property)

**APPROVALS:**

**DATE**

DIRECTOR OF DIVISION

PREPARING ITEM \_\_\_\_\_

FINANCE \_\_\_\_\_

EXECUTIVE DIRECTOR/CEO \_\_\_\_\_

SECRETARY \_\_\_\_\_

ADOPTED RESOLUTION BE RETURNED TO Jason Gallegos

**ASSIGNED MTAB CALENDAR DATE:** \_\_\_\_\_

## **PAGE 2**

### **PURPOSE**

This calendar item requests that the SFMTA Board of Directors authorize the Executive Director/CEO to request the Director of Property of City to prepare and submit legislation to the Mayor and Board of Supervisors to approve the proposed Lease between the City, acting by and through SFMTA, and the San Francisco Community College District for a term of 75 years, and to authorize the Executive Director/CEO to execute the Lease, pending approval by the Board of Supervisors and the Mayor. This action provides for the development of a public plaza that furthers the City's comprehensive redevelopment efforts for City Property in accordance with the Balboa Park Station Area Plan (Plan) that was adopted by the Board of Supervisors and approved by the Mayor in April 2009.

### **GOAL**

This item will meet the following goals and objectives of the SFMTA Strategic Plan:

Goal 3 - External Affairs - Community Relations: To improve the customer experience, community value, and enhance the image of SFMTA as well as ensure SFMTA is a leader in the industry.

Objective 3.1 Improve economic vitality by growing relationships with businesses, community, and stakeholder groups.

Objective 3.4 Enhance proactive participation and cooperatively strive for improved regional transportation.

Goal 4 - Financial Capacity: To ensure financial stability and effective resource utilization.

Objective 4.2 Ensure efficient and effective use of resources.

### **DESCRIPTION**

The SFMTA operates a bus loop (Existing Bus Loop) at the intersection of Phelan Avenue and Ocean Avenue. The Plan contemplates redevelopment of this property by relocating the existing bus loop, developing a public plaza on the Plaza Parcel, and developing the Housing Parcel.

The Plaza Parcel would front Ocean Avenue to the west of Phelan Avenue, and be comprised of approximately 0.5 acres. A public plaza on the Plaza Parcel would provide a safe and efficient pedestrian thoroughfare to access transit, educational facilities, housing, and other public and private amenities along the Ocean Avenue commercial corridor.

If the Board of Supervisors and Mayor approve a proposed exchange of reservoir property with the College, a new southern entrance to the College's Ocean Campus would abut the Plaza Parcel. A public plaza on this parcel would be a natural gateway to this new entrance, and the College is willing to enter into the Lease as part of these negotiations. The Lease would require the SFMTA to construct a public plaza (Plaza Improvements) on the Plaza Parcel, relocate the Existing Bus Loop, and it would require the College to manage and maintain the Plaza Improvement and the Plaza Parcel at its sole cost.

Under the Lease, the SFMTA would submit the plaza design to the College for review and approval by September 30, 2012. The City and the College would collaborate on a final design that substantially conforms to the public plaza described in the Plan and incorporates the mitigation measures specified in the Plan's Final Environmental Impact Report (Plan EIR) and any other mitigation measure required as part of any additional environmental review; be based on the needs of both the College and the community, and accommodate emergency fire apparatus access easement or pedestrian access easement for the proposed Building.

Plaza Maintenance Plan, Management Plan and Uses

The Lease requires the College to submit its proposed maintenance plan (Maintenance Plan) and management plan (Management Plan) for the Plaza Parcel to City for review and approval by December 31, 2012. The Maintenance Plan must ensure that the Plaza Improvements and the Plaza Parcel are maintained in a safe, secure, sanitary, and aesthetically pleasing condition. The Maintenance Plan must also include provisions for utilities maintenance, litter collection, garbage and recycling services, graffiti removal, improvements upkeep (e.g., painting, repairs, renovations, replacing light bulbs and worn materials), and landscape maintenance.

The proposed Plaza Parcel uses (Plaza Uses) include the following:

1. Pedestrian Right of Way – One which provides a safe and inviting connection for people walking between the areas abutting the Plaza Parcel (e.g., College's Ocean Campus, the relocated bus loop, and the future and existing retail buildings and housing in the general area).
2. Public/Community Uses – For activities that provide social, entertainment, and other community uses either proposed by the City, College, or the public (i.e., farmer's markets, special events, entertainment activities). The final plaza design will include seating and resting areas, including benches, tables and chairs.
3. Vending/Retail Uses – By way of example, mobile, non-permanent vending/retail uses proposed by the City, College, or the public (i.e., food or other push cart or kiosk vendors) including regular on-going farmers' markets.
4. Student/College Uses – By way of example, Student club tables.

The Management Plan will require the College to professionally manage the Plaza Parcel at its sole cost and to the City's satisfaction during the term of the lease. The Management Plan must include a reasonable process for receiving and reviewing applications for proposed uses of the Plaza Parcel, which would be subject to final approval or comment by the City, and may include reasonable fees charged for proposed uses of the Plaza Parcel, but not for daily informal use of the Plaza Parcel. The application review and approval process cannot be overly cumbersome, prohibitive, excessive or discriminatory in any manner. Any use fees charged by the College cannot be excessive or unreasonable and must be used by the College only to offset its costs to maintain and manage the Plaza Parcel pursuant to the lease.

If the College approves the proposed use of the Plaza Parcel, the permittee must, at its sole cost, acquire all City permits applicable for its intended use and carry insurance naming the City and College as additional insureds and of a type and amount reasonably required by the City and

College. The College would minimize early morning programming before 8:00 am (except as needed at earlier times for farmers' markets) and late evening programming after 9:00 pm, and ensure that the uses comply with the City's noise ordinances.

The Management Plan will cover litter control and does not permit any uses that generate noxious or hazardous odors. The College will secure the Plaza Parcel, taking the necessary measures that a public entity would reasonably take to secure a public space of similar size and uses, and require additional security measures for any permitted use. The Lease permits the College to have a third party to manage the Plaza, subject to the City's approval, which approval.

#### Modifications for Bus Safety and Bus Loop Operations

The SFMTA will have the right, at its sole cost, to modify the design and/or permitted uses of the final design or the Plaza Improvements if it determines that such unmodified design, uses or Plaza Improvements create a safety hazard for, or materially impacts operations of its relocated bus loop. During the term of the lease, the SFMTA can access the Plaza Parcel to the extent necessary to perform any work reasonably necessary to maintain, repair, replace, or operate the relocated bus loop.

#### Lease Terms, Delivery Date, and Conditions

The term of the lease would commence once the SFMTA completes the construction of the Plaza Improvements and delivers possession of the Plaza Parcel to the College (Delivery Date), and would terminate on the 75<sup>th</sup> anniversary of the Delivery Date (Expiration Date) unless terminated sooner. The SFMTA would not receive any rent from the College under the lease, but the College would be obligated to perform its obligations under this lease at its sole cost, including the maintenance and management of the Plaza Improvements and Plaza Parcel. It has been projected that such maintenance and management costs would amount to \$162,000 per year, approximately \$12,000,000 during the term of the lease.

The SFMTA will have no obligation to construct the Plaza Improvements unless the following conditions are all timely satisfied:

1. Both City and College staff will have mutually agreed to the final plaza design, the Maintenance Plan, the Management Plan and the legal description of the Plaza Parcel on or before June 30, 2013.
2. The SFMTA shall have obtained sufficient funding to relocate the Existing Bus Loop and build the Plaza Improvements, including the receipt of the full purchase price to be paid to SFMTA under the Housing Parcel Purchase Agreement, without the passage of any state legislation that would require the City to deliver such purchase price to another entity or use the purchase price for other purposes as a result of potential reorganization and or elimination of redevelopment agencies in the State of California.
3. The City shall have obtained all necessary approvals to remove the Existing Bus Loop and build the relocated bus loop and the Plaza Improvements, including any approvals required of the SFMTA Board of Directors or the Board of Supervisors and Mayor.



4. All environmental review, if any, necessary for the removal of the Existing Bus Loop, the construction of the relocated bus loop, and the construction of the Plaza Improvements shall have been completed, and the City's Planning Department shall have either confirmed that the final plaza design is consistent with the Plan EIR and City's General Plan or the final plaza design shall have been modified to be consistent with the Plan EIR and City's General Plan.
5. Construction of the Building shall be substantially completed.

If all of the foregoing conditions are fully satisfied, the SFMTA would have 18 months to construct the Plaza Improvements. Construction of the Plaza Improvements is projected to commence in May of 2015.

### **ALTERNATIVES CONSIDERED**

There are alternatives other than approving the proposed Lease, such as finding another City Department (e.g. Recreation and Parks, Department of Public Works, or the City Real Estate Department) to oversee the construction, maintenance and management responsibilities for the Plaza Parcel. However, due to time constraints and the lack of City resources, those options are not viable at this time and thus less attractive alternatives. The Lease negotiations have occurred over a two year time frame, and going back to the negotiations table with another City department is not a feasible alternative from both a cost and time perspective.

### **FUNDING IMPACT**

The proposed Lease would not commit SFMTA funds and the SFMTA will receive grant funding in the amount of \$1,200,000 from the Metropolitan Transportation Commission for the design and construction of the Plaza Improvements.

The collective projects in the area are anticipated to contribute to the City's economic development activities in the surrounding Ocean Avenue commercial corridor, according to the City's Office of Economic and Workforce Development. They introduce new housing, commercial development and public open space for a cohesive and integrated development along Ocean Avenue, which would all be supported by transit. Without such a public plaza, successful completion of a comprehensive and integrated redevelopment of the area would be adversely impacted. Consequently, the necessary revitalization and economic development in the area for the benefit of the community could also be jeopardized.

### **OTHER APPROVALS RECEIVED OR STILL REQUIRED**

The Lease will require approval by the City's Board of Supervisors and Mayor.

### **RECOMMENDATION**

Staff recommends that the SFMTA Board of Directors authorize the Executive Director/CEO to request the City's Director of Property to prepare and submit legislation to the City's Mayor and Board of Supervisors to approve the Lease and, if approved, to execute the Lease.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

RESOLUTION No. \_\_\_\_\_

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) operates a bus loop on certain City real property under SFMTA's jurisdiction, located at the intersection of Phelan Avenue and Ocean Avenue and known as a portion of Assessor's Block 3180, Lot 1 (City Property); and

WHEREAS, The City wishes to facilitate the Property in accordance with the Balboa Park Station Area Plan (Plan), adopted by the City's Board of Supervisors on April 7, 2009, and approved by the City's Mayor on April 17, 2009; and

WHEREAS, The Plan contemplates the relocation of the Existing Bus Loop, the development of a public plaza on a portion of the City Property (Plaza Parcel), and the development of a mixed-use project with affordable housing (Building) on another portion of the City Property (Housing Parcel); and

WHEREAS, The Plaza Parcel and the Housing Parcel cannot be developed unless the SFMTA receives sufficient funds to pay its costs (Relocation Costs) to relocate the existing bus loop to a proposed location east of the Plaza Parcel; and

WHEREAS, The Redevelopment Agency of the City and County of San Francisco (Agency) wishes to purchase the Housing Parcel for the development of the Building and SFMTA is willing to sell the Housing Parcel if the SFMTA has sufficient funds to pay for the Relocation Costs; and

WHEREAS, The SFMTA Board of Directors authorized the proposed sale of the Housing Parcel to the Agency pursuant to an Agreement for the Purchase and Sale of Real Property (Housing Parcel Purchase Agreement) on November 17, 2009, and April 20, 2010 under Resolutions No. 09-196 and Resolutions No. 10-051, and the City's Board of Supervisors and Mayor authorized such proposed sale on March 16, 2011 under Ordinance No. 49-11; and

WHEREAS, The purchase price to be paid to the SFMTA pursuant to the Housing Parcel Purchase Agreement would pay for a majority of the Relocation Costs, and the SFMTA has conditionally received a grant of additional funds from the Federal Transit Administration and Metropolitan Transportation Commission that would pay for the remainder of the Relocation Costs and the costs to design and build a public plaza on the Plaza Parcel; and

WHEREAS, The San Francisco Community College District (College) owns certain real property near the City Property and if both the City and College consummate a proposed exchange of property, the Plaza Parcel would abut the new southern entrance to the College's Ocean Campus; and

WHEREAS, A public plaza on the Plaza Parcel would create a natural gateway to the relocated southern entrance to the College's Ocean Campus and the College wishes to participate in the design of any such plaza and ensure it will be sufficiently maintained through the College's

long-term lease of the Plaza Parcel; and

WHEREAS, A public plaza on the Plaza Parcel would abut the relocated bus loop, the Building, College's Ocean Campus and other proposed housing and mixed-use developments in the area, resulting in an integrated Transit Oriented Development hub consisting of new housing, commercial development and public open space all supported by transit and cohesive and integrated development along Ocean Avenue planned to facilitate revitalization and economic development in the area for the benefit of the community; and

WHEREAS, The SFMTA is willing to lease the Plaza Parcel to the College, and the College is willing to lease the Plaza Parcel from the SFMTA, for 75 years on the terms and conditions of a lease agreement; and

WHEREAS, On December 4, 2008, pursuant to Motion No. 17775, the San Francisco Planning Commission (Planning Commission) certified the Final Environmental Impact Report for the Plan (Plan EIR), which contemplated, among other things, the development of the Building at the Housing Parcel and public open space at the Plaza Parcel, adopted environmental findings pursuant to the California Environmental Quality Act (CEQA) and a Statement of Overriding Considerations for significant and unavoidable transportation and historical resources impacts, and established a Mitigation Monitoring Program that attaches mitigation measures and improvement measures identified in the Plan EIR; and

WHEREAS, In approving the sale of the Housing Parcel to the Agency pursuant to the Housing Purchase Agreement, the SFMTA's Board of Directors relied on the Plan EIR and adopted the Planning Commission's environmental findings, Statement of Overriding Considerations and Mitigation Monitoring Program as its own and adopted additional findings that there was no new information requiring subsequent environmental analysis in Resolution No. 09-196 on November 17, 2009, and for purposes of this action, the SFMTA Board of Directors adopts these same additional findings and incorporates the SFMTA Resolution No. 09-196 by reference herein; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors hereby approves the proposed Phelan Plaza Lease Agreement by and between the City and County of San Francisco, acting by and through the San Francisco Municipal Transportation Agency, and the San Francisco Community College District for a term of 75 years on that certain City real property under SFMTA jurisdiction, located near the intersection of Phelan Avenue and Ocean Avenue and known as a portion of Assessor's Block 3180, Lot 1; and be it

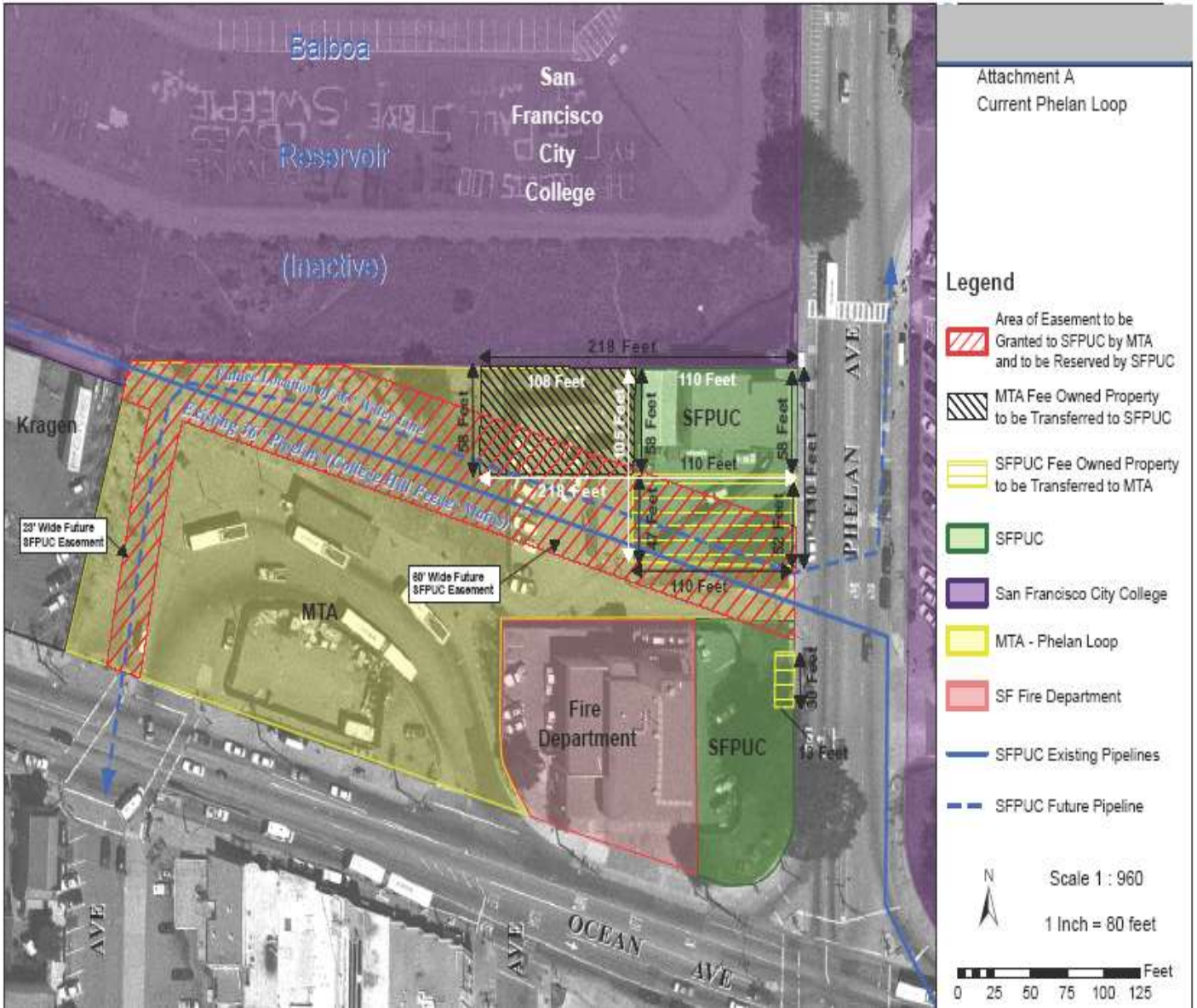
FURTHER RESOLVED, That the SFMTA Board of Directors hereby authorizes the Executive Director/CEO of the SFMTA to request the City's Director of Property to prepare and submit legislation to the Mayor and Board of Supervisors to approve the execution of the Phelan Plaza Lease Agreement and, if it is approved, to execute the Phelan Plaza Lease Agreement.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of \_\_\_\_\_.

\_\_\_\_\_  
Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency



**Exhibit B**  
**(Existing Bus Loop)**





PHELAN PLAZA LEASE AGREEMENT

between

CITY AND COUNTY OF SAN FRANCISCO,  
acting by and through the San Francisco Municipal Transportation Agency,  
as Landlord

and

SAN FRANCISCO COMMUNITY COLLEGE DISTRICT,  
as Tenant

For the lease of  
Phelan Plaza  
San Francisco, California

August 1, 2011

# **PHELAN PLAZA LEASE AGREEMENT**

## **Table of Contents**

**[To be inserted]**



## PHELAN PLAZA LEASE AGREEMENT

THIS PHELAN PLAZA LEASE AGREEMENT (this "**Lease**") dated for reference purposes only as of August 1, 2011, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**" or "**Landlord**"), acting by and through the San Francisco Municipal Transportation Agency ("**SFMTA**"), and the SAN FRANCISCO COMMUNITY COLLEGE DISTRICT, an institution of higher education organized under the State of California Education Code ("**Tenant**"). City and Tenant may each be referred to from time to time as a "**Party**" and collectively as the "**Parties**".

### RECITALS

A. City owns that certain real property generally described as the western portion (the "**City Property**") of Assessor's Block 3180 Lot 1 (the "**Undivided Parcel**") and Tenant owns that certain real property generally described as the eastern portion of the Undivided Parcel, as depicted on the attached Exhibit A.

B. City wishes to facilitate the development of a portion of the City Property in accordance with the Balboa Park Station Area Plan (the "**Plan**") adopted by the City's Board of Supervisors on April 7, 2009, and approved by the City's Mayor on April 17, 2009.

C. The Plan contemplates the development of a public plaza on a portion of the City Property located near the intersection of Phelan Avenue and Ocean Avenue, which portion is depicted as the "Proposed Plaza" on the attached Exhibit B (the "**Plaza Parcel**"), and the development of a mixed-use building with affordable housing (the "**Mixed Use Project**") on an adjacent portion of the City Property, which portion is depicted as the "Proposed Housing Project" on the attached Exhibit B and described on the attached Exhibit C (the "**Housing Parcel**").

D. The Plaza Parcel and the Housing Parcel are under the jurisdiction of SFMTA and cannot be developed unless SFMTA receives sufficient funds to pay for its costs (the "**Relocation Costs**") to relocate an existing bus loop located thereon (the "**Existing Bus Loop**") to a proposed location east of the Plaza Parcel, as depicted on the attached Exhibit B (the "**Relocated Bus Loop**").

E. The San Francisco Redevelopment Agency ("**Agency**") is interested in purchasing the Housing Parcel to facilitate the development of the Mixed Use Project pursuant to an Agreement for the Purchase and Sale of Property between Agency and City dated as of April 7, 2011, as amended by a First Amendment to Agreement for the Purchase and Sale of Property (as amended, the "**Agency Purchase Agreement**"), and the purchase price to be paid to City pursuant to the Agency Purchase Agreement would pay for a majority of the Relocation Costs.

F. SFMTA has conditionally received a grant of additional funds from the Federal Transit Administration and Metropolitan Transportation Commission that would pay for the remainder of the Relocation Costs and the costs to design and build a public plaza on the Plaza Parcel (the "**Plaza Costs**").

G. A public plaza on the Plaza Parcel would create a natural gateway to the southern entrance of Tenant's Ocean Campus on the Tenant Property, and as a condition of approving an Agreement for the Exchange and Conveyance of Real Estate between City and Tenant dated as of July 11, 2011, the consummation of which resulted in the current ownership configuration of the Undivided Parcel, City requested that Tenant agree to manage and maintain such a public plaza on the Plaza Parcel under a long-term lease.

H. City is willing to lease the Plaza Parcel to Tenant, and Tenant is willing to lease the Plaza Parcel from City, on the terms and conditions of this Lease.

## AGREEMENT

City and Tenant hereby agree as follows:

### 1. 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. If there is any conflict between the information in this Article and any more specific provision of this Lease, the more specific provision shall control.

Lease Reference Date:	August 1, 2011
Landlord:	CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation
Tenant:	SAN FRANCISCO COMMUNITY COLLEGE DISTRICT, an institution of higher education organized under the State of California Education Code
Premises ( <b>Section 3.1</b> ):	Plaza Parcel, including the Final Plaza Improvements and any Future Tenant Improvements, but excluding the City Facilities and Third Party Utilities, if any
Term ( <b>Section 4.2</b> ):	Commencing on the Delivery Date and terminating on the seventy-fifth (75 <sup>th</sup> ) anniversary of the Delivery Date
Rent ( <b>Section 3.1</b> ):	Tenant's costs to perform its obligations under this Lease, including all Reimbursement Amounts owed by Tenant to City
Final Plaza Improvements ( <b>Article 5</b> ):	City and Tenant to collaborate on initial design pursuant to <b>Section 5.2(a)</b> and City to construct the Final Plaza Improvements on the satisfaction of the Construction Conditions, as more particularly described in <b>Section 5.3(a)</b>
Use ( <b>Section 7.1</b> ):	Management and maintenance of a public plaza, as more particularly described in <b>Section 7.1</b>
Notice Address of City ( <b>Section 24.1</b> ):	San Francisco Municipal Transportation Agency Finance & Technology Division - Real Estate Section 1 South Van Ness Avenue, 8 <sup>th</sup> Floor San Francisco, CA 94103 Attn: Senior Manager
with a copy to:	Office of the City Attorney City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, California 94102-4682 Attn: Real Estate/Finance Team

Key Contact for City: \_\_\_\_\_  
Telephone No.: \_\_\_\_\_

Address for Tenant (**Section 24.1**): Peter Goldstein  
Vice Chancellor of Finance and Administration  
San Francisco Community College District  
33 Gough Street  
San Francisco, CA 94103  
  
Director of Facilities Planning & Construction  
San Francisco Community College District  
33 Gough Street  
San Francisco, CA 94103

Key Contact for Tenant: \_\_\_\_\_  
Telephone No.: \_\_\_\_\_

## 2. DEFINITIONS

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

"**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 made to any Improvements or to the Premises by or on behalf of Tenant, but shall not include the Final Plaza Improvements.

"**Approved Legal Description**" has the meaning given in **Section 3.2**.

"**Approved Title Conditions**" has the meaning given in **Section 5.4**.

"**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 **Article 1**.

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

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

"**City Facilities**" means any and all subsurface facilities owned by the City and now or later located in, under, on or about the Premises, including, without limitation, the SFPUC Pipelines and any other water lines and sewer lines, and any existing and future surface improvements and facilities in, under, or about the Premises and used by SFMTA to support its bus operations on the City Property.

"**City Reserved Rights**" has the meaning given in **Section 3.3**.

"**Conditions of Title**" shall mean any and all covenants, conditions, restrictions, easements and other title matters affecting the Premises or any portion thereof.

"**Construction Approval Date**" has the meaning given in **Section 5.3(a)**.

"**Construction Conditions**" has the meaning given in **Section 5.3(a)**.

"**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.

"**Delivery Date**" has the meaning given in **Section 5.4**.

"**Delivery Date Notice**" has the meaning given in **Section 5.4**.

"**Design Requirements**" has the meaning given in **Section 5.1**.

"**Effective Date**" means the date on which this Lease becomes effective pursuant to **Section 4.1**.

"**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 the 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**.

"**Executive Director/CEO**" means the Executive Director/CEO of SFMTA or any equivalent position created by SFMTA to replace the Executive Director/CEO of SFMTA.

"**Expiration Date**" means the seventy-fifth (75<sup>th</sup>) anniversary of the Delivery Date.

"**Final Design**" has the meaning given in **Section 5.2(a)**.

"**Final Plaza Improvements**" has the meaning given in **Section 5.2(a)**.

"**Future Access Right**" has the meaning given in **Section 3.3(h)**.

"**Future Tenant Improvements**" means any and all buildings, structures, fixtures and other improvements constructed, installed or placed on the Premises by or on behalf of Tenant or any Tenant permittee pursuant to **Section 8.1** of this Lease, without limitation, any signs, walks, fences, walls, stairs, poles, plantings and landscaping.

"**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 Premises, any Improvements, or are naturally occurring substances on, in or about the

Premises; 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 either City (including SFMTA) and its Agents or Tenant and its Agents, 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, and attorneys' fees and consultants' fees and experts' fees and costs.

**"Housing Parcel Easements"** has the meaning given in **Section 3.3(g)**.

**"Improvements"** means the Final Plaza Improvements and any Future Tenant Improvements.

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

**"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 which 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"** means the clients, customers, invitees, guests, members, licensees, permittees, assignees and sublessees of Tenant and any party that enters the Premises, but excluding any of City's Agents, licensees or assignees.

**"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 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.

**"Notice of Default"** has the meaning given in **Section 17.1**.

**"Official Records"** means the official records of the county(ies) in which the Premises are located.

**"Outside Design Date"** shall be June 30, 2013.

**"Outside Delivery Date"** has the meaning given in **Section 5.4**.

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

**"Permitted Uses"** has the meaning given in **Section 7.1**.

"**Pipeline Activities**" has the meaning given in **Section 3.3(b)**.

"**Pipeline MOU**" means a Memorandum of Understanding between SFMTA and SFPUC, dated as of February 13, 2007, a copy of which is attached here to as Exhibit D.

"**Plaza Costs**" has the meaning given in Recital F of this Lease.

"**Premises**" has the meaning given in **Section 3.1**. The Premises shall include the Improvements. Notwithstanding anything to the contrary in this Lease, the Premises shall not include the City Facilities, any Third Party Utilities, or any water, water rights, riparian rights, water stock, mineral rights or timber rights relating to the Premises.

"**Reimbursement Amount**" shall be any payment to be paid by Tenant to City pursuant to **Section 6.1, Section 9.5, Article 11, Section 17.2(a), Section 19.3**, or as otherwise expressly set forth in this Lease.

"**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 Improvements, or in, on, under or about the Premises, or any City Facilities or Third Party Utilities, or any portion thereof.

"**Relocation Costs**" has the meaning given in Recital D of this Lease.

"**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, the Improvements, or City Facilities or which 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.

"**Scheduled Delivery Date**" has the meaning given in **Section 5.3(b)**.

"**SFMTA**" means the San Francisco Municipal Transportation Agency.

"**SFPUC**" means the San Francisco Public Utilities Commission.

"**SFPUC Pipelines**" has the meaning given in **Section 5.3(b)**.

"**Sublease**" has the meaning given in **Section 16.1**.

"**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 Indemnified Parties**" means Tenant, including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, and all of its and their respective Agents, and their respective heirs, legal representatives, successors and assigns, and each of them.

"**Tenant's Personal Property**" means the personal property of Tenant (including equipment) at the Premises, as further described in **Section 8.3**.

"**Term**" means the term of this Lease as determined under **Section 4.2**.

"**Third Party Utilities**" shall mean any and all utility improvements located in, under, on or about the Premises and owned by any party other than City or Tenant.

"**Transfer**" means any Assignment or Sublease.

"**Transferee**" means any recognized assignee of any part of Tenant's leasehold interest hereunder or any recognized sublessee of any portion of the Premises, pursuant to a Transfer that complies with **Article 16**.

"**Unmatured Event of Default**" means any default by Tenant under this Lease that, with the giving of notice or the passage of time, or both, would constitute an Event of Default hereunder.

### **3. PREMISES; CITY RESERVED RIGHTS**

**3.1. Leased Premises; Rent.** Subject to the terms, covenants and conditions of this Lease, City leases to Tenant and Tenant leases from City the Plaza Parcel, a legal description for which shall be prepared pursuant to **Section 3.2**, together with the Final Plaza Improvements (the "**Premises**"). Tenant shall not be obligated to pay any monthly rent for its use of the Premises pursuant to this Lease to City, provided, however, that Tenant's costs to perform its obligations under this Lease and to deliver any Reimbursement Amounts to City shall be deemed to be "Rent" for purposes of California Civil Code Sections 1951.2 and 1951.4.

**3.2. Approved Legal Description.** City shall deliver a proposed legal description for the Premises to Tenant on or before December 31, 2012, together with a copy of the documents listed as Exceptions Nos. 10, 11 and 12 in the preliminary report for Order No. 05-35500353, prepared by Chicago Title Company and dated as of March 23, 2011. Tenant shall provide City with its written approval of, or comments to, the proposed legal description within thirty (30) days of receiving the proposed legal description, which approval shall not be unreasonably withheld or conditioned. If the Parties do not mutually agree to the proposed legal description for the Premises on or before the Outside Design Date, this Lease shall automatically terminate as of the Outside Design Date. If the Parties mutually approve of the legal description for the Premises, such legal description shall be the "**Approved Legal Description**" and the Parties shall execute an amendment to this Lease that attaches the Approved Legal Description as an exhibit thereto.

**3.3 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 at all times (collectively, the "**City Reserved Rights**"):

(a) SFMTA shall have the right to access the Premises at all times to the extent necessary to perform any work reasonably necessary to maintain, repair, replace, or operate the Relocated Bus Loop (if any). SFMTA shall provide Tenant with at least thirty (30) days' prior notice of SFMTA's intent to access the Premises for such purposes, provided, however, that no such prior notice shall be required in the event of an emergency.

(b) A portion of the Premises is located within the "**Subject Area**" described in the Pipeline MOU. City reserves the right to use the Premises for the pipeline installation, maintenance, repair, and replacement activities described in the Pipeline MOU, and Tenant's use of the Subject Area shall comply with all requirements and restrictions applicable to SFMTA's use of the Subject Area under the Pipeline MOU. Tenant shall not take any action that would

interfere with SFPUC's use of the Subject Area under the Pipeline MOU (the "**Pipeline Activities**") or cause SFMTA to be in default of any of its obligations under the Pipeline MOU.

(c) 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;

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

(e) 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 and 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 to interfere with the permitted use thereof by Tenant, without Tenant's prior written consent;

(f) All rights to use, operate, maintain, repair, enlarge, modify, expand, replace and reconstruct any of the City Facilities;

(g) If not recorded in the Official Records prior to the Effective Date, the right to grant the emergency fire apparatus access easement and pedestrian access easement City is required to grant to Agency pursuant to the Agency Purchase Agreement benefit of Mixed Use Project, the forms of which are attached hereto as Exhibit E (the "**Housing Parcel Easements**"), provided that if a Housing Parcel Easement is granted after the Effective Date, City shall be responsible, at its sole cost, for repairing any damage to Tenant's Personal Property or the Improvements resulting from the grantee's use of such Housing Parcel Easements and City shall deliver a copy of such Housing Parcel Easement to Tenant before the Permitted Uses are subject to such Housing Parcel Easement;

(h) The right to grant future easements, rights of way, permits and/or licenses (each, a "**Future Access Right**") over, across, under, in and upon the Premises (i) that City determines to be in the public interest or otherwise related to determining the physical condition of the Premises or (ii) for the installation, operation, maintenance, repair and removal of (A) 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, (B) commercial billboards, signs and/or advertising kiosks, or (C) construction staging materials reasonably necessary for the construction of the Mixed Use Project, provided that any Future Access Right shall not unreasonably interfere with the operation of the Premises as a public plaza and shall be conditioned upon the grantee's assumption of liability to Tenant for any damage to Tenant's Personal Property or the Improvements resulting from the grantee's use of such Future Access Right, and City shall deliver a copy of the written document evidencing such Future Access Right to Tenant before the Permitted Uses are subject to such Future Access Right;

(i) All rights of access provided for in **Article 20** below.

**3.4. Exercise of City Reserved Rights.** Any party exercising the City Reserved Rights shall not take any action that would cause Tenant to be in default of any of its obligations under this Lease. Except for any actions arising from the Pipeline Activities, City shall exercise the City Reserved Rights in a manner that reasonably minimizes any interference with Tenant's rights and obligations under this Lease. At all times during the Term of this Lease when exercising a City Reserved Right, except for any actions arising from the Pipeline Activities, City shall take, and shall cause any of its Agents or invitees exercising a City Reserved Right to



take, reasonable care to protect the Premises, the Improvements, and Tenant's Personal Property from any damage, injury, or disturbance directly caused by the exercise of such City Reserved Right.

Any actions arising from the Pipeline Activities that interfere with Tenant's rights and obligations under this Lease shall not constitute an Event of Default, but if such actions damage the Premises or the Improvements, City shall repair such damage or terminate this Lease, at its sole discretion. City shall deliver written notice of its election to repair such damage or to terminate this Lease within thirty (30) days of receiving Tenant's written notice of such damage to the Premises or the Improvements. If City elects to repair such damage, City shall additionally notify Tenant of the timing of City's performance of such repair, and City shall commence such correction during such anticipated period and diligently pursue completion of such correction.

If any actions arising from the Pipeline Activities damage Tenant's Personal Property, City shall repair such damage or compensate Tenant for the then-value of such damaged Tenant's Personal Property.

#### **4. TERM**

**4.1. Effective Date.** This Lease shall become effective on the date (the "**Effective Date**") that all of the following conditions are fully satisfied: (i) SFMTA Board of Directors shall have approved a resolution authorizing SFMTA to enter into this Lease, (ii) the City's Board of Supervisors and the City's Mayor shall have finally approved legislation authorizing SFMTA to enter into this Lease, (iii) Tenant's Board of Trustees shall have approved a resolution authorizing Tenant to enter into this Lease, and (iv) the Parties hereto have duly executed and delivered this Lease.

**4.2 Term of Lease; Expiration Date.** The Premises are leased for a term (the "**Term**") that shall commence on the Delivery Date and shall terminate on the seventy-fifth (75<sup>th</sup>) anniversary of the Delivery Date (the "**Expiration Date**") unless sooner terminated pursuant to the provisions of this Lease. Any holding over after the Expiration Date without City's consent shall constitute a default by Tenant and entitle City to exercise any or all of its remedies as provided herein.

#### **5. FINAL PLAZA IMPROVEMENTS; DELIVERY OF POSSESSION**

**5.1. Design Requirements.** City and Tenant shall collaborate on the plaza design to be developed at the Premises pursuant to the process set forth in **Section 5.2**. Such design shall incorporate each of the following requirements (collectively, the "**Design Requirements**"): (i) substantially conform to the public plaza described in the Balboa Park Station Area Plan, (ii) incorporate the mitigation measures specified in the Balboa Park Station Area Plan Environmental Impact Report (SCH# 2006072114) prepared by the City's Planning Department and adopted by the City's Planning Commission on December 4, 2008 (the "**Balboa EIR**"), and any additional measures for the Final Plaza Improvements required by the City's Planning Department, (iii) be based on the needs of the Tenant and the neighborhood adjacent to the Undivided Parcel, (iv) accommodate the Relocated Bus Loop, all City Facilities and Third Party Utilities existing at the Premises as of the Outside Design Date, the Housing Parcel Easements, and any Future Access Rights existing as of the Effective Date if such existing Future Access Right will remain in effect after the Outside Design Date, (v) comply with the requirements of the Pipeline MOU, (vi) incorporate City's public art requirements applicable for public improvements constructed on City property, and (vii) include signage that the plaza on the Premises is open to the public.

## 5.2 Approval of Final Design.

(a) **Proposed Design.** City, at its sole cost, shall deliver a proposed plaza design (the "**Proposed Design**"), which shall include a list of the plaza improvements that City plans to construct at the Premises prior to the Delivery Date to effectuate such design (the "**Proposed Improvements**"), to Tenant on or before September 30, 2012. Tenant's Director of Facilities Planning and Construction ("**Tenant's Design Reviewer**") shall review the Proposed Design and Proposed Improvements to determine, in good faith, if they conform to the Design Requirements. Tenant shall notify City of the Tenant's Design Reviewer's approval or comments to the Proposed Design and Proposed Improvements within thirty (30) days following City's delivery of the Proposed Design and Proposed Improvements to Tenant.

If Tenant's Design Reviewer believes the Proposed Design or the Proposed Improvements do not conform to the Design Requirements, City, at Tenant's request, shall meet with Tenant to discuss such comments. City shall not unreasonably reject or delay its review of any request by Tenant for modifications to the Proposed Design or Proposed Improvements that Tenant reasonably believes are required to conform to the Design Requirements. Each Party shall bear its own costs in reviewing the Proposed Design and Proposed Improvements and meeting to discuss either Party's comments thereto.

If the Parties do not mutually agree to the Proposed Design and Proposed Improvements on or before the Outside Design Date, this Lease shall automatically terminate as of the Outside Design Date. Any Proposed Design and Proposed Improvements prepared by City and approved in writing by Tenant pursuant to this Section shall be the "**Final Design**" and the "**Final Plaza Improvements**" and the Parties shall execute an amendment to this Lease that attaches the Final Design and Final Plaza Improvements as exhibits thereto.

City, at City's sole cost, shall have the right to modify the Final Design and the Final Plaza Improvements if such modifications are required by City's Planning Department for consistency with the EIR or the City's General Plan, if City determines that such unmodified Final Design and the Final Plaza Improvements would create (or create) a safety hazard at, or materially impact, the use or operation of the Relocated Bus Loop, or if such modification is required to accommodate any of the City Reserved Rights. College shall have no obligation to modify the Final Design or the Final Plaza Improvements if such modification is required for the matters in the foregoing sentence unless College is otherwise responsible for such modification pursuant to **Section 9.5**. If City modifies the Final Design or the Final Plaza Improvements at any time, City shall provide Tenant no less than thirty (30) days to review and comment on such modifications, and the Parties shall execute an amendment to this Lease that attaches such modified Final Design or the Final Plaza Improvements as an exhibit thereto. City shall bear the costs to relocate the Improvements existing at the Premises at such time and to construct any new Improvements required under any such modified Final Design or modified Final Plaza Improvements.

(b) **Plaza Approval Conditions.** The "**Plaza Approval Conditions**" are as follows:

(i) On or before the Outside Design Date, SFMTA shall have received the purchase price to be paid by the Agency to City pursuant to the Agency Purchase Agreement, without the passage of any state legislation that would require City to deliver such purchase price to another entity or use such purchase price for other purposes, and SFMTA shall have obtained sufficient funding to fully pay for the remainder of the Relocation Costs and the Plaza Costs.

(ii) On or before the Outside Design Date, City and Tenant shall have mutually agreed to the Final Design pursuant to **Section 5.2**.

(iii) On or before the Outside Design Date, City and Tenant shall have mutually agreed to the Management Plan pursuant to **Section 7.3**.

(iv) On or before the Outside Design Date, City and Tenant shall have mutually agreed to the Maintenance Plan pursuant to **Section 9.1**.

If any Plaza Approval Condition is not timely satisfied, this Lease shall automatically terminate on the Outside Design Date.

### **5.3 Plaza Construction.**

(a) **Construction Conditions.** The "**Construction Approval Date**" shall be the date, if any, on which each of the following conditions (collectively, the "**Construction Conditions**") are fully satisfied:

(i) Each of the Plaza Approval Conditions shall have been timely satisfied;

(ii) All environmental review, if any, necessary for the removal of the Existing Bus Loop, the construction of the Relocated Bus Loop, and the construction of the Final Plaza Improvements shall have been completed, and City's Planning Department shall have either confirmed that the Final Design is consistent with the EIR and City's General Plan or the Final Design shall have been modified to be consistent with the EIR and City's General Plan; and

(iii) The construction of the Mixed Use Project shall be substantially completed.

(b) **Final Plaza Work Period.** If each of the Construction Conditions is fully satisfied, then prior to the eighteen (18) month anniversary of the Construction Approval Date (the "**Scheduled Delivery Date**"), City shall perform the following activities (the "**Final Plaza Work**") at City's sole cost: (i) remove, at City's sole cost, any and all improvements, fixtures, furnishings, equipment or other personal property from the Premises, excluding the pipelines and related equipment and facilities described in the Pipeline MOU (the "**SFPUC Pipelines**"), (ii) perform the soil remediation work on the Premises described in the attached Exhibit F (the "**City Remediation Work**"), and (iii) construct the Final Plaza Improvements in substantial conformance with the Final Design. Notwithstanding anything to the contrary in the foregoing, if the Construction Approval Date does not occur on or before July 1, 2014, and City reasonably determines that such later Construction Approval Date would prevent the timely completion of the Final Plaza Work on or before the Outside Delivery Date, City shall have the right to terminate this Lease by delivering written notice of such termination to Tenant on or before December 31, 2014.

(c) **Performance of Final Plaza Work.** The Final Plaza Work shall be performed (i) by duly licensed and bonded contractors or mechanics, (ii) in a good and professional manner, and (iii) in strict compliance with all Laws (including, without limitation, all health, disabled access and building codes and ordinances). City, at its sole expense, shall procure all regulatory permits and approvals required for the Final Plaza Work and the City Remediation Work, including any required for the disposal of any contaminated soil removed as part of the City Remediation Work, and shall promptly upon receipt deliver copies of any such permits and approvals to Tenant within thirty (30) days following Tenant's request therefor. No material change from the Final Design may be made without Tenant's prior written consent. Tenant and its Agents shall have the right to inspect the course of the construction of the Final Plaza Improvements at all times, provided such inspection is conducted in a manner that does not interfere with such construction activities.

If Tenant reasonably determines that the Final Plaza Work or the City Remediation Work does not comply with applicable Laws or the required regulatory permits and approvals therefor, or that the Final Plaza Improvements are not in keeping with the Final Design, Tenant shall deliver written notice of such determination to City and City shall attempt in good faith to correct any such deficiency within thirty (30) calendar days after receiving such notice. If the deficiency

is not reasonably susceptible to correction within the thirty (30) day period, City shall submit a written proposal for the correction along with a specific timeline for such cure no later than thirty (30) days after the date of receiving the original notice from Tenant and diligently pursue completion of such correction. City's proposal shall be subject to approval by Tenant, which shall not be unreasonably withheld, conditioned or delayed.

**5.4. Delivery Date; Delivery of Possession.** City shall deliver written notice of its completion of the Final Plaza Work to Tenant (the "**Delivery Date Notice**"), which shall be accompanied with a complete set of final as-built plans and specifications for the Final Plaza Improvements. The "**Delivery Date**" shall be the thirtieth (30<sup>th</sup>) day immediately following Tenant's receipt of the Delivery Date Notice. City shall deliver, at its sole cost, possession of the Premises to Tenant on the Delivery Date with all Final Plaza Work completed and free and clear of possession and rights of possession by any other parties, subject to (i) the City Reserved Rights and (ii) all liens, encumbrances, covenants, and easements existing as of the Effective Date and all liens, encumbrances, covenants, and easements arising between the Effective Date and the Delivery Date that results from the acts of Tenant or its Agents, does not materially increase Tenant's costs or liabilities in performing its obligations under this Lease, is otherwise approved by Tenant in writing, or is a Future Access Right (collectively, the "**Approved Title Conditions**").

If the Delivery Date does not occur on or before the Scheduled Delivery Date, City shall not be liable to Tenant for any Losses resulting therefrom, nor, provided the Delivery Date occurs on or before December 31, 2015 (the "**Outside Delivery Date**"), shall the validity of this Lease be affected. Tenant waives all provisions of any Laws to the contrary, and the Term shall not commence until City delivers possession of the Premises in compliance with the conditions set forth in this Section. If the Delivery Date occurs after the Scheduled Delivery Date but on or before Outside Delivery Date, this Lease shall nevertheless expire on the Expiration Date, unless sooner terminated pursuant to the provisions of this Lease. If the Delivery Date does not occur on or before the Outside Delivery Date, this Lease shall automatically terminate as of the Outside Delivery Date.

**5.5. As Is Condition of Premises.** Tenant shall conduct a thorough and diligent inspection and investigation prior to the Delivery Date, either independently or through Agents of Tenant's own choosing, of the Premises and the suitability of the Premises for Tenant's intended use on the Delivery Date and City's performance of its obligations under **Section 5.4**. If, after receiving the Delivery Date Notice, Tenant determines that City has not performed its obligations under **Section 5.4**, Tenant shall notify City in writing and, within ten (10) business days of receiving such notice, City shall deliver written notice to Tenant of its agreement to correct such deficiency or City's good faith disagreement with such Tenant determination.

Tenant's acceptance of possession of the Premises on the Delivery Date shall be deemed to be Tenant's acceptance of the Premises in the condition in which they are in as of the Delivery Date, subject to (a) City's agreement, in its sole and absolute discretion, to modify the Final Plaza Improvements pursuant to **Section 3.3**, **Section 5.1**, **Section 5.2**, or **Section 7.2** (the "**Future Modifications**"), and (b) City's obligations under **Section 9.3**. Tenant acknowledges and agrees that City shall have the right, in its sole and absolute discretion, to elect to terminate this Lease in lieu of performing any of the Future Modifications, and Tenant shall have no right to cause the City to perform any of the Future Modifications.

## **6. INSURANCE, TAXES, ASSESSMENTS, EXPENSES AND REIMBURSEMENT AMOUNTS**

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

**(a) Payment Responsibility.** Tenant shall not be responsible for any leases, taxes or assessments for the Premises that are applicable to any periods prior to the Delivery Date. To the extent applicable, 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 (including those assessed under the Ingleside-Ocean Avenue Community Benefit District), any Improvements, Tenant's Personal Property, the leasehold estate or any subleasehold estate, or Tenant's use of the Premises or any Improvements on or after the Delivery Date. Notwithstanding anything to the contrary in the foregoing, Tenant shall not be responsible for any taxes, assessments, fees or charges levied on or assessed against the Premises with respect to any of the City Reserved Rights. Tenant shall make all such payments directly to the charging authority when due and payable and at least ten (10) days prior to delinquency, subject to Tenant's right to contest the validity of such charge pursuant to **Section 6.1(c)**. However, 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, 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; Contest Requirement.** Tenant shall not allow or suffer a lien for any taxes payable by Tenant hereunder to be imposed upon the Premises or upon any equipment or other property located thereon without promptly discharging the same. Tenant may 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 the City Attorney of City. 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 City Indemnified Parties, and the Premises from and against any Losses arising out of any proceeding or contest provided for hereunder. The foregoing Indemnity shall not be limited by the amount of the bond.

**(d) Reporting Requirement.** Tenant agrees to 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.** Subject to City's obligations under **Section 9.3**, Tenant shall be responsible for any and all other charges, costs and expenses related to the performance of its obligations under this Lease or its use, occupancy, operation or enjoyment of the Premises or any Improvements permitted thereon, including, without limitation, the cost of any utilities or services necessary for the operation of the Premises as a public plaza.

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

**6.4 Interest on Late Reimbursement Amounts.** If Tenant fails to timely deliver any Reimbursement Amounts to City within thirty (30) days of receiving written request therefor, such unpaid amount shall bear interest from the due date until paid at the rate of ten percent (10%) per year or, if a higher rate is legally permissible, at the highest rate an individual is permitted to charge under Law. However, interest shall not be payable on late charges incurred by Tenant nor on any amounts on which late charges are paid by Tenant to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Tenant.

## 7. USE AND MANAGEMENT

**7.1. Tenant's Permitted Uses.** Tenant acknowledges that Premises shall remain open for public use subject to the rules and regulations established in the Management Plan, and Tenant shall operate and manage the Premises in compliance with the Management Plan. As of the Delivery Date, Tenant shall operate the Premises and Improvements under the Management Plan as a public plaza that allows for informal daily use and scheduled special events that comply with all City laws and regulations for such events on City property, including farmers' markets and festivals, and for performing its obligations under this Lease (collectively the "**Permitted Uses**"), and for no other use or purpose. The Permitted Uses shall comply with the terms and conditions of this Lease and shall include the following uses:

(a) **Pedestrian Right of Way.** A safe and inviting connection for people walking between the areas abutting the Premises (e.g., the Ocean Campus of City College, the Relocated Bus Loop, existing and future light rail facilities, the Mixed Use Project and the future and existing retail buildings and housing in the general area).

(b) **Public/Community Uses.** Social, entertainment, and other community uses that may be proposed by the City, Tenant, or the public (i.e., farmer's markets, special events, entertainment activities), passive seating and resting areas, including benches, tables and chairs, and outdoor seating for any restaurant or cafe in the Mixed Use Project, provided the operator of such restaurant or cafe obtains the permits delineated in the Management Plan for such use).

(c) **Vending/Retail Uses.** Mobile, non-permanent vending/retail uses proposed by the City, Tenant, or the public (i.e., food or other push cart or kiosk vendors), including regular farmers' markets, provided such uses comply with all City laws and regulations for the performance of such activities on City property.

(d) **Tenant Uses.** Social, entertainment, and other uses that may be proposed by the Tenant (e.g., temporary tables providing information about student clubs and other activities at the Ocean Campus of City College) and are conducted in compliance with the Management Plan.

**7.2 Use Modifications by City.** City shall have the right to modify the Permitted Uses if it determines that such uses create a safety hazard at, or materially impacts operations of, the Relocated Bus Loop or interferes with SFPU's rights, or conflict with SFMTA's obligations, under the Pipeline MOU. Tenant shall not be responsible for any additional expenses arising from any installation of new Improvements or modifications of existing Improvements to provide for such modifications.

**7.3. Management Plan.** On or before December 31, 2012, Tenant, at its sole cost, shall deliver to City a proposed management plan for the Premises that incorporates each of the following requirements (collectively, the "**Management Requirements**"): (i) creates a reasonable process for receiving and reviewing applications for proposed activities and uses of the Premises, which shall not be discriminatory or unduly cumbersome, prohibitive, or excessive; (ii) establishes reasonable fees for use of the Premises, which shall not be excessive or unreasonable and shall be only used to offset Tenant's management and maintenance costs under this Lease; (iii) requires each permittee, at its sole cost, to acquire all permits required by City, acting in its regulatory capacity, for such permittee's proposed use; (iv) requires each permittee to carry insurance of a type and amount reasonably required by the City and Tenant for such proposed use and to name City and Tenant as additional insureds on such insurance; (v) minimizes early morning programming before 8:00 am (except as needed at earlier times for farmers' markets) and late evening programming after 9:00 pm, and requires all activities at the Premises to use reasonable efforts to comply with any City noise laws, ordinances or regulations; (vi) ensures litter control; (vii) prohibits uses that generate noxious or hazardous odors; and (viii) provides for reasonable security measures that a public entity would reasonably take to secure a

public space of similar size and uses, including additional security measures for any permitted uses as necessary and appropriate.

City shall review the proposed management plan timely delivered by Tenant to determine, in good faith, if the proposed management plan conforms to the Management Requirements. City shall notify Tenant of its approval or comments to a proposed management plan within thirty (30) days following Tenant's delivery of such proposed management plan to City. If City believes the proposed management plan does not conform to the Management Requirements, Tenant, at City's request, shall meet with City to discuss such comments. Tenant shall not unreasonably reject or delay its review of any request by City for modifications to any proposed management plan that City reasonably believes are required to conform to the Management Requirements. Each Party shall bear its own costs in reviewing Tenant's proposed management plan and meeting to discuss any comments to any proposed management plan.

If the Parties do not mutually agree to the proposed management plan on or before the Outside Design Date, this Lease shall automatically terminate as of the Outside Design Date. Any proposed management plan proposed by Tenant and approved in writing by City pursuant to this Section shall be the "**Management Plan**", and Parties shall enter into an amendment to this Lease that attaches the Management Plan as an exhibit thereto.

**7.4 Management of Premises.** Commencing on the Delivery Date, Tenant shall cause the Premises to be managed at its sole cost and in conformance with the Management Plan. If there is a conflict between the provisions of the Management Plan and the provisions of this Lease, the provisions of this Lease shall control. If Tenant desires to engage in any use that is not a Permitted Use or to materially change the manner in which Tenant manages a Permitted Use from the manner described for such Permitted Use in the Management Plan, Tenant shall request such additional use or modification in writing, and such addition or modification shall be subject to the approval of the Executive Director/CEO, which may be withheld in his or her sole discretion.

If City reasonably determines that the operations or services provided at the Premises or the coordination of daily use and special events at the Premises are not in keeping with the Management Plan or are inconsistent with the Management Requirements, City shall deliver written notice of such determination to Tenant and Tenant shall respond within ten (10) business days of receiving such notice of its agreement to correct such deficiency or its good faith disagreement with such City determination. If the deficiency is not reasonably susceptible to correction within the ten (10) business day period, Tenant shall submit a written proposal for the correction along with a specific timeline for such cure no later than ten (10) business days after the date of receiving the original notice from City, and shall diligently pursue such cure to completion. Tenant's proposal shall be subject to approval by City in its sole and absolute discretion. If the deficiency is not corrected by the end of the ten (10) business day period, or if City has not accepted Tenant's plan for cure by such date or Tenant fails to diligently pursue a cure to completion, City shall have the right to deliver a Notice of Default regarding such matter to Tenant.

**7.5 Days and Hours of Operation.** Tenant shall use reasonable and diligent efforts to operate the Premises pursuant to the Management Plan and to further the operations thereof and to serve the surrounding community (including the Ocean Campus of City College, the Mixed Use Project and the surrounding commercial and residential areas) and the public at large. The Premises shall be open for public use daily from generally 8:00 am and sunset (or any earlier times required by any applicable Laws); provided that the Premises shall remain open for pedestrian ingress and egress purposes at all times. The schedule is approved by City and may not be altered in any manner without prior written approval from the Executive Director/CEO, which may be withheld in his or her sole discretion.

**7.6. Rates and Charges.** There shall be no admission charge for the daily informal use and special events at the Premises except as otherwise set forth in the Management Plan and described in **Section 7.3(ii)**.

**7.7. 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 thereof, 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 reasonable precautions to eliminate any nuisances or hazards relating to its activities on or about the Premises or any Improvements permitted hereunder as soon as reasonably practicable.

(b) **Covenant Against Waste.** Tenant shall not cause or permit any waste, damage or injury to the Premises.

(c) **Covenant to Protect Premises, City Facilities and Third Party Utilities.** At all times during the Term of this Lease, Tenant shall take reasonable efforts to protect the Premises, the City Facilities, if any, and the Third Party Utilities, if any, from any damage, injury or disturbance directly caused by Tenant, its Agents or any Invitees.

(d) **Covenant Against Dumping; Waste Disposal.** 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. Organic wastes from the Premises shall be composted on-site to the extent reasonably possible. Tenant shall use its best efforts to reduce the amount of trash and waste generated from the Premises, to acquire products for use on the Premises which reuse or recycle packaging, and to recycle all materials used on the Premises to the extent reasonably possible.

(e) **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 prior written approval of the Executive Director/CEO, which may be withheld in his or her sole discretion.

(f) **No Tree Planting.** Tenant shall not plant any trees on the Premises, nor shall Tenant plant any other vegetation on the Premises without the prior written approval of the Executive Director/CEO, which may be withheld in his or her sole discretion.

(g) **Covenant Against Hunting.** Tenant shall not engage in or permit any hunting or, trapping 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 the Executive Director/CEO in writing, 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.

(h) **Pesticides Prohibition.** Tenant shall comply with the provisions of Section 39.9 of Chapter 39 of the San Francisco Administrative Code (the "**Pesticide Ordinance**") which (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 SFMTA 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 39.1 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 the requirements of Sections 39.4(a) and 39.4(b) of the Pesticide Ordinance.

(i) **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(h)**.

(j) **Covenant Against Burning.** Tenant shall not burn any weeds, debris or other substances on or about the Premises.

(k) **Sewerage System.** Tenant shall maintain and its sole cost and expense, and in accordance with the direction and to the satisfaction of the Executive Director/CEO and the SFPUC, all sewerage system components installed as part of the Final Plaza Improvements and shall not permit any sewage or fouled waste water to be disposed of on the Premises, except as provided for and as customary per such sewerage system.

(l) **Soil Erosion.** Tenant shall not cause any material erosion of soil on or around the Premises. Tenant shall not engage in any activity that causes a material change, disturbance, fill, alteration or impairment to the topography of the Premises by placing on it any soil, dredging, spoils, landfill, or other material, nor shall Tenant engage in any activity that would change, disturb, alter or impair the significant relatively natural ecological features and values of the Premises, without the prior written approval of the Executive Director/CEO, which may be withheld in his or her sole discretion.

(m) **Operating Covenants.** Tenant shall use reasonable and diligent efforts to facilitate the Permitted Uses and to operate the Premises in compliance with the Management Plan, the Maintenance Plan and this Lease. Tenant shall not allow the Premises to remain unoccupied or unused without City's prior written consent, which City may give or withhold in its sole discretion. Tenant shall use and operate the Premises in a first class and professional manner.

(n) **Recycling and Resource Conservation.** The City of San Francisco has set ambitious recycling and composting goals for City departments including 75% landfill diversion by 2010 and maximum participation the City's municipal composting program at all City properties where there is food service. In addition, City has recently passed the Food Service Waste Reduction Ordinance (see **Section 24.42**) which, in part, "Prohibits the use of polystyrene foam dispensable food service ware and requires the use of recyclable or compostable food service ware by restaurants, retail food vendors, City departments and the City's contractors and lessee." City contractors and lessees may not use Disposable Food Service Ware that contains Polystyrene Foam in City Facilities and while performing under a City contract or lease. City contractors and lessees using any Disposable Food Service Ware shall use suitable Biodegradable/Compostable or Recyclable Disposable Food Service Ware in City Facilities and while performing under a City contract or lease unless there is no suitable Affordable Biodegradable/Compostable or recyclable product available as determined by the City Administrator in accordance with Subsection 1604(a). Tenant shall develop a program to work toward a zero waste goal, including the implementation of a composting system for food waste, packaging and 100% biodegradable supplies whenever practical. Tenant shall submit a recycling and composting plan prior to the Delivery Date, and provide an annual report on each anniversary date of this Lease outlining their progress toward meeting the recycling and composting goals described above and their success toward a zero waste goal.

(o) **Americans with Disabilities Act.** Tenant acknowledges that the Americans with Disabilities Act (the "ADA") requires that programs, services and other

activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Tenant further acknowledges its obligation to comply with the ADA and any other federal, state or local disability rights legislation. Without limiting the provisions of **Section 8.1** and **Article 12** below, and subject to City's obligations under **Section 9.3**, Tenant warrants that it will fulfill that obligation, and that it will not discriminate against disabled persons in the provision of services, benefits or activities pursuant to this Lease. Notwithstanding anything to the contrary in the foregoing, Tenant shall have no obligation to make any mandated physical changes to the Premises resulting from the ADA or any other disability access laws or regulations.

## **8. ALTERATIONS AND IMPROVEMENTS**

**8.1. Construction of Alterations and Improvements.** Tenant shall not construct, install or otherwise place any Improvements or make or permit any Alterations in, to or about the Premises without the prior written consent of the Executive Director/CEO in each instance, which the Executive Director/CEO may give or withhold in his or her sole and absolute discretion. Any Improvement or Alteration that Tenant wishes to install, place, make or permit with the prior written consent of the Executive Director/CEO shall be a "**Future Tenant Improvement**". Subject to the Executive Director/CEO's consent as provided above, each Future Tenant Improvement shall be done at Tenant's sole expense (i) in strict accordance with designs, plans and specifications approved in advance by the Executive Director/CEO in writing, (ii) by duly licensed and bonded contractors or mechanics approved by the Executive Director/CEO, (iii) in a good and professional manner, (iv) in strict compliance with all Laws (including, without limitation, all health, disabled access and building codes and ordinances), and (v) subject to all other conditions that the Executive Director/CEO or SFMTA may reasonably impose, including, without limitation, provision of such completion security as is acceptable to City. In no event shall the construction or installation of any Future Tenant Improvement impair the use or operation of the Final Plaza Improvements or the City Facilities (if any), or any portion thereof, or the City's access thereto. Prior to the commencement of any work on the Premises to construct any Future Tenant Improvement, Tenant, at its sole expense, 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 written consent. City and its Agents shall have the right to inspect the course of such construction at all times. Upon completion of such Future Tenant Improvement, Tenant shall furnish City with a complete set of final as-built plans and specifications. If the cost of any Future Tenant Improvement exceeds Five Thousand Dollars (\$5,000), Tenant shall pay City an administrative fee equal to ten percent (10%) of the total cost of the work to offset City's costs in reviewing such matter. Tenant shall require from each contractor and subcontractor performing any Future Tenant Improvement work on or about the Premises to carry a policy of commercial general liability insurance, with such limits as may reasonably be required by City from time to time, but in any event not less than One Million Dollars (\$1,000,000) combined single limit. Such insurance shall also be in compliance with the requirements set forth in **Section 19.2**.

**8.2. Ownership of Improvements.** Any Future Tenant Improvement constructed on or affixed to the Premises by or on behalf of Tenant above shall be and remain Tenant's property during the Term. Upon the Expiration Date or any earlier termination hereof, Tenant shall, upon City's request, remove all such Future Tenant Improvements from the Premises in accordance with the provisions of **Section 22.1**, unless City, at its sole option and without limiting any of the provisions of **Section 8.1**, specifies that such Future Tenant Improvement may remain on the Premises following the expiration or termination of this Lease at the time of City's approval thereof.

**8.3. Tenant's Personal Property.** All furniture, furnishings and articles of movable personal property and equipment installed in the Premises by Tenant or at Tenant's request that can be removed without structural or other material damage to the Premises (all of which are

herein called "**Tenant's Personal Property**") shall be and remain the property of Tenant and may be removed by it subject to the provisions of **Section 22.1**.

## **9. REPAIRS AND MAINTENANCE**

**9.1. Maintenance Plan.** On or before December 31, 2012, Tenant, at its sole cost, shall deliver to City a proposed maintenance plan for the Premises that incorporates each of the following requirements (collectively, the "**Maintenance Requirements**"): (i) the plan should be comprehensive and designed to ensure that the Premises and the Improvements, including any landscaping, are maintained in a safe, secure, sanitary, and aesthetically pleasing condition; (ii) the plan shall have reasonable provisions to address the provision of utilities, litter collection, garbage and recycling services, the removal of graffiti, the ordinary maintenance, repair and replacement of the Improvements (including painting, repairs, renovations, and replacing light bulbs and worn materials), and maintenance of the landscape (including the use of trees, shrubs, plants and grasses that are generally adaptable to San Francisco's climatic zone and the provision of adequate irrigation); and (iii) if the Final Design includes public restrooms, the plan shall have reasonable provisions to address the ordinary maintenance, repair and replacement of such restrooms.

City shall review any proposed maintenance plan timely delivered by Tenant to determine, in good faith, if the proposed plan conforms to the Maintenance Requirements. City shall notify Tenant of its approval or comments to a proposed maintenance plan within thirty (30) days following Tenant's delivery of such proposed maintenance plan to City. If City believes the proposed maintenance plan does not conform to the Maintenance Requirements, Tenant, at City's request, shall meet with City to discuss such comments. Tenant shall not unreasonably reject or delay its review of any request by City for modifications to any proposed maintenance plan that City reasonably believes are required to conform to the Maintenance Requirements. Each Party shall bear all of its costs to review Tenant's proposed maintenance plan and meet to discuss any comments to such proposed maintenance plan.

If the Parties do not mutually agree to the proposed maintenance plan on or before the Outside Design Date, this Lease shall automatically terminate as of the Outside Design Date. Any proposed maintenance plan approved in writing by City pursuant to this Section shall be the "**Maintenance Plan**", and Parties shall enter into an amendment to this Lease that attaches the Maintenance Plan as an exhibit thereto.

**9.2 Tenant Responsible for Maintenance.** On and after the Delivery Date, Tenant shall cause the Premises to be maintained at its sole cost and pursuant to the Maintenance Plan. If there is a conflict between the provisions of the Maintenance Plan and the provisions of this Lease, the provisions of this Lease shall control. If Tenant desires to materially change the manner in which Tenant conducts its maintenance obligations from the manner described in the Maintenance Plan, Tenant shall request such modification in writing, and such modification shall be subject to the approval of the Executive Director/CEO which may be withheld in his or her sole discretion.

If City determines that Premises are not being maintained in conformance with the Maintenance Plan, City shall deliver written notice of such determination to Tenant and, within ten (10) business days of receiving such notice, Tenant shall deliver written notice to City of its agreement to correct such deficiency or Tenant's good faith disagreement with such City determination. If the deficiency is not reasonably susceptible to correction within the ten (10) business day period, Tenant shall submit a written proposal for the correction along with a specific timeline for such cure no later than ten (10) business days after the date of receiving the original notice from City. Tenant's proposal shall be subject to approval by City in its sole and absolute discretion. If the deficiency is not corrected by the end of the ten (10) business day period, or if City has not accepted Tenant's plan for cure by such date or Tenant fails to diligently pursue a cure to completion, City shall have the right to deliver a Notice of Default regarding such matter to Tenant.

**9.3. City's Maintenance and Repair Obligations.** Following the Delivery Date, City shall not under any circumstances be responsible for the repair or maintenance of the Premises or the repair, modification or replacement of any of the Final Plaza Improvements except to the extent such needed repair or replacement directly results from any of the following: (a) City's material default of any of its obligations under this Lease (a "**City Default Condition**"), (b) any physical condition or Approved Title Condition (a "**Pre-Existing Condition**"), (c) the requirements of any applicable law or regulation (a "**Legal Condition**"), or (d) the gross negligence or willful misconduct of City or any of its Agents (a "**City Misconduct Condition**"). City shall not under any circumstances be responsible for the repair, modification or replacement of any of Future Tenant Improvements unless such needed repair, modification or replacement is required as a result of a City Default Condition or a City Misconduct Condition.

If Tenant discovers any material defect in any of the Final Plaza Improvements at any time during the ten (10) year period immediately following the Delivery Date, or any repair, modification or replacement of any Final Plaza Improvements is required as a result of a City Default Condition or a City Misconduct Condition, or any repair, modification or replacement of any Future Tenant Improvement is required as a result of a City Misconduct Condition, Tenant shall deliver written notice thereof to City and, within ten (10) business days of receiving such notice, City shall deliver written notice to Tenant of its agreement to correct such deficiency within thirty (30) calendar days of delivering such notice, if the deficiency is reasonably susceptible to correction within such thirty (30) day period, or City's good faith disagreement with such Tenant determination. If City elects to cure such deficiency, but it is not reasonably susceptible to correction within the thirty (30) day period, City shall notify Tenant of such matter in writing and City shall commence such correction during such thirty (30) day period and diligently pursue completion of such correction.

If Tenant discovers that any repair, modification or replacement to the Final Plaza Improvements is required as a result of a Pre-Existing Condition or a Legal Condition (an "**Optional City Repair**"), Tenant shall deliver written notice thereof to City and, within ten (10) business days of receiving such notice, City shall deliver written notice to Tenant of its election, in its sole and absolute discretion, to make such Optional City Repair at its sole cost or to terminate this Lease, or City's good faith disagreement with such Tenant determination. If City elects to make any Optional City Repair, City shall additionally notify Tenant of the timing of City's performance of such Optional City Repair, and City shall commence such correction during such anticipated period and diligently pursue completion of such correction.

If Tenant discovers that any repair, modification or replacement to the Final Plaza Improvements is required as a result of any event of default by Agency or any of its officers, directors, board members, employees, agents, consultants, contractors, subcontractors, tenants, subtenants, invitees, or guests under the Housing Parcel Easement, Tenant shall deliver written notice thereof to City and, within ten (10) business days of receiving such notice, City shall deliver written notice to Tenant of its agreement to cause Agency to correct such deficiency or City's good faith disagreement with such Tenant determination. If City agrees to cause Agency to correct such deficiency, but such deficiency is not reasonably susceptible to correction within the thirty (30) day period, City shall notify Tenant of such matter in writing and City shall cause Agency to commence such correction during such thirty (30) day period and to diligently pursue completion of such correction.

If Tenant discovers that any repair, modification or replacement to the Final Plaza Improvements is required as a result of any event of default by any Future Access Right holder under the documenting granting such Future Access Right, Tenant shall deliver written notice thereof to City and, within ten (10) business days of receiving such notice, City shall deliver written response to Tenant of its agreement to cause such holder to correct such deficiency or City's good faith disagreement with such Tenant determination. If City agrees to cause the Future Access Right holder to correct such deficiency, but such deficiency is not reasonably susceptible to correction within the thirty (30) day period, City shall notify Tenant of such matter in writing

and City shall cause such holder to commence such correction during such thirty (30) day period and to diligently pursue completion of such correction.

**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 perform City's obligations under **Section 9.3** or to keep any adjoining property owned by City (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 hereunder on account of such matter. 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. If City fails to perform its obligations under **Section 9.3** or to keep any City property adjoining the Premises (including, without limitation, access roads, utilities and other infrastructure serving the Premises) or any part thereof in good order, condition or repair, and such failure reasonably prevents Tenant from performing its management or maintenance obligations under this Lease, Tenant shall be excused from performing such obligations (to the extent such performance is prevented by City's failure) until such failure is cured.

**9.5 Repair of Damage by Tenant.** Tenant shall be responsible for the repair of any damage to the Premises or the Final Plaza Improvements to the extent resulting from any of the following (each, a "**Tenant Repair Obligation**"): (a) normal wear and tear, (b) Tenant's material default of any of its obligations under this Lease, (c) casualty (subject to the limitations specified in **Article 14**), (d) the act of Tenant or any of Tenant's Agents or Invitees (subject to the limitations specified in **Article 14**), or (e) the act of any other party other than City or any of its Agents (subject to the limitations specified in **Article 14**), unless City is otherwise responsible for such repair as described in **Section 9.3**, Agency is otherwise responsible for such repair pursuant to the Housing Parcel Easements, or a Future Access Right holder is responsible for such repair pursuant to the document granting such Future Access Right. Tenant shall perform the necessary repair or correction required for a Tenant Repair Obligation at its sole cost and expense.

If a Tenant Repair Obligation arises, but it is not material and does not affect the SFPUC Pipelines or the Relocated Bus Loop (a "**Nonmaterial Event of Damage**"), Tenant shall correct such Nonmaterial Event of Damage within ten (10) business days after it occurs; provided that if such matter is not reasonably susceptible to correction within the ten (10) business day period, Tenant shall submit a written proposal for the correction along with a specific timeline for such cure within such ten (10) business day period and shall diligently commence and pursue completion of such correction. Tenant's proposal shall be subject to approval by City in its sole and absolute discretion, but such approval shall not be unreasonably withheld.

If a Tenant Repair Obligation arises, and it materially damages, injures or disturbs any of the Premises or the City Facilities or any portion thereof (a "**Material Event of Damage**"), Tenant shall immediately notify City of that occurrence. A Material Event of Damage that poses an immediate threat to public health or safety, or damages or threatens to damage the SFPUC Pipelines, or materially interferes with or threatens to interfere with the operation of the Relocated Bus Loop shall be an "**Immediate Threat**". If there is a Material Event of Damage that is not an Immediate Threat, or if there is a Material Event of Damage that is an Immediate Threat but City does not elect to exercise its repair rights under the following paragraph, Tenant shall attempt in good faith to correct such Material Event of Damage within ten (10) business days after providing such notice; provided that if such matter is not reasonably susceptible to correction within such ten (10) business day period, Tenant shall submit a written proposal for the correction along with a specific timeline for such cure within such ten (10) business day period and shall diligently commence and pursue completion of such correction. Tenant's

proposal shall be subject to approval by City in its sole and absolute discretion, but such approval shall not be unreasonably withheld.

Without limiting any of its other rights hereunder, if a Material Event of Damage is an Immediate Threat, City may immediately take all actions it deems proper to repair such Material Event of Damage at Tenant's sole expense following delivery of written notice of such election by City (except in the event of an emergency in which case no notice or cure period is required). Tenant shall promptly, upon City's request, remove or alter to City's satisfaction and at Tenant's sole cost, any Future Tenant Improvements or Tenant's Personal Property placed on the Premises as necessary to avoid interference with the City Reserved Right described in **Section 3.3(a)**, **Section 3.3(b)**, **Section 3.3(g)**, or **Section 3.3(h)**; provided, however, that such removal shall be at City's sole cost if the applicable Future Tenant Improvements were approved by City in writing or otherwise permitted pursuant to the terms of this Lease. City may adopt from time to time such rules and regulations with regard to Tenant's operations hereunder as City may determine are necessary or appropriate to safeguard the City Facilities or are reasonably necessary or appropriate to safeguard any of the City Reserved Rights or City's fee interest in the Premises. Tenant shall comply with all such rules and regulations upon receipt of a copy thereof.

A Tenant Repair Obligation shall include, without limitation, the responsibility of Tenant to make any substantial or structural repairs and alterations to the Premises (including any Improvements) required for a Tenant Repair Obligation, regardless of, among other factors, the relationship of the cost of curative action to Tenant's financial obligations under this Lease, the length of the then remaining Term hereof, the relative benefit of the repairs to Tenant or City, the degree to which the curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the Parties contemplated the particular Tenant Repair Obligation involved, and whether the Tenant Repair Obligation involved is related to Tenant's particular use of the Premises.

## **10. UTILITIES**

**10.1. Utilities and Services.** The Final Design shall detail any water, gas, electrical and sewerage utility connections that City will make as part of the Final Plaza Improvements. Tenant shall pay for, at Tenant's sole cost, all water, gas, electricity, sewerage services, garbage and recycling material removal and disposal, telephone, facsimile and internet service provided to the Premises, except for the extent that such utilities and services are used by City or any of its Agents or invitees pursuant to the City Reserved Rights. If Tenant desires any upgrades to water, gas, electricity or sewerage services in connection with the operation of the Premises, such upgrades shall be subject to City's prior written consent (which shall not be unreasonably withheld, conditioned or delayed) and shall be made at Tenant's sole cost and expense.

**10.2. Interruption of Services.** City's obligation to provide utilities for the Premises are subject to applicable Laws (including the rules or actions of the public utility company furnishing the utility or service), and shutdowns for maintenance and repairs, for security purposes, or due to strikes, lockouts, labor disputes, casualty, acts of God, or other causes beyond the control of City. In the event of an interruption in, or failure or inability to provide any service or utility for the Premises for any reason, such interruption, failure or inability shall not constitute an eviction of Tenant, constructive or otherwise, or impose upon City any liability whatsoever, including, but not limited to, liability for consequential damages or loss of business by Tenant. Tenant hereby waives the provisions of California Civil Code Section 1932(1) or any other applicable existing or future Law permitting the termination of this Lease due to such interruption, failure or inability.

**10.3. Water and Energy Conservation; Mandatory or Voluntary Restrictions.** In the event any law, ordinance, code or governmental or regulatory guideline imposes mandatory or voluntary controls on City or the Premises or any part thereof, relating to the use or conservation of energy, water, gas, light or electricity or the reduction of automobile or other emissions, or the provision of any other utility or service provided with respect to this Lease, or

in the event City is required or elects to make alterations to any part of the Improvements on the Premises in order to comply with such mandatory or voluntary controls or guidelines, such compliance and the making of such alterations shall be done at City's sole cost and shall not entitle Tenant to any damages, relieve Tenant of the obligation to pay any Reimbursement Amounts or to perform each of its other covenants hereunder or constitute or be construed as a constructive or other eviction of Tenant. City shall have the right at any time to install a water meter in the Premises or otherwise to measure the amount of water consumed on the Premises, and the cost of such meter or other corrective measures and the installation and maintenance thereof shall be paid for by City.

**10.4. Antennae.** No antennae or telecommunication dish may be installed on the Premises without the advance written approval of City. If City provides such written approval in writing, such approved antennae or telecommunications dish shall not interfere with City's emergency and non-emergency communications facilities or the transmission facilities of City. Tenant agrees, at the request of City, to permit City to install, at City's sole cost, transmission equipment for City's emergency or 800 MHz City wide radio system communications facilities (or its successor) at a location at the Premises reasonably acceptable to Tenant.

## **11. LIENS**

Tenant shall keep the Premises and the Final Plaza Improvements free from any liens arising out of any work performed, material furnished or obligations incurred by or for Tenant. In the event Tenant does not, within five (5) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, City shall have in addition to all other remedies provided herein and by Law or equity 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 provided that City delivers no less than ten (10) business days prior written notice of its intent to cause the release of such lien to Tenant. If City pays any sums or incurs any expenses in connection therewith (including, without limitation, reasonable attorneys' fees) after the expiration of such ten (10) business notice period, City shall deliver written notice thereof to Tenant, together with reasonable documentation of such sums and expenses, and Tenant shall reimburse City for such sums and expenses within ten (10) business days of receiving such written notice. If Tenant does not timely reimburse City, City shall have the right to deliver a Notice of Default describing such matter to Tenant. 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 the Final Plaza Improvements from mechanics' and materialmen's liens. Tenant shall give City at least fifteen (15) days' prior written notice of the commencement of any 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.

## **12. COMPLIANCE WITH LAWS**

**12.1. Compliance with Laws.** Tenant shall, at its sole expense, perform its obligations under this Lease, conduct its use and operations at the Premises, and cause the uses and operations at the Premises by its Agents and Invitees to be conducted 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.S. §§ 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.

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 hereunder, 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 Reimbursement Amount or in its costs to perform its obligations under this Lease, or to compel City to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

## **12.2. Regulatory Approvals**

**(a) Responsible Party.** Tenant understands and agrees that Tenant's use, management and maintenance of the Premises and the activities of any of Tenant's licensees or permittees at the Premises may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises. Tenant shall be solely responsible for obtaining any and all such regulatory approvals. Tenant shall not seek any regulatory approval without first obtaining the written consent of the Executive Director/CEO, which shall not be unreasonably withheld. 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.

**(b) City Acting as Owner of Real Property.** Tenant understands and agrees that City, acting by and through SFMTA, is entering into this Lease 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 for Tenant's use, management or maintenance of the Premises. By entering into this Lease, City is in no way modifying or limiting Tenant's obligation to cause its use, management or maintenance of the Premises or any Improvements to be in accordance with all applicable Laws, as provided further above.

**12.3. Compliance with City's Risk Management Requirements.** Except in the event of City performance of any activities required to protect public health or safety or needed with respect to the SFPUC Pipelines or the operation of the Relocated Bus Loop (a "**City Service Situation**"), neither Party shall not do anything, or permit anything to be done, in or about the Premises or any Improvements that would create any unusual fire risk, and shall take commercially reasonable steps to protect the Parties from any potential premises liability. Each Party shall faithfully observe, at its expense, any and all reasonable requirements of City's Risk Manager with respect thereto 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 hereunder, provided that City may waive such requirements to the extent necessary to respond to a City Service Situation.

**12.4. Reports.** Tenant shall submit a report and provide such documentation to City as City may from time to time request regarding Tenant's management and maintenance of, and the activities conducted at, the Premises, in compliance thereof with this Lease and all applicable Laws. If Tenant prepares or obtains any report or other informational document relating to the Premises or any Improvements thereon, Tenant shall promptly deliver a copy of such report or document to City.

If, within the sixty (60) day period immediately following the Delivery Date, Tenant delivers a written request to City for documentation regarding City's completion of the City Remediation Work and the compliance of the Final Design and construction of the Final Plaza Improvements in compliance with all applicable Laws, City shall deliver a copy of any written



materials received by City with respect to such matters, together with a written summary of how such matters were completed in compliance with all applicable Laws. If City, acting in its proprietary capacity pursuant to this Lease, prepares or obtains any report or other informational document relating to the Premises or any Improvements thereon, City shall promptly deliver a copy of such report or document to Tenant.

### **13. ENCUMBRANCES; SUBORDINATION**

**13.1. 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 transfer or Encumber its fee estate in any portion of the Premises provided that (i) City retains fee ownership of the Premises, (ii) any such transfer or Encumbrance shall be subject and subordinate to all of the terms of this Lease and the leasehold estate created hereby, (iii) Tenant's right to maintain, manage and operate the Premises shall not be affected or disturbed by any such transfer or Encumbrance, or by the exercise of any rights or remedies by any transferee or Encumbrancer arising out of any instrument reflecting such transfer or encumbrance so long as no Event of Default or Unmatured Event of Default is outstanding hereunder.

(b) **Encumbrance By Tenant.** Tenant shall not under any circumstances whatsoever Encumber in any manner City's estate in the Premises or any adjoining property owned by City, or City's interest under this Lease, or any portion thereof.

**13.2. Leasehold Encumbrances.** Without limiting **Article 15**, Tenant shall not Encumber this Lease or Tenant's interest in this Lease or the Premises, 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 in its sole discretion.

### **14. DAMAGE OR DESTRUCTION**

**14.1. Damage or Destruction to the Improvements.** Except as otherwise set forth in this Section, if the Premises or the Final Plaza Improvements are damaged by casualty, the act of Tenant or any of Tenant's Agents or Invitees (but excluding a default of Tenant's obligations under this Lease, gross negligence, or willful misconduct), or the act of any Private Party (as defined below), and Tenant carries a third-party policy of insurance that complies with the conditions under **Article 19** for such event, Tenant shall deliver written notice of the insurance proceeds that will be available under such insurance policy (the "**Insurance Proceeds**") to repair the damage within five (5) business days of receiving such determination from the insurer providing such insurance policy, which notice shall include Tenant's reasonable determination whether the Insurance Proceeds are sufficient to repair such damage (the "**Insurance Proceeds Notice**"). If the Insurance Proceeds are sufficient to repair the damage, and such damage did not occur during the last fifteen (15) years of the Term, then Tenant shall diligently repair such damage and this Lease shall remain in full force and effect, except that Tenant shall have the right to modify the public use of the Premises to the extent reasonably necessary to make such repair. A "**Private Party**" shall mean any party other than Tenant or any of its Agents, or City or any of its Agents, unless such acting party is the Agency acting in default of its obligations under the Housing Parcel Easements, or a Future Access Right Holder acting in default of its obligations under the document granting such Future Access Right.

If the Premises or the Final Plaza Improvements are damaged by casualty, the act of Tenant or any of Tenant's Agents or Invitees (but excluding a default of Tenant's obligations under this Lease, gross negligence, or willful misconduct), or the act of any Private Party, but Tenant self-insures for such event and such damage does not occur during the last fifteen (15) years of the Term, then Tenant shall diligently repair such damage and this Lease shall remain in

full force and effect, except that Tenant shall have the right to modify the public use of the Premises to the extent reasonably necessary to make such repair.

If the Premises or the Final Plaza Improvements are damaged by casualty, the act of Tenant or any of Tenant's Agents or Invitees (but excluding a default of Tenant's obligations under this Lease, gross negligence, or willful misconduct), or the act of any Private Party during the last fifteen (15) years of the Term, or if Tenant carries a third-party insurance for casualty or the act of any Private Party or of any of Tenant's Agents or Invitees that complies with the conditions of **Article 19**, but the Insurance Proceeds Notice sets forth Tenant's reasonable determination that the Insurance Proceeds are insufficient to repair the damage caused by such matter and Tenant does not elect to provide, at its sole cost, the additional funds necessary to repair such damage, either Party shall have the right to terminate this Lease by delivering written notice thereof to the other Party within the thirty (30) day period immediately following Tenant's delivery written notice of the Insurance Proceeds Notice. If either Party timely terminates this Lease pursuant to this Section, then at City's election, which shall be made in City's sole discretion and in writing, Tenant shall promptly, at its sole cost, demolish such damaged Improvements and remove them (including all debris) from the Premises in compliance with the provisions of **Section 22.1** below, to the extent the Insurance Proceeds are sufficient to perform such demolition and removal, or leave such damaged Improvements at the Premises and assign all Insurance Proceeds received or receivable by Tenant with respect to such damage, and this Lease shall terminate as of the date that Tenant removes the damaged Improvement or City receives such Insurance Proceeds.

**14.2. No City Obligations.** City shall have no obligation to repair the Premises, the Improvements or any of Tenant's Personal Property in the event of any damage or destruction caused by casualty or the act of any Private Party.

**14.3. Waiver.** The Parties understand and agree that 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 hereof.

## **15. EMINENT DOMAIN**

**15.1. General.** If any Taking of all or any part of the Premises or any interest in this Lease occurs after the Effective Date, the rights and obligations of the Parties hereunder 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 automatically 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 untenantable or unsuitable for continued use by Tenant, (B) the condition rendering the Premises untenantable 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, fully perform all of its obligations hereunder.

(b) City shall have the right to terminate this Lease in the event of a partial Taking of a substantial portion of any of City's adjoining real property, even if the Taking does not directly affect the Premises.

(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 (30<sup>th</sup>) day after such written notice is given or the Date of Taking.

**15.4. Award.** Upon termination of this Lease pursuant to an election under **Section 15.3**, then 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 Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's Personal Property.

**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**, 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, 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, Tenant shall continue to perform all of the terms, conditions and covenants of this Lease. City shall be entitled to receive any Award in the event of such temporary Taking.

## **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, any Improvements or its leasehold estate hereunder (collectively, "**Assignment**"), or 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**"); provided, however, that any assignment of management obligations pursuant to **Section 16.4** and the issuance of any permit to third party in compliance with the Management Plan shall not be deemed an "Assignment" or a "Sublease". Any Assignment or Sublease shall be voidable at the option of the City in its sole and absolute discretion; and the City shall have the right to terminate immediately this Lease by sending written notice to Tenant.

**16.2. Effect of Transfer.** If City consents to a proposed Sublease or Assignment, no such Sublease or Assignment by Tenant shall relieve Tenant, or any guarantor, of any obligation to be performed by Tenant under this Lease. Any Sublease or Assignment made without City's prior written consent shall constitute a material Event of Default by Tenant under this Lease. The acceptance of any Reimbursement Amount or other payments by City from a proposed Transferee shall not constitute consent to such Sublease or Assignment by City or a recognition of any Transferee, or a waiver by City of any failure of Tenant or other transferor to comply with this Section.

**16.3. Indemnity for Relocation Benefits.** Without limiting **Section 16.2**, 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.

**16.4 Assignment of Management Obligations.** Tenant may arrange for a third party to manage the Premises in compliance with the terms and conditions of this Lease subject to the prior written approval of such third party management by the Executive Director/CEO, which shall not be unreasonably withheld.

## **17. DEFAULT; REMEDIES**

**17.1. Events of Default.** If either Party determines that the other Party is in default of its obligations under this Lease, such Party shall have the right to deliver written notice of such determination to the other Party (a "**Notice of Default**"). Any of the following shall constitute an event of default ("**Event of Default**") hereunder:

(a) **Failure to Reimburse.** Tenant's failure to deliver a Reimbursement Amount to City as and when due, provided Tenant shall have a period of three (3) days from the date of City's delivery of a Notice of Default describing such failure within which to cure the failure described in such Notice of Default.

(b) **Covenants, Conditions and Representations.** A Party's failure to perform or comply with any other covenant, condition or representation made by such Party under this Lease, provided such Party shall have a period of fifteen (15) days from the date of receiving a Notice of Default describing such failure from the other Party within which to cure such default under this Lease; provided that if such failure is not capable of cure within such fifteen (15) day period, such Party shall have a reasonable period to complete such cure if such Party promptly undertakes action to cure such default within such fifteen (15) day period and thereafter diligently prosecutes the same to completion, and such Party uses its best efforts to complete such cure within sixty (60) days after the receipt of Notice of Default from the other Party.

(c) **Vacation or Abandonment.** Any vacation or abandonment of the Premises by Tenant for more than fourteen (14) consecutive days.

(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.**

(a) **Default by Tenant.** If there is an 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:

(i) **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 Rent 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.

**(ii) 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 in 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 Rent due hereunder, the cost of such subletting and such alterations and repairs incurred by City and the amount, if any, by which the Rent owing hereunder for the period of such subletting (to the extent such period does not exceed the Term) exceeds the amount of Rent for the Premises for such period pursuant to such subletting. No action taken by City pursuant to this **Section 17.2(a)(ii)** 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.

**(iii) 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.

**(iv) City's Right to Cure Tenant's Defaults.** If Tenant defaults in the performance of any of its obligations under this Lease, then City may, at any time following the third (3<sup>rd</sup>) day following City's delivery of a Notice of Default therefor Tenant (except in the event of an emergency as determined by City), remedy such Event of Default for Tenant's account and at Tenant's expense. Tenant shall pay to City, 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. Any City demand for such payment shall be in writing and include reasonable detail and documentation of the sums, costs, damages, expenses or liabilities described in such demand. Tenant's obligations under this Section shall survive the termination of this Lease. Nothing herein 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.

**(b) Default by City.** If there is an occurrence of an Event of Default by City, and such Event of Default reasonably prevents Tenant from performing its management or maintenance obligations under this Lease, Tenant shall be excused from performing such obligations (to the extent such performance is prevented by City's Event of Default) until such Event of Default is cured.

## **18. INDEMNIFICATION**

Tenant shall defend, indemnify, and hold harmless City and its officers, directors, employees, and agents from any and all claims and liabilities related to or as a result of Tenant's performance of its obligations under this Lease, except to the extent caused, in whole or in part,

by the gross negligence or willful misconduct of City or its Agents. City shall defend, indemnify, and hold harmless Tenant and its officers, directors, employees, and agents from any and all claims and liabilities related to or as a result of City's performance of its obligations under this Lease, except to the extent caused, in whole or in part, by the gross negligence or willful misconduct of Tenant or its Agents.

Such indemnification obligations shall include any Losses resulting from a Party's default of its obligations under **Article 23**, including any Release of Hazardous Material in, on, under or about the Premises (including any Improvements thereon) and the extent to which such Release migrates onto other property owned by the other Party, and all Hazardous Materials Claims. Such Losses 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.

## **19. INSURANCE**

**19.1. Tenant's Insurance.** Tenant, at no cost to the City, shall procure and keep in effect at all times during the Term insurance as follows:

(a) Commercial general liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence and Two Million Dollars (\$2,000,000) aggregate, combined single limit for bodily injury and property damage, including contractual liability, independent contractors, broad-form property damage, fire damage legal liability (of not less than Two Hundred Fifty Thousand Dollars (\$250,000)), personal injury, products and completed operations, and explosion, collapse and underground (XCU).

(b) Worker's Compensation Insurance with Employer's Liability Limits not less than One Million Dollars (\$1,000,000) each accident.

(c) All risk property insurance policy in an amount equal to one hundred percent (100%) of the full insurance replacement value (replacement cost new, including, debris removal and demolition) of the Final Plaza Improvements and any Future Tenant Improvements, without any reduction in coverage for any act of Tenant's Agents or Invitees that is not a default of Tenant's obligations under this Lease, gross negligence, or willful misconduct.

(d) Such other risks in such amounts as City's Risk Manager may from time to time reasonably require.

**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 hereof 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 double the occurrence or claims limits specified above.

(c) All liability insurance policies shall name Tenant as the insured and the City and County of San Francisco, its officers, agents and employees, as additional insureds, as their respective interests may appear hereunder, and endorsed to provide the following:

(i) 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.

(ii) Provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

(iii) All policies shall be endorsed to provide thirty (30) days' advance written notice to City of cancellation, non-renewal or reduction in coverage, mailed to the address(es) for City set forth in the Basic Lease Information.

(d) Each insurance policy required hereunder shall be issued by an insurance company licensed in the State of California and with a general policyholders' rating of "A-" or better and a financial size ranking of "Class VIII" or higher in the most recent edition of Best's Insurance Guide.

**19.3. Proof of Insurance.** Tenant shall deliver to City certificates of insurance in form and with insurers satisfactory to City, evidencing the coverages required hereunder, on or before the Delivery 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 thirty (30) 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 **Article 18** hereof 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, in 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 and Alterations and Improvements.** Tenant shall be responsible, at its expense, for separately insuring Tenant's Personal Property, Alterations, and Improvements made by or on behalf of Tenant.

**19.8. Self Insurance.** Tenant acknowledges that City self-insures against casualty, property damage and public liability risks and agrees City shall not be required to carry any third party insurance with respect to the Premises or otherwise. Tenant shall have the right to self-insure for the general liability risks and workers compensation insurance required under **Section**

**19.1** and City agrees that Tenant shall not be required to carry any third party insurance for general liability and workers compensation.

**19.9. Waiver of Subrogation.** Notwithstanding anything to the contrary contained herein, to the extent permitted by their respective policies of insurance, each Party hereby waives any right of recovery against the other Party and against any other Party maintaining a policy of insurance covering the Premises or other City property and their contents, or any portion thereof, for any loss or damage maintained by such other Party with respect to the Premises, other City Property or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other Party. If any policy of insurance relating to the Premises or other City property carried by Tenant does not permit the foregoing waiver or if the coverage under any such policy would be invalidated due to such waiver, Tenant shall obtain, if possible, from the insurer under such policy a waiver of all rights of subrogation the insurer might have against City or any other party maintaining a policy of insurance covering the same loss, in connection with any claim, loss or damage covered by such policy.

## **20. ACCESS BY CITY**

### **20.1. Access to Premises by City.**

**(a) General Access.** In addition to the access reserved to City pursuant to **Section 3.3**, 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 of the following purposes:

(i) To determine whether the Premises are in good condition and to inspect the Premises (including, without limitation, soil borings or other Hazardous Material Investigations);

(ii) To determine whether Tenant is in compliance with its obligations hereunder and to cure or attempt to cure any such default in accordance with the provisions of **Section 17.2(a)**;

(iii) To serve, post or keep posted any notices required or allowed under any of the provisions of this Lease;

(iv) To do any maintenance or repairs to the Premises that City has the right or the obligation, if any, to perform hereunder; and

(v) To show it to any prospective purchasers, brokers, Encumbrancers or public officials, or, during the last year of the Term of this Lease, exhibiting the Premises to prospective tenants or other occupants, and to post any "for sale" or "for lease" signs in connection therewith.

**(b) Emergency Access.** In the event of any emergency, as determined by City, City may, at its sole option and without notice, 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 an 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 damage resulting directly and exclusively



from the gross negligence or willful misconduct of City or its Agents and not contributed to by the acts, omissions or negligence of Tenant, its Agents or Invitees.

**(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 use hereunder.

**20.2. City Facilities and Utility Installations.** Without limiting **Section 20.1**, City shall have the right at all times, to enter upon the Premises upon forty eight (48) hours advance written or oral notice (except in cases of emergency as determined by City), to use, install, construct, repair, maintain, operate, replace, inspect, and remove the City Facilities, including any of the SFPUC Pipelines or any Third Party Utilities. City shall bear the expense of any such activities, unless the need is occasioned by the gross negligence or willful misconduct of Tenant or its Agents or Invitees or any default by Tenant of its obligations under this Lease. 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, and such temporary loss or disruption shall not be deemed to be Tenant's default of its obligations under this Lease.

**20.3. Rights of Public.** Tenant shall keep the Premises open to the public at all times consistent with the Permitted Uses, subject to the Rules and Regulations, the Management Plan, **Section 7.5** or as otherwise approved by the Executive Director/CEO in writing.

## **21. ESTOPPEL CERTIFICATES**

Either Party hereto 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 Delivery Date and 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 defaults under this Lease (or if so, specifying the same), (d) the dates, if any, to which any Reimbursement Amounts have been paid, and (e) any other information that may be reasonably required by any such persons or entities. Any such certificate delivered pursuant to the provisions hereof may be relied upon by the other Party or any prospective purchaser or Encumbrancer of its estate. The Executive Director/CEO shall be authorized to execute, acknowledge and deliver any such certificates of the City.

## **22. SURRENDER**

**22.1. Surrender of the Premises.** Upon the Expiration Date or any earlier termination of this Lease pursuant hereto, Tenant shall surrender to City the Premises, in good condition, order and repair, free from debris and hazards, and free and clear of all liens, easements and other Encumbrances created or suffered by, through or under Tenant, and with all Tenant's Personal Property removed therefrom. On or before the Expiration Date or any earlier termination hereof, or later upon City's request, Tenant shall, at its sole cost, remove any and all of Tenant's Personal Property from the Premises and demolish and remove any and all Future Tenant Improvements from the Premises requested by City to be removed (except for any Future Tenant Improvements that City agrees are to remain part of the Premises pursuant to the provisions of **Section 8.2**). In addition, Tenant shall, at its sole expense, repair any damage to the Premises resulting from the removal of any such items and restore the Premises to their condition immediately prior to the presence of any Future Tenant Improvement. In connection therewith, Tenant shall obtain any and all necessary permits and approvals, including, without limitation, any environmental permits, and execute any manifests or other documents necessary to complete the demolition, removal or restoration work required hereunder. 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 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, all Losses resulting therefrom shall include, without limitation, all Losses made by a succeeding tenant or licensee at the Premises as a result of Tenant's failure to surrender the Premises.

**22.2. Automatic Reversion.** Upon the Expiration Date or earlier termination of this Lease, the Premises and any Future Tenant Improvements that Tenant is entitled to leave at the Premises under **Section 8.2** or **Section 22.1** 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 hereunder and to effect such transfer or vesting of title to the Premises or any Future Tenant Improvements that Tenant is entitled to leave at the Premises under **Section 8.2** or **Section 22.1**.

### **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. 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 hereunder is being handled in compliance with all applicable Environmental Laws, and Tenant shall promptly provide all such information. Without limiting **Article 20**, City and its Agents shall have the right to inspect the Premises for Hazardous Material and compliance with the provisions hereof at all reasonable times upon reasonable advance oral or written notice to Tenant (except in the event of an emergency).

City covenants and agrees that neither City nor any of its Agents or any of its licensees 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 except to the extent reasonably required to maintain, repair, replace, operate or install the SFPUC Pipelines. City shall immediately notify Tenant if and when City learns or has reason to believe there has been any Release of Hazardous Material in, on or about the Premises or any Improvements. Tenant may from time to time request City to provide adequate information for Tenant to determine that any Hazardous Material permitted hereunder is being handled in compliance with all applicable Environmental Laws, and City shall promptly provide all such information. Without limiting **Article 20**, Tenant and its Agents shall have the right to make noninvasive inspections of the Premises for Hazardous Material and compliance with the provisions hereof at all reasonable times upon reasonable advance oral or written notice to City (except in the event of an emergency).

**23.2 Remediation.** If Tenant or any of its Agents or Invitees causes or permits the Release of any Hazardous Materials in, on, under or about the Premises, Tenant shall, immediately, at no expense to City, take any and all appropriate actions to return the Premises and any property owned by City (if such Hazardous Materials migrate from the Premises onto such other City property) 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 that is Released by Tenant. Tenant shall not be responsible for remediating any environmental condition existing at the Premises on the Delivery Date, except to the extent that such condition was released or otherwise exacerbated by Tenant's gross negligence or willful misconduct. Nothing in this Section shall be deemed to release City from its obligations to perform the City Remediation Work pursuant to **Section 5.3(b)**.

If City or any of its Agents or invitees causes or permits the Release of any Hazardous Materials in, on, under or about the Premises, City shall, immediately, at no expense to Tenant, take any and all appropriate actions to return the Premises and any property owned by Tenant (if such Hazardous Materials migrate from the Premises onto such other Tenant property) to the condition existing prior to such Release and otherwise Investigate and Remediate the Release in accordance with all Environmental Laws. City shall provide Tenant with written notice of and afford Tenant 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 that is Released by City.

## **24. GENERAL PROVISIONS**

**24.1. Notices.** Except as otherwise expressly provided in this Lease, any notice given hereunder 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 at Tenant's address set forth in the Basic Lease Information, if sent prior to Tenant's taking possession of the Premises, (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 prior to the effective date of such change. Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first-class or certified mail, one day after the date it is made if sent by commercial overnight courier, or upon the date personal delivery is made, and any refusal by either Party to accept the attempted delivery of any notice, if such attempted delivery is in compliance with this **Section 24.1** and applicable Laws, shall be deemed receipt of such notice. For convenience of the Parties, copies of notices may also be given by telefacsimile to the telefacsimile number set forth in the Basic Lease Information or such other number as may be provided from time to time; however, neither Party may give official or binding notice by telefacsimile. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a telefacsimile copy of the notice.

**24.2. No Implied Waiver.** No failure by City to insist upon the strict performance of any obligation of Tenant under this Lease or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, no acceptance of full or partial Rent or Reimbursement Amounts during the continuance of any such breach, or possession of the Premises prior to the expiration of the Term by any Agent of City, shall constitute a waiver of such breach or of City'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 hereof 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 hereof shall not be deemed to be a waiver of a subsequent default or performance. The consent of City given in any instance under the terms of this Lease shall not relieve Tenant of any obligation to secure the consent of City in any other or future instance under the terms of this Lease.

**24.3. Amendments.** Neither this Lease nor any term or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the Parties

hereto. Whenever this Lease requires or permits the giving by City of its consent or approval, the Executive Director/CEO shall be authorized to provide such approval, except as otherwise provided by applicable law, including the Charter. Any amendments or modifications to this Lease, including, without limitation, amendments to or modifications to the exhibits to this Lease, shall be subject to the mutual written agreement of City and Tenant, and City's agreement may be made upon the sole approval of the Executive Director/CEO provided such amendment or modification does not (i) decrease the amount of rental income payable by Tenant to City, (ii) materially increase City's liabilities or financial obligations under this Lease, (iii) materially increase the size of the Premises, (iv) change the Term of this Lease, or (v) materially change the permitted uses of the Premises. Any proposed amendment which falls into the above specified categories shall require the approval of the Commission, and, if required under the City's Charter or Administrative Code, the Mayor, and the Board of Supervisors.

**24.4. Joint and Several Obligations.** The word "Tenant" as used herein 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.

**24.5. 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 herein 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 herein, whenever the consent of City is required to be obtained by Tenant hereunder, City may give or withhold such consent in its sole and absolute discretion. All such consents may be made by the Executive Director/CEO acting alone, unless stated to the contrary herein.

**24.6. Successors and Assigns.** Subject to the provisions of **Article 16** relating to 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 herein, their personal representatives and successors and assigns.

**24.7. 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 herein 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. The provisions of this Section shall survive any termination of this Lease.

**24.8. Severability.** If any provision of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, 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.

**24.9. Governing Law.** This Lease shall be subject to, and construed and enforced in accordance with, the Laws of the State of California and the City's Charter and Administrative Code.

**24.10. Entire Agreement.** This instrument (including the exhibits hereto, 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 of this Lease and any changes therefrom) 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 herein, and no rights, easements or licenses are or shall be acquired by Tenant by implication or otherwise unless expressly set forth herein. City hereby acknowledges that neither Tenant nor Tenant's Agents have made any representations or warranties with respect to the Premises or this Lease except as expressly set forth herein.

**24.11. 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 Party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other Party in enforcing or establishing its rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Lease, reasonable fees of attorneys of 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.

**24.12. 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.

**24.13. Cumulative Remedies.** All rights and remedies of either Party hereto set forth in this Lease shall be cumulative, except as may otherwise be provided herein.

**24.14. Survival of Indemnities.** Termination of this Lease shall not affect the right of either Party to enforce any and all indemnities, waivers 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 hereof. Tenant specifically acknowledges and agrees that, with respect to each of the indemnities by Tenant contained in this Lease, Tenant has an immediate and independent obligation to defend City and the City Indemnified Parties from any claim which 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. City specifically acknowledges and agrees that, with respect to each of the indemnities by City contained in this Lease, City has an immediate and independent obligation to defend Tenant and the Tenant Indemnified Parties from any claim which 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 City by Tenant and continues at all times thereafter.

**24.16. Relationship of Parties.** Neither Party is, and none of the provisions in this Lease shall be deemed to render a Party, a partner in the other Party's business, or joint venturer or member in any joint enterprise with the other Party. Neither Party shall act as the agent of the other Party in any respect hereunder, and neither Party shall have any authority to commit or bind the other Party without such Party's consent as provided herein. 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.

**24.17. Transfer by City.** If City sells or otherwise transfers the Premises, City shall be released from its obligations hereunder 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 the Premises, or any portion thereof.

**24.18. Recording.** Tenant agrees that it shall not record this Lease in the Official Records.

**24.19. Non-Liability of City Officials, Employees and Agents.** No elective or appointive board, commission, member, officer, employee or other Agent of either Party shall be personally liable to Tenant, its successors and assigns, in the event of any default or breach by such Party or for any amount which may become due to the other Party, its successors and assigns, or for any obligation of either Party under this Lease or otherwise.

**24.20. Wages and Working Conditions.** With respect to the construction of any Improvements or Alterations, any employee performing services for Tenant shall be paid not less than the highest prevailing rate of wages, 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 City and County of San Francisco. Tenant shall require any contractor to provide, and shall deliver to City every calendar month during any construction period, certified payroll reports with respect to all persons performing labor in the construction of any Improvements or Alterations on the Premises.

**24.21. Prevailing Wages for Theatrical Workers.** Pursuant to San Francisco Administrative Code Section 21.25-3, unless excepted, Contracts, Leases, Franchises, Permits, and Agreements awarded, let, issued or granted by the City and County of San Francisco for the use of property owned by the City and County of San Francisco shall require any Employee engaged in theatrical or technical services related to the presentation of a Show to be paid not less than the Prevailing Rate of Wages. Employees engaged in theatrical and technical services include, without limitation, those engaged in rigging, sound, projection, theatrical lighting, videos, computers, draping, carpentry, special effects, and motion picture services. Capitalized terms in this Section that are not defined in this Lease shall have the meanings provided in Administrative Code Section 21.25-3. Tenant agrees to comply with and be fully bound by, and to require its Subcontractors to comply with and be fully bound by, the provisions of Administrative Code Section 21.25-3, including, without limitation, the payment of any penalties for noncompliance and other remedies available to the City. The provisions of Administrative Code Section 21.25-3 are hereby incorporated by reference and made a part of this Lease. Tenant shall cooperate fully with the Labor Standards Enforcement Officer and any other City official or employee, or any of their respective agents, in the administration and enforcement of the requirements of Administrative Code Section 21.25-3, including, without limitation, any investigation of noncompliance by Tenant or its Subcontractors. Tenant agrees that the City may inspect and/or audit any workplace or job site involved in or related to the performance of this Lease, including, without limitation, interviewing Tenant's and any Subcontractor's employees and having immediate access to employee time sheets, payroll records, and paychecks for inspection. Tenant may obtain a copy of the current Prevailing Rate of Wages from City by contacting its Office of Labor Standards Enforcement. Tenant acknowledges that the City's Board of Supervisors may amend such Prevailing Rate of Wages and agrees that Tenant and any Subcontractors shall be bound by and shall fully comply with any such amendments by the Board of Supervisors.

**24.22. Intellectual Property; Music Broadcasting Rights.** Tenant shall be solely responsible for obtaining any necessary clearances or permissions for the use of intellectual property on the Premises, including, but not limited to musical or other performance rights. (Note to Tenant: To obtain the appropriate music performance license, you may contact the BMI Licensing Executive toll free at 1-877-264-2137 Monday – Friday, 9-5 p.m. (Central Time) and the American Society of Composers, Authors and Publishers ("ASCAP") at 1-800-505-4052 Monday – Friday, 9-5 p.m. (Eastern Time).)

**24.23. Supervision of Minors.**

(a) **Records Request.** If any person applies for employment or for a volunteer position with Tenant, or any sublessee or subcontractor, in which such applicant would have supervisory or disciplinary power over a minor or any person under such applicant's care, then Tenant, and any sublessee or subcontractors providing services at the Premises, shall request from the California Department of Justice records of all convictions or any arrest pending adjudication of such applicant involving the offenses listed in Welfare and Institution Code Section 15660(a), in accordance with the procedures established in California Penal Code Section 11105.3.

(b) **Restriction on Hires for Recreational Sites.** If Tenant, or any sublessee or subcontractor, is providing services under this Lease at a City park, playground, recreational center or beach (separately and collectively, "Recreational Site"), Tenant shall not hire, and shall prevent its subcontractors from hiring, any person for employment or a volunteer position to provide supervisory or disciplinary power over a minor or any person under his or her care if that person has been convicted of any offense listed in Welfare and Institution Code Section 15660(a).

(c) **Notice Required for Sites Other Than Recreational Sites.** If Tenant, or any of its sublessees or subcontractors, hires an employee or volunteer to provide services to minors at any location other than a Recreational Site, and that employee or volunteer has been convicted of an offense specified in Penal Code Section 11105.3(c), then Tenant shall comply, and cause its sublessees and subcontractors to comply, with Penal Code Section 11105.3(c) and provide written notice to the parents or guardians of any minor who will be supervised or disciplined by the employee or volunteer not less than ten (10) days prior to the day the employee or volunteer begins his or her duties or tasks. Tenant shall provide, or cause its sublessees or subcontractors to provide, City with a copy of any such notice at the same time that it provides notice to any parent or guardian, to the extent permitted by law.

(d) **General Requirements.** Tenant shall expressly require any of its subcontractors with supervisory or disciplinary power over a minor to comply with this Section of the Lease as a condition of its contract with the subcontractor. Tenant acknowledges and agrees that failure by Tenant or any of its subcontractors to comply with any provision of this Section of this Lease shall constitute an Event of Default. Tenant further acknowledges and agrees that such Event of Default shall be grounds for the City to terminate the Lease, partially or in its entirety, to recover from Tenant any amounts paid under this Lease, and to withhold any future payments to Tenant. The remedies provided in this Section shall not limited any other remedy available to the City hereunder, or in equity or law for an Event of Default, and each remedy may be exercised individually or in combination with any other available remedy. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

**24.24. Employee Signature Authorization Ordinance.** City has enacted an ordinance at Chapter 23, Article VI of its Administrative Code, commencing at Section 23.50 (the "**Ordinance**"), which may apply to employers of employees in hotel or restaurant projects on City property with more than fifty (50) employees. The terms of the Ordinance are expressly incorporated herein by reference. To the extent Tenant or its successors or assigns employs employees in a hotel or restaurant in the Premises within the scope of the Ordinance, Tenant hereby agrees as a material condition of this Lease to enter into and abide by a Card Check

Agreement with a Labor Organization or Organizations seeking to represent Tenant's employees, if and as required by the Ordinance, and to otherwise fully comply with the requirements of the Ordinance. Tenant recognizes that, if the Ordinance applies to Tenant's operations on the Premises, Tenant must enter into a Card Check Agreement with a Labor Organization(s) as specified by the Ordinance before executing this Lease, and that being party to such a Card Check Agreement(s) is a condition precedent of rights or obligations under this Lease.

#### **24.25. Non-Discrimination in City Contracts and Benefits Ordinance.**

**(a) Covenant Not to Discriminate.** In the performance of this Lease, Tenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, height, weight, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Tenant, in any of Tenant's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Tenant.

**(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 Sublessee 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 sublessees 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, in any of its operations in San Francisco 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 herein. 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.

**24.26. 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.

**24.27. MacBride Principles - Northern Ireland.** The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, *et seq.* The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Tenant acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

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

**24.29. Tropical Hardwood and Virgin Redwood Ban.** Tenant shall not permit the use of any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product in or on the Premises or otherwise in the performance of this Lease. The City and County of San Francisco 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. In the event Tenant fails to comply in good faith with any of the provisions of Section 12I of the San Francisco Administrative 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 greatest. Tenant acknowledges and agrees that the liquidated damages assessed shall be payable to the City and County of San Francisco upon demand and may be set off against any monies due to Tenant from any contract with the City and County of San Francisco.

**24.30. Tobacco Product Advertising Prohibition.** Tenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the City, including the property which is the subject of this Lease. This 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 prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

**24.31. First Source Hiring Ordinance.** The provisions of San Francisco Administrative Code Chapter 83, the First Source Hiring Program, are incorporated in this Section by reference, and are made a material part of this Lease as though fully set forth herein. As an essential term of, and consideration for, this Lease, unless exempted by the City's Office of Economic and Workforce Development, Tenant shall enter into a First Source Hiring Agreement with the City, on or before the effective date of the Lease. Tenant shall keep, and provide to the City, accurate records demonstrating its compliance with the First Source Hiring Program. Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the Office of Economic and Workforce Development.

**24.32. Sunshine Ordinance.** In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between City and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public upon request.

**24.33. Counterparts.** This Lease may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

**24.34. Vending Machine/Non-alcoholic Beverage Contract.** Tenant hereby agrees to abide by any and all provisions of any contract entered into by City for the purpose of the sales of non-alcoholic beverages at City-owned facilities.

**24.35. No Light, Air or View Easement.** Any diminution or shutting off of light, air or view by any structure which may be erected on lands adjacent to the Premises shall in no way affect this Lease or impose any liability on City as landlord under this Lease.

**24.36. Inability to Perform.** If City is unable to perform or is delayed in performing any of its obligations under this Lease by reason of acts of God, accidents, breakage, repairs, strikes, lockouts, other labor disputes, protests, riots, demonstrations, inability to obtain utilities or materials or by any other reason beyond City's reasonable control, no such inability or delay shall constitute an eviction under this Lease, or impose any liability upon City or its Agents by reason of inconvenience, annoyance, interruption, injury or loss to or interference with Tenant's business or use and occupancy or quiet enjoyment of the Premises or any loss or damage occasioned thereby. If Tenant is unable to perform or is delayed in performing any of its obligations under this Lease by reason of acts of God, accidents, breakage, repairs, strikes, lockouts, other labor disputes, protests, riots, demonstrations, inability to obtain utilities or materials or by any other reason beyond Tenant's reasonable control, no such inability or delay shall constitute a termination of this Lease, or impose any liability upon Tenant or its Agents by reason of inconvenience, annoyance, interruption, injury or loss to or interference with any of the City Reserved Rights or any loss or damage occasioned thereby.

**24.37. 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 approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, 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 prospective party to the contract; each member of Tenant's board of directors, chairperson, 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. Tenant further agrees to provide to City the name of the each person, entity or committee described above.

**24.38. Public Transit Information.** Tenant shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Tenant employed on the Premises, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Premises and encouraging use of such facilities, all at Tenant's sole expense.

**24.39. Drug-Free Workplace.** Tenant acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City premises. Tenant agrees that any violation of this prohibition by Tenant, its Agents or assigns shall be deemed a material breach of this Lease.

**24.40. Preservative-Treated Wood Containing Arsenic.** Tenant may not purchase preservative-treated wood products containing arsenic in the performance of this Lease unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Tenant may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Tenant from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

**24.41. Resource Efficiency.** Tenant acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 707 relating to resource-efficient buildings and resource-efficient pilot projects. Tenant hereby agrees that it shall comply with all applicable provisions of such code sections.

**24.42. Food Service Waste Reduction Requirements.** Tenant agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Lease as though fully set forth. 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; further, Tenant agrees that the sum of \$100 liquidated damages for the first breach, \$200 liquidated damages for the second breach in the same year, and \$500 liquidated damages for subsequent breaches in the same year is 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 amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Tenant's failure to comply with this provision.

**24.43. No Smoking in City Parks.** Tenant agrees to comply with Section 1009.81 of the San Francisco Health Code with respect to the Premises, which provides: "Smoking is prohibited on any unenclosed area of property in the City and County of San Francisco that is open to the public and under the jurisdiction of the Recreation and Park Commission or any other City department if the property is a park, square, garden, sport or playing field, pier, or other property used for recreational purposes, or a farmers' market."

**24.44. Prohibition of the Sale of Lottery Tickets.** The selling of any lottery tickets on the Premises is expressly prohibited.

**24.45. Graffiti Removal.** Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti. Tenant shall remove all graffiti from the Premises within forty eight (48) hours of the earlier of Tenant's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 *et seq.*) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 *et seq.*). Any failure of Tenant to comply with this Section of this Lease shall constitute an Event of Default of this Lease.

## **25. QUALITY OF SERVICES AND PRODUCTS OFFERED**

Tenant hereby agrees that any food and refreshments offered for sale at the Premises shall be in compliance with the Management Plan and be of good quality and that the service shall be prompt, clean, courteous, and efficient. SFMTA shall have the right to raise reasonable objections to the quality of the food, beverages, and service(s) provided and Tenant shall have the obligation to address those objections by modifying the causes of those objections until corrected to the satisfaction of SFMTA.

## **26. PARTICIPATION IN CITY CUSTOMER SATISFACTION PROGRAM**

Tenant hereby agrees to participate in any customer satisfaction program developed by the City, provided that the participation requirements of the Customer Satisfaction Program shall be reasonable.

## **27. SIGNS AND ADVERTISING**

Tenant hereby agrees not to erect or maintain, nor permit to be erected or maintained, upon any part of the Premises, any signs or advertising improvements (including tables, booths and kiosks) unless such signs or advertising improvements comply with the Management Plan or Tenant receives prior written approval thereto from the Executive Director/CEO, which approval may be withheld in his or her sole discretion.

## **28. SUSTAINABLE FOODS.**

"Sustainable foods" are those which, through their production, purchase, and consumption, enhance the health of the environment, producers and consumers through one or more of these methods: growing, processing and distributing locally; using low or no synthetic agricultural chemicals; fairly trading with developing countries; meeting animal welfare standards; processing minimally; no genetic modification; no unnecessary antibiotics; and no added growth hormones.

Tenant shall use commercially reasonable efforts to incorporate sustainable food concepts into everyday operations of the business on the Premises. City encourages Tenant to source sustainable foods by buying certified and/or locally produced food products. Acceptable sustainability certifications are limited to organic certification under the National Organic Standards Act ("USDA Organic), Fair Trade certification, Protected Harvest certification, Food Alliance certification, Rainforest Alliance certification, Certified Humanely Raised and Handled certification, American Humane certification, Marine Stewardship Council certification, and Salmon-Safe certification. Sustainability-related product claims that are acceptable under this clause include "grass-fed" claims, "not treated with artificial growth hormones (RBGH)" claims," produced without the nontherapeutic use of antibiotics" claims, and "raised without added hormones/no hormones added" claims.

Locally produced food products are produced within 200 miles of San Francisco including the following counties in the North Coast, Central Coast, Sacramento and San Joaquin Valleys: Alameda, Amador, Butte, Calaveras, Colusa, Contra Costa, El Dorado, Fresno, Glenn, Kern, Kings, Lake, Madera, Marin, Mariposa, Mendocino, Merced, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Sierra, Solano, Sonoma, Stanislaus, Sutter, Tehama, Tulare, Tuolumne, Yolo, and Yuba counties.

Tenant shall also provide an annual report on each anniversary of the Delivery Date of how Tenant incorporated these sustainable food concepts into everyday operations of any food or beverage concession at the Premises and how Tenant informed customers and the youth employed by the Tenant at the Premises, if any, regarding sustainable foods. This report shall include the percentage of total sales that were products certified as sustainably produced.

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 HERETO UNLESS AND UNTIL LEGISLATION FOR THE APPROVAL OF THIS LEASE AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY IS DULY ADOPTED BY SFMTA'S BOARD OF DIRECTORS, THE CITY'S BOARD OF SUPERVISORS AND MAYOR. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON PASSAGE OF SUCH LEGISLATION, AND THIS LEASE SHALL NOT BE EFFECTIVE UNLESS AND UNTIL THIS LEASE IS APPROVED BY SFMTA'S BOARD OF DIRECTORS AND THE CITY'S BOARD OF SUPERVISORS AND MAYOR, EACH IN ITS SOLE AND ABSOLUTE DISCRETION, AND IN ACCORDANCE WITH ALL APPLICABLE LAWS.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, CITY ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF TENANT HAS AUTHORITY TO COMMIT TENANT HERETO UNLESS AND UNTIL LEGISLATION FOR THE APPROVAL OF THIS LEASE AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY IS DULY ADOPTED BY TENANT'S BOARD OF TRUSTEES. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF TENANT HEREUNDER ARE CONTINGENT UPON PASSAGE OF SUCH LEGISLATION, AND THIS LEASE SHALL NOT BE EFFECTIVE UNLESS AND UNTIL THIS LEASE IS APPROVED BY TENANT'S BOARD OF TRUSTEES IN ITS SOLE AND ABSOLUTE DISCRETION, AND IN ACCORDANCE WITH ALL APPLICABLE LAWS.

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

**TENANT:**

SAN FRANCISCO COMMUNITY COLLEGE DISTRICT, an institution of higher education organized under the State of California Education Code

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

APPROVED AS TO FORM:

SHUTE, MIHALY & WEINBERGER, LLP

By: \_\_\_\_\_  
Deborah L. Miller

**[CITY'S SIGNATURE ON FOLLOWING PAGE]**

**CITY:**

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation, acting by and through the  
San Francisco Municipal Transportation Agency

By: \_\_\_\_\_  
Debra A. Johnson  
Acting Executive Director/CEO

Date: \_\_\_\_\_

San Francisco Municipal Transportation  
Agency  
Board of Directors  
Resolution No. \_\_\_\_\_  
Adopted: \_\_\_\_\_  
Attest:

\_\_\_\_\_  
Secretary, SFMTA Board of Directors

By: \_\_\_\_\_  
John Updike  
Acting Director of Real Property

Date: \_\_\_\_\_

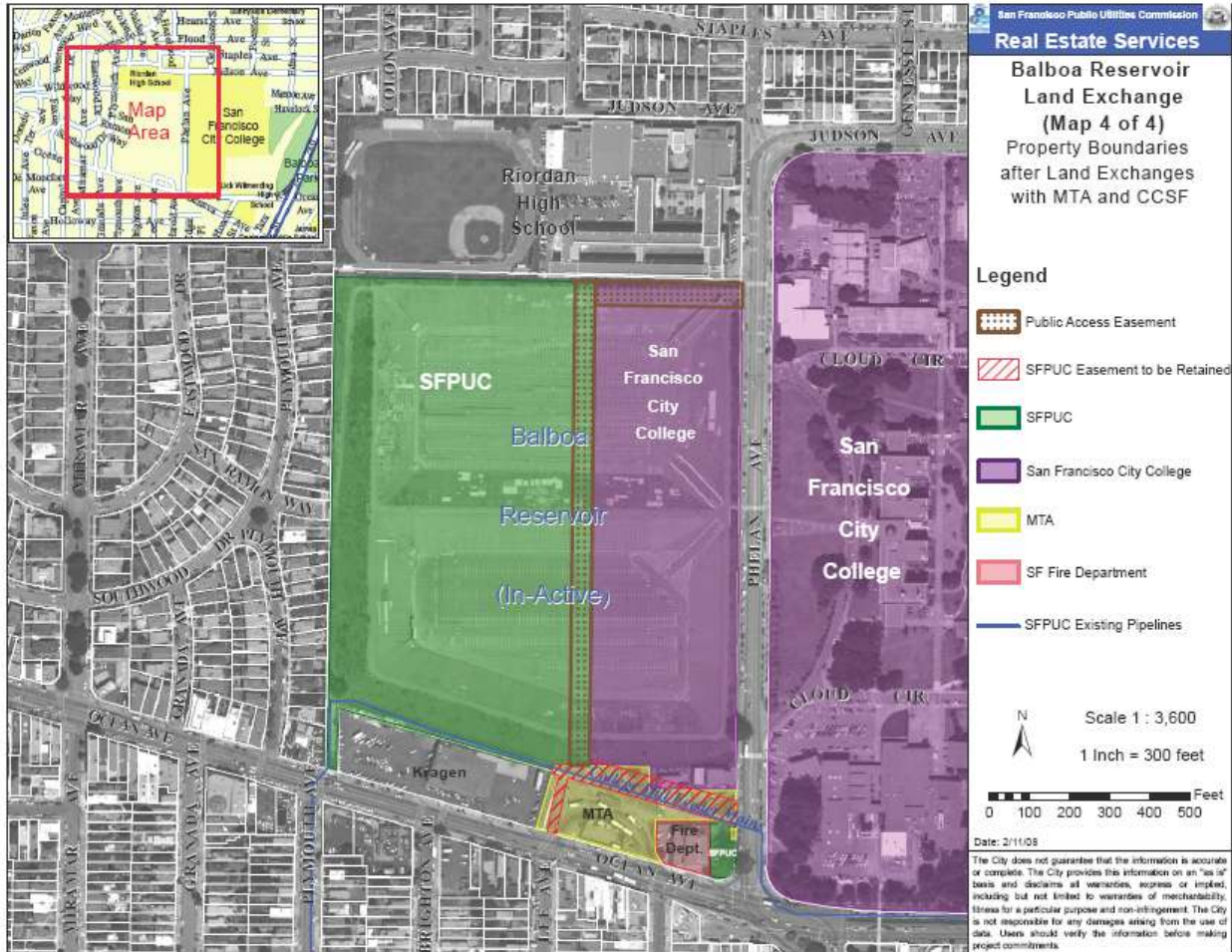
APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
Carol Wong, Deputy City Attorney

# EXHIBIT A

## DEPICTION OF CITY AND TENANT FEE INTERESTS IN UNDIVIDED PARCEL

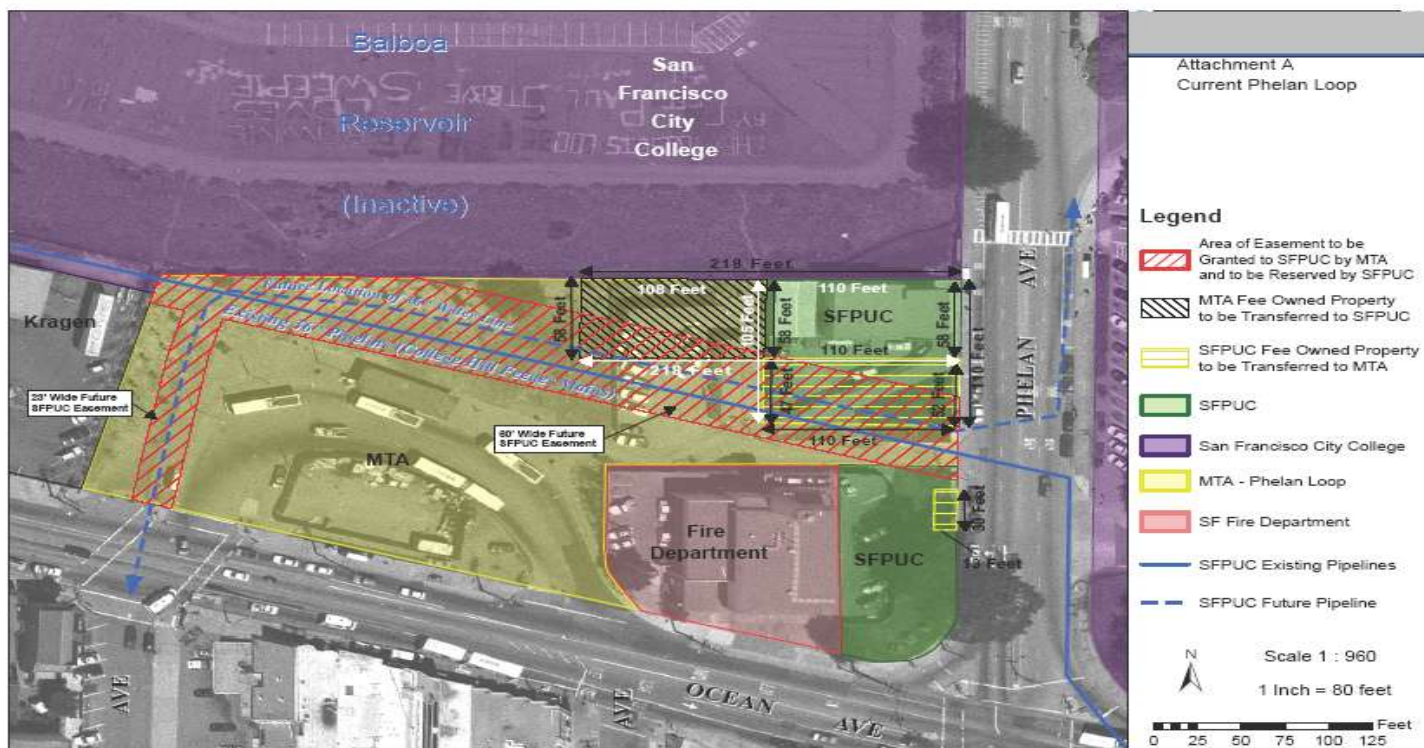
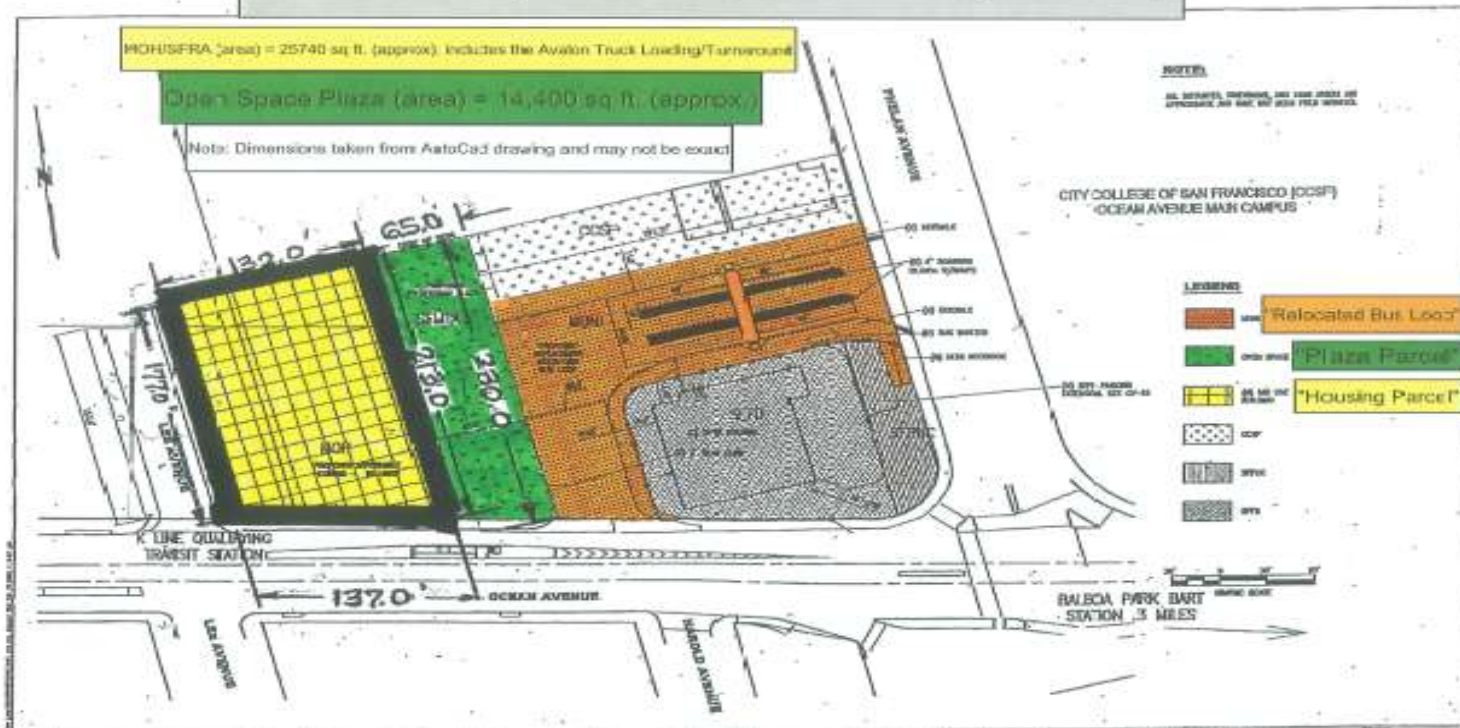




## EXHIBIT B

### DEPICTION OF HOUSING PARCEL, PLAZA PARCEL, EXISTING BUS LOOP AND RELOCATED BUS LOOP

#### Phelan Loop Development Project Map



**EXHIBIT C**

**LEGAL DESCRIPTION OF HOUSING PARCEL**

Legal Description  
For:  
**A portion of Record of Survey number 5951**

All that certain real property situate in the City and County of San Francisco, State of California, being a portion of Assessor's Block 3180, Lot 001, as shown on Record of Survey 5951, filed for record, June 2, 2010, in Book DD of Survey Maps at pages 38 and 39, and shown on those Certificates of Correction recorded July 20, 2010 as Document number 2010-1998415-00 and December 14, 2010 as Document number 2010-J098072-00, all Official Records of the City and County of San Francisco, said real property more particularly described as follows:

Beginning at an angle point in the northerly line of Ocean Avenue (80.00 feet wide) as shown on said Record of Survey; thence, South 75°48'04" East, 18.37 feet along said northerly line of Ocean Avenue, to the True Point of Beginning of this description said point also being the southwest corner of that certain Parcel shown as "PORTION OF LOT 001"; thence leaving said northerly line of Ocean Avenue around the perimeter of said Parcel through the following four (4) courses:

- 1) North 00°24'00" West, 175.67 feet; thence,
- 2) North 89°01'17" East, 132.01 feet; thence,
- 3) South 00°58'43" East, 211.95 feet to a point on the northerly line of Ocean Avenue; thence,
- 4) North 75°48'04" West, 138.62 feet along said northerly line of Ocean Avenue, to the True Point of Beginning of this description

Containing 25,772 square feet/ 0.591 acres more or less.

Being a portion of Assessor's Block 3180, lot 001

Above described real property shown on attached plat and by reference made a part hereof.

  
Bruce R. Storrs, PLS                      No. 6914  
My license expires September 30, 2011  
City and County Surveyor  
City and County of San Francisco

JUNE 17, 2011  
Date





AB 3180

LOT 001

LANDS OF SAN FRANCISCO  
COMMUNITY COLLEGE DISTRICT  
F734 O.R. 0746

460.03' (T)

PIPELINE EASEMENT  
(F734 O.R. 746)

SFPUC

N89°01'17"E  
132.01'

ROS 5951

BK DD, PGS 38-39

MTA  
PORTION  
OF LOT  
001

S0°58'43"E  
211.95'

AB 3180

LOT 003

REEL 6386 O.R. 412

N0°24'00"W  
175.67'

MTA



138.62'  
N75°48'04"W

ANGLE POINT IN ROW

POB

S75°48'04"E  
18.37'

OCEAN AVENUE (80' WIDE)

N75°48'04"W

LEE  
AVENUE  
(70' WIDE)

HAROLD  
AVENUE  
(60' WIDE)

**EXHIBIT**

PLAT TO ACCOMPANY LEGAL  
DESCRIPTIONS FOR APN  
3180 PORTION OF LOT ONE

1:50

SCALE

T=TOTAL  
POB=POINT OF BEGINNING

## PIPELINE MOU

### MEMORANDUM OF UNDERSTANDING

**THIS MEMORANDUM OF UNDERSTANDING** (this "**MOU**"), dated for reference purposes only as of February 13, 2007, is entered into by and between the San Francisco Municipal Transportation Agency ("**MTA**") and the San Francisco Public Utilities Commission ("**SFPUC**").

### RECITALS

A. Certain property located near the intersection of Phelan Avenue and Ocean Avenue in the City and County of San Francisco ("**City**") is under the jurisdiction of MTA, as generally depicted on the attached Exhibit A (the "**MTA Parcel**"), and certain other property located near such intersection is under the jurisdiction of SFPUC, also as generally depicted on the attached Exhibit A (the "**PUC Parcels**").

B. SFPUC presently maintains a 36-inch pipeline known as the Crosstown Pipeline, which delivers water from the west side of the City to the east side of the City (the "**Existing Crosstown Pipeline**"). A portion of the Existing Crosstown Pipeline is located beneath the surface of a portion of MTA Parcel in the location generally depicted on the attached Exhibit A (labeled "Existing 36" Pipeline (College Hill Feeder Mains)").

C. SFPUC plans to install approximately 4.5 miles of pipeline known as the East-West Transmission Main from the Alemany Pump Station in the eastern part of the City to Junipero Serra Boulevard at Holloway (the "**East-West Pipeline**"). The new East-West Pipeline will enable the SFPUC to move water from the east side of the City into the City's Sunset system in the event of a pipeline failure on the peninsula or in the event of other emergencies. Its installation and operation is critical to the health and safety of residents of the Sunset District. The installation of the East-West Pipeline is referred to herein as the "**Project**."

D. A portion of the East-West Pipeline will be located beneath the surface of a portion of the MTA Parcel and a portion of the East-West Pipeline will be located under a portion of one or more of the PUC Parcels, in the location generally depicted on the attached Exhibit A (labeled "Future Location of 36" Water Line"). SFPUC and MTA have agreed on the alignment identified in Exhibit A and on the construction drawings and specifications for the Project (the "**Initial Plans**") prepared by SFPUC and dated August 2006 (the "**Preferred Alignment**").

E. SFPUC also plans the future installation of an additional 36-inch pipeline running easterly from the future Balboa Reservoir (the "**Future Balboa Reservoir Outlet Pipeline**"). The final alignment of the Future Balboa Reservoir Outlet Pipeline has not yet been fixed, but it is anticipated that portions of the Future Balboa Reservoir Outlet Pipeline may be installed beneath the surface of a portion of the MTA Parcel and the PUC Parcels, parallel to that portion of the Existing Crosstown Pipeline located on the MTA Parcel and the PUC Parcels. The installation of the Future Balboa Reservoir Outlet Pipeline is referred to herein as the "**Future Balboa Reservoir Project**".

F. MTA and SFPUC anticipate entering into one or more future agreements with each other and certain other City agencies or other parties pursuant to which, among other

matters, the jurisdiction over or ownership of portions of one or more of the PUC Parcels will be transferred to MTA and one or more of such other agencies or parties and jurisdiction over or ownership of a portion of the MTA Parcel will be transferred to one or more of such other agencies or parties (the "**Proposed Transfer Agreement**").

G. In connection with the Project, the Future Balboa Reservoir Project and the Proposed Transfer Agreement, SFPUC desires to ensure that SFPUC obtains over the MTA Parcel and reserves over the PUC Parcels an easement in the locations generally depicted on Exhibit A and labeled "60' Wide Future SFPUC Easement" and "23' Wide Future SFPUC Easement" (the "**Permit Area**"), for the installation of the East-West Pipeline and the Future Balboa Reservoir Outlet Pipeline, and for the operation, maintenance and repair of the Existing Crosstown Pipeline, the East-West Pipeline and the Future Balboa Reservoir Outlet Pipeline. The Existing Crosstown Pipeline, the East-West Pipeline and the Future Balboa Reservoir Outlet Pipeline are sometimes referred to herein collectively as the "**Pipelines**".

H. Not all details of the Proposed Transfer Agreement have been finalized, and it presently appears that the Project may be completed most effectively if construction of that portion of the Project located on the MTA Parcel is permitted to commence prior to the date the Proposed Transfer Agreement is ultimately finalized. Accordingly, SFPUC and MTA now wish to enter into this MOU to set forth the conditions under which the SFPUC will construct the East-West Pipeline and the Future Balboa Reservoir Outlet Pipeline on the MTA Parcel, and maintain the Pipelines on the MTA Parcel, to provide for the future documentation of SFPUC's right to use the Permit Area, to provide for the conditions to MTA's use of the Permit Area, and to provide that any party transferring jurisdiction over or ownership of any portion of the Permit Area shall give such transferee notice of the terms and conditions of this MOU.

NOW, THEREFORE, IN CONSIDERATION of the foregoing, MTA and SFPUC hereby agree as follows:

### **AGREEMENT**

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference.
2. **Preferred Alignment.** SFPUC and MTA acknowledge and agree that the Preferred Alignment remains subject to minor revisions as may be reasonably required by additional design considerations, future environmental review and field modifications, which revisions shall be mutually agreed to by SFPUC and MTA. SFPUC and MTA shall cooperate in identifying and resolving any revisions to the Preferred Alignment which are reasonably required. Any revisions to the Preferred Alignment shall be confirmed by the parties in writing, and following such revision the term "Preferred Alignment" shall refer to the Preferred Alignment, as so revised. Further, upon written notice from SFPUC that SFPUC desires to proceed with plans to install the Future Balboa Reservoir Outlet Pipeline, MTA shall cooperate with SFPUC in establishing the alignment of the Future Balboa Reservoir Outlet Pipeline. Once installed, SFPUC shall provide MTA with a copy of the as-built plans for any installed Pipeline.
3. **SFPUC Use of MTA Parcel.** MTA hereby grants to SFPUC and its agents and contractors the right to enter that portion of the MTA Parcel located in the Permit Area (the "**Subject Area**") to install the East-West Pipeline in the Preferred Alignment, to install the Future Balboa Reservoir Outlet Pipeline, to access, operate, repair, replace and maintain the Pipelines, and to perform such other actions as are reasonably necessary for the SFPUC to install and operate the Pipelines.

In addition to the foregoing, MTA and SFPUC shall cooperate to identify an access route for SFPUC construction equipment to cross over the MTA Parcel from Ocean Avenue to the

Subject Area in connection with construction activities to be performed during the installation of the East-West Pipeline, and MTA shall establish terms and conditions for such access designed to minimize the impact on MTA's use, maintenance, repair, removal or replacement of the current and future bus loops, boarding areas and temporary parking areas located on the MTA Parcel (collectively, the "**Bus Activities**"). Once such route and terms and conditions are established, MTA shall permit SFPUC to cross over the permitted access route in accordance with such terms and conditions.

SFPUC acknowledges that its entry on the Subject Area or other areas of the MTA Parcel pursuant to this Section shall be subject to reasonable restrictions established by MTA to protect the safety of its employees and passengers and to maintain its efforts to provide reliable public transit services. Such restrictions shall include mutually-agreeable access routes for construction equipment and equipment storage and staging areas required in connection with the exercise of SFPUC's rights hereunder. SFPUC and MTA acknowledge that such access routes and storage and staging areas will need to be created to minimize the impact to MTA's use of the Subject Area and the surrounding area for the Bus Activities, while permitting the access reasonably required for the exercise of SFPUC's rights hereunder.

4. **MTA Use of Permit Area.** Subject to MTA's rights to continue the Bus Activities, MTA shall not do anything in, on, under or about the Subject Area that could cause damage to or interference with the Pipelines or related facilities. Without limiting the foregoing, MTA agrees that no trees or shrubs shall be planted, no structures or improvements of any kind or character shall be constructed or placed, and no excavation shall occur, on the Subject Area without the prior written consent of SFPUC, except as provided in Section 6 below. To prevent damage to the Pipelines, MTA shall not use vehicles or equipment in excess of the standards established by AASHTO-H20 within the Subject Area during construction and/or maintenance of any improvements on or adjacent to the Subject Area, or for any other purpose, without SFPUC's prior written approval. SFPUC acknowledges that for the purposes of this Section 4, the passage, boarding, and temporary parking of buses and trolley coaches over the Subject Area shall not be deemed to violate the foregoing restriction regarding vehicle and equipment weight.

5. **Reserved Rights with Respect to Subject Area.** In addition to MTA's reserved right to perform the Bus Activities, MTA further reserves the right to use the Subject Area for all purposes which are not inconsistent with SFPUC's rights hereunder, including the right to maintain the following over and across and along the Subject Area: roads, streets, sidewalks, electric power lines, and telephone and telegraph lines; provided, however, that MTA shall not use the Subject Area, or permit the same to be used, for any purpose or in any manner which will interfere with, damage or endanger the Pipelines.

6. **Installation of Future Bus Loop on Reconfigured MTA Parcel; General Restrictions on Installations.** Although not all details of the Proposed Transfer Agreement have been finalized, the parties anticipate that the Proposed Transfer Agreement will provide for a jurisdictional transfer of a portion of the PUC Parcels to MTA to accommodate its anticipated construction and operation of a replacement bus loop and all related appurtenances, and a jurisdictional transfer of a portion of the MTA Parcel to SFPUC to accommodate its anticipated sale of property to San Francisco City College (the "**Anticipated Transfers**"). SFPUC acknowledges and agrees that, if the Anticipated Transfers occur, MTA shall have the right to conduct the Bus Activities on the portions of the PUC Parcels so acquired by MTA, the definition of "Subject Area" shall be deemed to include the portion of the Permit Area located on such acquired PUC Parcels, and for the purpose of this MOU, the "MTA Parcel" shall be deemed to include the portions of the PUC Parcels so acquired by MTA. In addition, notwithstanding the provisions of Section 5 above, if the Anticipated Transfers occur, MTA shall have the right to install, maintain, use, repair and replace up to four (4) trolley wire support pole foundations and two (2) boarding islands, together with all appurtenances related to the replacement bus loop,

including, but not limited to, pavement, sidewalks and shallow utility conduits (collectively, the "**Proposed MTA Installations**"), on the Subject Area.

The following restrictions (collectively, the "**Improvement Conditions**") shall apply to the Proposed MTA Installations as well as any other proposed installations by MTA in the Subject Area: (i) MTA shall provide to SFPUC, at the address for the Manager of City Distribution Division set forth in Section 10 below, a copy of each of the conceptual engineering report, the 95% completed plans, and the final plans and specifications for any proposed installation, as each becomes available, to provide SFPUC an opportunity to review and comment on such report and plans, (ii) MTA shall obtain SFPUC's approval of the plans and specifications for any proposed installation, which approval shall not be unreasonably withheld or delayed, (iii) there shall be a minimum of an eight foot (8') linear clearance on a horizontal plane between any trolley wire support pole foundation and any then-existing Pipeline within the Subject Area, unless SFPUC otherwise consents in writing, (iv) such installation, repair and replacement shall be performed in a manner which does not endanger or damage any then-existing Pipelines within the Subject Area, and (v) once installed, SFPUC shall provide MTA with a copy of the as-built plans for such installation.

If MTA is prepared to commence construction activities for its replacement bus loop over a portion of the PUC Parcels before the Anticipated Transfers occur, MTA shall obtain SFPUC's consent prior to commencing such activities, which consent shall not be unreasonably withheld, and shall ensure that each installation so made over the PUC Parcels complies with the Improvement Conditions.

7. **Preparation of Legal Description.** If MTA transfers any portion of the Subject Area to a third party, and such third party requires a legal description of the Subject Area (the "**Legal Description**"), MTA shall have the right to either obtain such Legal Description or to require SFPUC to obtain such Legal Description in a form that is reasonably acceptable to MTA. If MTA requires SFPUC to obtain such Legal Description, SFPUC shall do so at its sole cost within the thirty (30) day period following receipt of MTA's written request therefor. If MTA elects to obtain such Legal Description, SFPUC shall reimburse MTA for all third party costs reasonably incurred by MTA in preparing or obtaining such Legal Description within sixty (60) days following MTA's request therefor, which request shall include reasonable documentation of such costs together with a copy of the Legal Description.

8. **Effective Date; Term.** The term of this MOU shall commence the date specified in the introductory paragraph of this MOU, and shall terminate on the earlier of the date an easement deed or agreement is recorded to memorialize an easement across the Subject Area in favor of SFPUC (in which event the terms and conditions of such easement deed or agreement shall govern the rights of the parties) or at such time as the SFPUC elects to permanently terminate operation of the Pipelines for distribution of potable water.

9. **Restriction on MTA Access; Limits on Interference with Bus Activities.** The parties acknowledge that the future construction and installation of the Future Balboa Reservoir Project may temporarily interfere with the use of the Proposed MTA Installations. Accordingly, SFPUC and its contractors may restrict access to the immediate vicinity of the Project, the Future Balboa Reservoir Project, and other construction projects, if any, related to the Pipelines during construction if reasonably necessary to ensure the health and safety of the public, and MTA shall cooperate with such restrictions. SFPUC shall use reasonable efforts to conduct all Pipeline construction and maintenance activities on the Subject Area in a manner that minimizes interference with the Bus Activities, taking into account the scope of work to be performed. MTA and SFPUC shall negotiate in good faith regarding the manner of SFPUC's exercise of its rights hereunder, with the dual goals of minimizing interference with the Bus Activities and



minimizing extra cost to SFPUC resulting from construction requirements and restrictions and from measures required to minimize interference with Bus Activities.

Notwithstanding anything to the contrary herein, except to the extent otherwise agreed by MTA in writing, SFPUC shall ensure that, at all times, (a) MTA has reasonable means for the passage of at least one lane of buses over the MTA Parcel (provided that, if the Anticipated Transfers occur, the reconfigured MTA Parcel has a bus passage corridor that is at least fifty-five feet (55') in width at Phelan Avenue), and (b) lines of construction vehicles entering the MTA Parcel are limited to five (5) vehicles per hour.

10. **Notice of Construction.** SFPUC shall provide at least sixty (60) days' prior written notice of SFPUC's planned construction activities in the Subject Area (unless such planned construction activities are to perform the work described in the Initial Plans, in which case SFPUC shall only need to provide at least twenty-one (21) days' prior written notice), together with plans and specifications for such construction activities, to MTA at the following address:

Chief Operating Officer / Director of Muni Operations  
Municipal Transportation Agency  
1 South Van Ness Avenue  
San Francisco, CA 94103  
Tel.: (415) 701-4202

MTA shall provide at least twenty-one (21) days' prior written notice of MTA's planned construction activities in the Subject Area to SFPUC at the following address:

General Manager  
San Francisco Public Utilities Commission  
1155 Market Street, Eleventh Floor  
San Francisco, CA 94103

with a copy of such notice, together with plans and specifications for such construction activities, to SFPUC at the following address:

Manager of City Distribution Division  
San Francisco Public Utilities Commission  
1990 Newcomb Ave.  
San Francisco, CA 94124

11. **Restrictions on SFPUC Use; Compliance with Law.** SFPUC, at SFPUC's expense, shall comply with all laws, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force with respect to SFPUC's activities hereunder, including compliance with all laws relating to Hazardous Materials (as defined below), which impose any duty upon SFPUC with respect to the use, occupancy or alteration of the MTA Parcel. SFPUC shall immediately notify MTA in writing of any release or discharge of any Hazardous Materials, whether or not the release is in quantities that would be required under the law requiring the reporting of such release to a governmental or regulatory agency. As used herein, "**Hazardous Materials**" shall mean any substance, water or material which has been determined by any state, federal, or local government authority to be capable of posing a risk of injury to health, safety or property.

12. **SFPUC Maintenance and Repairs.** SFPUC agrees that, subject to the terms of Section 13 below, any damage to the MTA Parcel caused by construction, installation,

maintenance, repair or any other activity of SFPUC permitted hereunder shall be repaired and restored to its prior condition upon completion of the construction, maintenance, repair or other activities at no cost to MTA. Following the completion of any excavation work by SFPUC in the Subject Area, SFPUC shall promptly return the surface of the Subject Area to its prior condition, including repaving and regrading any existing roadway as required, subject to the terms of Section 13 below. During the term hereof, SFPUC shall maintain in good repair and condition the improvements made pursuant to this MOU.

13. **Landscaping.** MTA acknowledges that installation of the East-West Pipeline in the Preferred Alignment and installation of the Future Balboa Reservoir Outlet Pipeline will require removal of certain trees and may require the trimming of roots of other trees, and will result in damage to grass in the Subject Area. SFPUC shall replace affected grass with like-kind grass, and at MTA's request shall plant the same kind of grass over areas in which trees are removed by SFPUC. Neither SFPUC nor MTA shall replace any trees in the Subject Area.

14. **Insurance.** SFPUC shall require any contractor or subcontractor it hires in connection with its use of the MTA Parcel to secure such insurance as is recommended by the City Risk Manager and reasonably approved by MTA. The City shall be included as an additional insured with respect to any such insurance.

15. **Indemnification.** SFPUC shall require MTA to be included as an indemnified party in any indemnification provision between SFPUC and any agent, contractor or subcontractor it hires in connection with its use of the MTA Parcel.

16. **Damages.** It is the understanding of the parties that MTA shall not expend any funds due to or in connection with SFPUC's activities on the MTA Parcel. Therefore, SFPUC agrees to be responsible for all costs associated with all claims, damages, liabilities or losses which arise as a result of the activities on or about the MTA Parcel by SFPUC, its agents or contractors. The foregoing obligation of SFPUC shall survive the termination of this MOU.

17. **Notices.** All notices, demand, consents or approvals which are or may be required to be given by either party to the other under this MOU shall be in writing and shall be deemed to have been fully given when delivered in person to such representatives of MTA and SFPUC as shall from time to time be designated by the parties for the receipt of notices, or when deposited in the United States mail, postage prepaid, and addressed, if to MTA to:

Executive Director/CEO  
San Francisco Municipal Transportation Agency  
1 South Van Ness Avenue, 7<sup>th</sup> Floor  
San Francisco, CA 94103

and if to SFPUC to:

General Manager  
San Francisco Public Utilities Commission  
1155 Market Street, Eleventh Floor  
San Francisco, CA 94103

or such other address with respect to either party as that party may from time to time designate by notice to the other given pursuant to the provisions of this Section.

18. **Obligations Run With the Land; Future Easement.** If a party transfers any portion of the Permit Area to a non-City entity, such transferring party shall reserve an easement to the City that incorporates the rights and obligations set forth in this MOU, and the parties

intend that any such future reserved easement shall run with the land and be binding on future owners of such transferred portion of the Permit Area. A reserved easement shall be recorded in the City's Official Records, and shall incorporate the party's respective rights and obligations set forth herein as to such portion of the transferred Permit Area, provided that such reserved easement shall be subject to any necessary approval of the San Francisco Municipal Transportation Agency Board of Directors or the San Francisco Public Utilities Commission, as applicable, and, to the extent required, the City's Board of Supervisors and Mayor. If MTA transfers jurisdiction over or permits the use of all or any portion of the MTA Parcel, MTA shall provide such transferee or permittee with a copy of this MOU. If SFPUC transfers jurisdiction over or permits the use of the Pipelines or all or any portion of the affected PUC Parcels, SFPUC shall provide such transferee or permittee with a copy of this MOU.

19. **Miscellaneous Provisions.**

a. Further Assurances. The parties hereto agree to execute and acknowledge such other and further documents as may be necessary or reasonably required to carry out the mutual intent of the parties as expressed in this MOU.

b. Incorporation of Exhibits. All exhibits to this MOU are incorporated herein by this reference and made a part hereof as set forth in full.

[No further text this page]

IN WITNESS WHEREOF, the parties have caused this MOU to be executed as of the date first written above.

AGREED TO AS WRITTEN  
ABOVE:

SAN FRANCISCO MUNICIPAL  
TRANSPORTATION AGENCY

By: /S/ Nathaniel P. Ford, SR.  
NATHANIEL P. FORD, SR.  
Executive Director/CEO

Date: 3/20/2007

AGREED TO AS WRITTEN  
ABOVE:

SAN FRANCISCO PUBLIC  
UTILITIES COMMISSION

By: /S/ Susan Leal  
SUSAN LEAL  
General Manager

Date: 2/13/07  
Resolution No.: 07-0028

**EXHIBIT E**

**FORM OF HOUSING PARCEL EASEMENTS**

Free Recording Requested Pursuant to  
Government Code Section 27383

Recording requested by and  
when recorded mail to:

City and County of San Francisco  
San Francisco Municipal Transportation Agency  
Real Estate Section  
1 South Van Ness, 8<sup>th</sup> Floor  
San Francisco, CA 94103  
Attn: Manager, Real Estate

with a copy to:

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

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(Space above this line reserved for Recorder's use only)

**EMERGENCY FIRE APPARATUS ACCESS EASEMENT AGREEMENT**  
(Portion of Assessor's Parcel Block No. 3180, Lot 1)

This Emergency Fire Apparatus Access Easement Agreement (this "**Agreement**"), by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**"), and the REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body corporate and politic established pursuant to the Community Redevelopment Law of the State of California ("**Agency**"), is executed as of \_\_\_\_\_ (the "**Effective Date**").

**RECITALS**

A. Agency owns the real property described on the attached Exhibit A (the "**Housing Parcel**") and City owns the real property described on the attached Exhibit B (the "**Easement Area**").

B. Agency intends to cause the construction of a mixed-use development with affordable housing on the Housing Parcel (the "**Project**") and wishes to obtain an easement on, over and across the Easement Area for emergency fire apparatus access to and from the Housing Parcel if such easement is required for the permit required to construct the Project.

C. City wishes to accommodate the construction and operation of the Project and is willing to grant such easement on the terms and conditions specified in this Agreement.



One South Van Ness Avenue, 5<sup>th</sup> Floor  
San Francisco, CA 94103  
Attn: Fred Blackwell, Executive Director

with a copy to:

Redevelopment Agency of the City and County  
of San Francisco  
One South Van Ness Avenue, 5<sup>th</sup> Floor  
San Francisco, CA 94103  
Attn: James Morales, Agency General Counsel

5. Indemnity. Agency shall indemnify, defend, reimburse and hold harmless City and any City Agents from and against any and all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages and liabilities of any kind ("**Claims**"), arising out of or relating to the activities of Agency or any Agency Agent in the Easement Area or Agency's failure to timely perform its obligations under this Agreement, except to the extent caused by the intentional acts or negligence of City or any City Agents or the failure of City to perform or comply with its obligations hereunder. The foregoing indemnity shall include, without limitation, reasonable attorneys', experts' and consultants' fees and costs, and shall survive any termination or extinguishment of the Easement or this Agreement.

6. Waiver of Claims. Agency covenants and agrees that City shall not be responsible for or liable to Agency for, and Agency hereby waives all rights against City and its Agents and releases City and its Agents from, any and all Claims relating to any injury, accident or death of any person or loss or damage to any property, in or about the Easement Area, from any cause whatsoever. Nothing herein shall relieve City from liability to the extent caused by the 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. City would not be willing to enter into this Agreement in the absence of a waiver of liability for consequential or incidental damages due to the acts or omissions of City or its agents, and Agency expressly assumes the risk with respect thereto.

Accordingly, as a material part of the consideration for this Agreement, Agency fully RELEASES, WAIVES AND DISCHARGES forever any and all Claims, and covenants not to sue, City or its Agents for any matters arising out of this Agreement or the Easement Area, except to the extent such Claims result from the negligence and willful misconduct of City or its Agents or the failure of City to perform its indemnification obligations pursuant to this Agreement. In connection with the foregoing release, Agency 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."

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

7. As Is Condition of Easement Area; Disclaimer of Representations. Agency accepts the Easement Area in its "AS IS" condition, without representation or warranty of any kind by City, its officers, agents or employees, and subject to all applicable laws, rules and ordinances

governing the use of the Easement Area. Without limiting the foregoing, this Agreement is made subject to any and all existing and future covenants, conditions, restrictions, easements, encumbrances and other title matters affecting the Easement Area, whether foreseen or unforeseen, and whether such matters are of record or would be disclosed by an accurate inspection or survey.

8. Run with the Land; Exclusive Benefit of Parties. The rights and obligations set forth herein shall run with the land and shall bind and inure to the benefit of the successors and assigns of the parties hereto. This Agreement is for the exclusive benefit of Agency and City and their respective successors and assigns and not for the benefit of, nor give rise to any claim or cause of action by, any other party. This Agreement shall not be deemed a dedication of any portion of the Easement Area to or for the benefit of the general public.

9. Proprietary Capacity. Agency understands and acknowledges that City is entering into this Agreement in its proprietary capacity and not as a regulatory agency with certain police powers. Notwithstanding anything to the contrary herein, no approval by City of any plans and specifications or other materials submitted by Agency to City for City's approval pursuant to this Agreement nor any other approvals by City hereunder shall be deemed to constitute approval of City acting in its regulatory capacity or any governmental or regulatory authority with jurisdiction over the Easement Area. City makes no representations or warranties that City, acting in its regulatory capacity and under its police powers, will ultimately approve of any draft plans, specifications or other materials nor issue any necessary permits.

10. No Joint Venturers or Partnership; No Authorization. This Agreement does not create a partnership or joint venture between City and Agency as to any activity conducted by Agency on, in or relating to the Easement Area.

11. Taxes. Agency recognizes and understands that this Agreement may create a possessory interest subject to property taxation and that Agency may be subject to the payment of property taxes levied on such interest under applicable law. Agency agrees to pay taxes of any kind, including possessory interest taxes, if any, that may be lawfully assessed on the interest created by this Agreement and to pay any other taxes, excises, licenses, permit charges or assessments based on Agency's use of the Easement Area that may be imposed on Agency by applicable law. Agency shall pay all of such charges when they become due and payable and before delinquency.

12. MacBride Principles – Northern Ireland. City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. City also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Agency acknowledges that it has read and understands the above statement of the City concerning doing business in Northern Ireland.

13. 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.

14. General Provisions. (a) This Agreement may be amended or modified only by a writing signed by City and Agency and recorded in the Official Records of the City and County of San Francisco. (b) No waiver by any party of any of the provisions of this Agreement shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver. (c) This Agreement contains the entire agreement between the parties with respect to the Easement Area and all prior negotiations,



discussions, understandings and agreements are merged herein. (d) This Agreement shall be governed by California law and City's Charter. (e) If either party commences an action against the other or a dispute arises under this Agreement, the prevailing party shall be entitled to recover from the other reasonable attorneys' fees and costs. For purposes hereof, reasonable attorneys' fees shall be based on the fees regularly charged by private attorneys in City with comparable experience, notwithstanding City's or Agency's use of its own attorneys. (f) This Agreement does not create a partnership or joint venture between City and Agency as to any activity conducted by Agency on, in or relating to the Easement Area. (g) City's obligations hereunder are contingent upon approval of this instrument by City's Public Utilities Commission and the City's Board of Supervisors and Mayor, each in their respective sole discretion, and the Easement and this Agreement shall be null and void if such approval is not obtained, and Agency's obligations hereunder are contingent upon approval of this instrument by the Agency's Board of Trustees, in its sole discretion, and the Easement and this Agreement shall be null and void if such approval is not obtained. (h) Time is of the essence of this Agreement and each party's performance of its obligations hereunder. (i) All representations, warranties, waivers, releases, indemnities and surrender obligations given or made in this Agreement shall survive the termination of this Agreement or the extinguishment of the Easement. (j) If any provision of this Agreement is deemed invalid by a judgment or court order, such invalid provision shall not affect any other provision of this Agreement, and the remaining portions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as partially invalidated would be unreasonable or grossly inequitable under all of the circumstances or would frustrate the purpose of this Agreement. (k) All section and subsection titles are included only for convenience of reference and shall be disregarded in the construction and interpretation of the Agreement. (l) Agency represents and warrants to City that the execution and delivery of this Agreement by Agency and the person signing on behalf of Agency below has been duly authorized, and City represents and warrants to Agency that the execution and delivery of this Agreement by City and the person signing on behalf of City below has been duly authorized. (m) This Agreement and the Easement granted hereunder shall automatically terminate as of the date the Project is demolished or removed from the Housing Parcel.

**[REMAINDER OF PAGE INTENTIONALLY BLANK]**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**AGENCY:** REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body corporate and politic

Authorized by Agency Resolution No. \_\_\_\_\_, adopted \_\_\_\_\_, 200\_ By: \_\_\_\_\_  
Amy Lee, Deputy Executive Director  
Finance and Administration

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
James Morales  
Agency General Counsel

**CITY:** CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By: \_\_\_\_\_  
Amy L. Brown, Director of Property

Date: \_\_\_\_\_

RECOMMENDED:

\_\_\_\_\_  
Nathaniel P. Ford Sr., Executive Director/CEO  
San Francisco Municipal Transportation Agency

Date: \_\_\_\_\_

San Francisco Municipal Transportation Agency  
Board of Directors  
Resolution No. \_\_\_\_\_  
Adopted: \_\_\_\_\_  
Attest:

\_\_\_\_\_  
Secretary, SFMTA Board of Directors

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
Carol Wong  
Deputy City Attorney

State of California            )  
  ) ss  
County of San Francisco    )

On \_\_\_\_\_, before me, \_\_\_\_\_, a notary public in and for said State, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.  
WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**Exhibit A**

**Legal Description of Housing Parcel**

**Exhibit B**

**Legal Description of Easement Area**

Free Recording Requested Pursuant to  
Government Code Section 27383

Recording requested by and  
when recorded mail to:

City and County of San Francisco  
San Francisco Municipal Transportation Agency  
Real Estate Section  
1 South Van Ness, 8<sup>th</sup> Floor  
San Francisco, CA 94103  
Attn: Manager, Real Estate

with a copy to:

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

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(Space above this line reserved for Recorder's use only)

PEDESTRIAN ACCESS EASEMENT AGREEMENT  
(Portion of Assessor's Parcel Block No. 3180, Lot 1)

This Pedestrian Access Easement Agreement (this "**Agreement**"), by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**"), and the REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body corporate and politic established pursuant to the Community Redevelopment Law of the State of California ("**Agency**"), is executed as of \_\_\_\_\_ (the "**Effective Date**").

RECITALS

A. Agency owns the real property described on the attached Exhibit A (the "**Housing Parcel**") and City owns the real property described on the attached Exhibit B (the "**Easement Area**").

B. Agency intends to cause the construction of a mixed-use development with affordable housing on the Housing Parcel (the "**Project**") and wishes to obtain an easement on, over and across the Easement Area for pedestrian access to and from the Housing Parcel if such easement is required for the permit needed to construct the Project.

C. City wishes to accommodate the construction and operation of the Project and is willing to grant such easement on the terms and conditions specified in this Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. Easement; Permitted Use. Pursuant to the terms and conditions specified in this Agreement, City grants to Agency a non-exclusive easement (the "**Easement**") on, over and across the Easement Area for pedestrian ingress and egress to and from the Housing Parcel over the Easement Area. Agency shall not construct any improvements on the Easement Area or use it for any other purposes. Agency acknowledges that the Easement shall be limited strictly to the Easement Area, and Agency shall not traverse over or otherwise use any adjoining lands of City. Agency shall bear all costs or expenses of any kind or nature in connection with its use of the Easement Area, and shall keep the Easement Area free and clear of any liens or claims of lien arising out of its use of the Easement Area.

2. Reserved Rights. City reserves the right to use, and to permit others to use, the Easement Area for all purposes that do not prevent the use of the Easement Area for such pedestrian access to and from the Housing Parcel. City's reserved rights include, but are not limited to, the right to install, maintain, replace and repair any of the following on, across, along or under the Easement Area: sidewalks, plaza improvements, electric power lines, telephone and telegraph lines, roadways, transit improvements, and pipeline(s) and related equipment.

3. Maintenance and Repair. City shall have no obligation under this Agreement to maintain or repair the Easement Area or to maintain, repair, replace or remove any improvements or materials in the Easement Area. As soon as reasonably practical following any damage to the Easement Area caused by Agency or any of its officers, directors, board members, employees, agents, consultants, contractors, subcontractors, tenants, subtenants, invitees, or guests (collectively, "**Agents**"), Agency shall repair such damage and restore the Easement Area to its condition immediately prior to such use, to the reasonable satisfaction of City.

4. Notices. All notices, demand, consents or approvals given hereunder shall be in writing and shall be personally delivered, or sent by a nationally-recognized overnight courier service that provides next business day delivery services, provided that next business day service is requested, or by United States first-class mail, postage prepaid, to the following addresses (or any other address that a party designates by written notice delivered to the other party pursuant to the provisions of this Section):

If to City: SFMTA  
City and County of San Francisco  
1 South Van Ness Avenue, 8<sup>th</sup> Floor  
San Francisco, CA 94103  
Attn: Manager, Real Estate

with a copy to: City and County of San Francisco  
Real Estate Division  
25 Van Ness Avenue, Suite 400  
San Francisco, CA 94102  
Attn: Director of Property

If to Agency: Redevelopment Agency of the City and County  
of San Francisco  
One South Van Ness Avenue, 5<sup>th</sup> Floor  
San Francisco, CA 94103  
Attn: Fred Blackwell, Executive Director

with a copy to: Redevelopment Agency of the City and County  
of San Francisco  
One South Van Ness Avenue, 5<sup>th</sup> Floor

San Francisco, CA 94103  
Attn: James Morales, Agency General Counsel

5. Indemnity. Agency shall indemnify, defend, reimburse and hold harmless City and any City Agents from and against any and all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages and liabilities of any kind ("**Claims**"), arising out of or relating to the activities of Agency or any Agency Agent in the Easement Area or Agency's failure to timely perform its obligations under this Agreement, except to the extent caused by the intentional acts or negligence of City or any City Agents or the failure of City to perform or comply with its obligations hereunder. The foregoing indemnity shall include, without limitation, reasonable attorneys', experts' and consultants' fees and costs, and shall survive any termination or extinguishment of the Easement or this Agreement.

6. Waiver of Claims. Agency covenants and agrees that City shall not be responsible for or liable to Agency for, and Agency hereby waives all rights against City and its Agents and releases City and its Agents from, any and all Claims relating to any injury, accident or death of any person or loss or damage to any property, in or about the Easement Area, from any cause whatsoever. Nothing herein shall relieve City from liability to the extent caused by the 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. City would not be willing to enter into this Agreement in the absence of a waiver of liability for consequential or incidental damages due to the acts or omissions of City or its agents, and Agency expressly assumes the risk with respect thereto.

Accordingly, as a material part of the consideration for this Agreement, Agency fully RELEASES, WAIVES AND DISCHARGES forever any and all Claims, and covenants not to sue, City or its Agents for any matters arising out of this Agreement or the Easement Area, except to the extent such Claims result from the negligence and willful misconduct of City or its Agents or the failure of City to perform its indemnification obligations pursuant to this Agreement. In connection with the foregoing release, Agency 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."

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

7. As Is Condition of Easement Area; Disclaimer of Representations. Agency accepts the Easement Area in its "AS IS" condition, without representation or warranty of any kind by City, its officers, agents or employees, and subject to all applicable laws, rules and ordinances governing the use of the Easement Area. Without limiting the foregoing, this Agreement is made subject to any and all existing and future covenants, conditions, restrictions, easements, encumbrances and other title matters affecting the Easement Area, whether foreseen or unforeseen, and whether such matters are of record or would be disclosed by an accurate inspection or survey.



8. Run with the Land; Exclusive Benefit of Parties. The rights and obligations set forth herein shall run with the land and shall bind and inure to the benefit of the successors and assigns of the parties hereto. This Agreement is for the exclusive benefit of Agency and City and their respective successors and assigns and not for the benefit of, nor give rise to any claim or cause of action by, any other party. This Agreement shall not be deemed a dedication of any portion of the Easement Area to or for the benefit of the general public.

9. Proprietary Capacity. Agency understands and acknowledges that City is entering into this Agreement in its proprietary capacity and not as a regulatory agency with certain police powers. Notwithstanding anything to the contrary herein, no approval by City of any plans and specifications or other materials submitted by Agency to City for City's approval pursuant to this Agreement nor any other approvals by City hereunder shall be deemed to constitute approval of City acting in its regulatory capacity or any governmental or regulatory authority with jurisdiction over the Easement Area. City makes no representations or warranties that City, acting in its regulatory capacity and under its police powers, will ultimately approve of any draft plans, specifications or other materials nor issue any necessary permits.

10. No Joint Venturers or Partnership; No Authorization. This Agreement does not create a partnership or joint venture between City and Agency as to any activity conducted by Agency on, in or relating to the Easement Area.

11. Taxes. Agency recognizes and understands that this Agreement may create a possessory interest subject to property taxation and that Agency may be subject to the payment of property taxes levied on such interest under applicable law. Agency agrees to pay taxes of any kind, including possessory interest taxes, if any, that may be lawfully assessed on the interest created by this Agreement and to pay any other taxes, excises, licenses, permit charges or assessments based on Agency's use of the Easement Area that may be imposed on Agency by applicable law. Agency shall pay all of such charges when they become due and payable and before delinquency.

12. MacBride Principles – Northern Ireland. City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. City also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Agency acknowledges that it has read and understands the above statement of the City concerning doing business in Northern Ireland.

13. 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.

14. General Provisions. (a) This Agreement may be amended or modified only by a writing signed by City and Agency and recorded in the Official Records of the City and County of San Francisco. (b) No waiver by any party of any of the provisions of this Agreement shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver. (c) This Agreement contains the entire agreement between the parties with respect to the Easement Area and all prior negotiations, discussions, understandings and agreements are merged herein. (d) This Agreement shall be governed by California law and City's Charter. (e) If either party commences an action against the other or a dispute arises under this Agreement, the prevailing party shall be entitled to recover from the other reasonable attorneys' fees and costs. For purposes hereof, reasonable attorneys' fees shall be based on the fees regularly charged by private attorneys in City with comparable experience, notwithstanding City's or Agency's use of its own attorneys. (f) This

Agreement does not create a partnership or joint venture between City and Agency as to any activity conducted by Agency on, in or relating to the Easement Area. (g) City's obligations hereunder are contingent upon approval of this instrument by City's Public Utilities Commission and the City's Board of Supervisors and Mayor, each in their respective sole discretion, and the Easement and this Agreement shall be null and void if such approval is not obtained, and Agency's obligations hereunder are contingent upon approval of this instrument by the Agency's Board of Trustees, in its sole discretion, and the Easement and this Agreement shall be null and void if such approval is not obtained. (h) Time is of the essence of this Agreement and each party's performance of its obligations hereunder. (i) All representations, warranties, waivers, releases, indemnities and surrender obligations given or made in this Agreement shall survive the termination of this Agreement or the extinguishment of the Easement. (j) If any provision of this Agreement is deemed invalid by a judgment or court order, such invalid provision shall not affect any other provision of this Agreement, and the remaining portions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as partially invalidated would be unreasonable or grossly inequitable under all of the circumstances or would frustrate the purpose of this Agreement. (k) All section and subsection titles are included only for convenience of reference and shall be disregarded in the construction and interpretation of the Agreement. (l) Agency represents and warrants to City that the execution and delivery of this Agreement by Agency and the person signing on behalf of Agency below has been duly authorized, and City represents and warrants to Agency that the execution and delivery of this Agreement by City and the person signing on behalf of City below has been duly authorized. (m) This Agreement and the Easement granted hereunder shall automatically terminate as of the date the Project is demolished or removed from the Housing Parcel.

**[REMAINDER OF PAGE INTENTIONALLY BLANK]**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**AGENCY:** REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body corporate and politic

Authorized by Agency Resolution No. \_\_\_\_\_, adopted \_\_\_\_\_, 200\_ By: \_\_\_\_\_  
Amy Lee, Deputy Executive Director  
Finance and Administration

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
James Morales  
Agency General Counsel

**CITY:** CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By: \_\_\_\_\_  
Amy L. Brown, Director of Property

Date: \_\_\_\_\_

RECOMMENDED:

\_\_\_\_\_  
Nathaniel P. Ford Sr., Executive Director/CEO  
San Francisco Municipal Transportation Agency

Date: \_\_\_\_\_

San Francisco Municipal Transportation Agency  
Board of Directors  
Resolution No. \_\_\_\_\_  
Adopted: \_\_\_\_\_  
Attest:

\_\_\_\_\_  
Secretary, SFMTA Board of Directors

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
Carol Wong  
Deputy City Attorney

State of California            )  
  ) ss  
County of San Francisco    )

On \_\_\_\_\_, before me, \_\_\_\_\_, a notary public in and for said State, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.  
WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**Exhibit A**

**Legal Description of Housing Parcel**

**Exhibit B**

**Legal Description of Easement Area**

**EXHIBIT F**

**CITY REMEDIATION WORK**

City shall remove any soil in the Plaza Parcel that has TPH-mo levels in excess of 410 mg/kg by excavating such soil to a depth of 4 feet, and moving the excavated soil off-site to a certified landfill, and back-filling any such excavated area with clean soil.

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Sustainable Streets

**BRIEF DESCRIPTION:**

Authorizing the Department of Public Works (DPW) to award DPW Contract No. 1812J: Contract 60 New Traffic Signals, to Bay Area Lightworks, Inc., 1350 Van Dyke Avenue, Suite B, San Francisco, California 94124, for a total contract amount not to exceed \$1,293,084 and for a term not to exceed 270 calendar days.

**SUMMARY:**

- On April 11, 2011, the San Francisco Municipal Transportation Agency (SFMTA) Board was notified that the Executive Director/CEO had authorized a bid call for DPW Contract No. 1812J: Contract 60 New Traffic Signals, for installation of new traffic signals at nine intersections and a red light camera at one intersection in San Francisco.
- The engineer's detailed cost estimate for the work was \$1,486,484.
- Among the three bids that were received on May 25, 2011, DPW identified Bay Area Lightworks as the lowest responsive and responsible bidder with a bid of \$1,293,084 (13 percent below the engineer's estimate).
- The contract work will be funded through local Sales Tax Proposition K revenues, the Mayor's Office of Housing, and the Red Light Photo Enforcement Program.
- The Contract Compliance Officer from the Human Rights Commission has reviewed this calendar item and has confirmed that Bay Area Lightworks, Inc. will meet the 25 percent Local Business Enterprise subcontracting participation goal for this project.
- The City Attorney's Office has reviewed this report.

**ENCLOSURES:**

1. SFMTA Resolution
2. Project Budget and Financial Plan

**APPROVALS:**

**DATE**

DIRECTOR OF DIVISION

PREPARING ITEM \_\_\_\_\_

\_\_\_\_\_

FINANCE \_\_\_\_\_

\_\_\_\_\_

EXECUTIVE DIRECTOR/CEO \_\_\_\_\_

\_\_\_\_\_

SECRETARY \_\_\_\_\_

\_\_\_\_\_

ADOPTED RESOLUTION

BE RETURNED TO Geraldine de Leon

**ASSIGNED SFMTAB CALENDAR DATE:** \_\_\_\_\_



## **PAGE 2.**

### **PURPOSE**

SFMTA staff requests this Board to authorize the Department of Public Works (DPW) to award DPW Contract No. 1812J: Contract 60 New Traffic Signals, to Bay Area Lightworks, Inc., 1350 Van Dyke Avenue, Suite B, San Francisco, California 94124, for a total contract amount not to exceed \$1,293,084 and for a term not to exceed 270 calendar days.

### **GOAL**

The SFMTA will further the following goals of the Strategic Plan through the award and execution of this contract:

Goal 1 – Customer Focus: To provide safe, accessible, clean, environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First Policy.

- 1.1 Improve safety and security across all modes of transportation
- 1.3 Reduce emissions as required by the SFMTA Clean Air Plan
- 1.5 Increase percentage of trips using more sustainable modes (such as transit, walking, bicycling, and rideshare)

Goal 2 – System Performance: To get customers where they want to go, when they want to be there.

- 2.1 Transit reliability: Improve on-time performance to 85 percent
- 2.3 Fulfill bicycle and pedestrian network connectivity
- 2.4 Reduce congestion through major corridors

### **DESCRIPTION**

#### **Scope of Work**

On April 11, 2011, the SFMTA Board was notified that the Executive Director/CEO had authorized a bid call for DPW Contract No. 1812J: Contract 60 New Traffic Signals, for installation of new traffic signals at nine intersections and red light camera at one intersection in San Francisco.

Under this contract, the SFMTA Sustainable Streets Division (SSD will install new traffic signals at nine designated intersections located in San Francisco (the Work). These intersections are as follows: 16<sup>th</sup> and Rhode Island streets; Folsom and Russ streets; California and Pierce streets; Divisadero and Grove streets; Page and Stanyan streets; Quintara Street and Sunset Boulevard; Ashton and Ocean avenues; Capitol and Ocean avenues; and Alemany Boulevard and San Juan Avenue. Under this contract, there is also red light camera work at Fell Street and Masonic Avenue.

The SFMTA SSD selected these locations to improve vehicle and pedestrian safety based on the presence of public transit vehicles and heavy vehicle and pedestrian traffic.

**PAGE 3.**

The Work is designed to improve safety by seeking to reduce the frequency of right angle collisions, improving right-of-way assignment for vehicles and pedestrians, and allowing side street vehicle and pedestrian traffic to enter or cross the major street with less difficulty.

The Work involves the installation of new wiring, conduits, poles, traffic signal controllers, vehicle signals, pedestrian signals with countdown timers, curb ramps and a red light camera. The Work is more specifically described in the "Contract 60 New Traffic Signals Contract No. 1812J Project Manual" and the accompanying contract plans and miscellaneous reference drawings (which are voluminous documents and are available for inspection at DPW's Bureau of Engineering, 30 Van Ness Avenue, 5<sup>th</sup> Floor, San Francisco, California).

The project is categorically exempt under the California Environmental Quality Act.

SFMTA SSD staff performed the initial conceptual design and most of the detailed electrical design for this contract. DPW staff performed the detailed electrical design review, contract preparation, and contract advertising. DPW staff will also provide construction management services.

The time allotted for substantial completion of the Work is 270 calendar days from the written Notice to Proceed. Liquidated damages are \$1,500 per day for contractor's delay that results in failure to complete the Work on time.

**Solicitation for Bids and Bid Opening**

On April 15, 2011, the City solicited bids for the Contract through public advertisements in the San Francisco Chronicle and the Small Business Exchange. In addition, the public advertisement was listed until the day of the bid opening on the City's internet website at <http://www.sfgov.org/oca/purchasing>.

On May 25, 2011, DPW received and publicly opened the following three bids for DPW Contract No. 1812J:

- Bay Area Lightworks, Inc.  
1350 Van Dyke Avenue, Suite B  
San Francisco, California 94124  
Bid Amount: \$1,293,084
  
- A. Ruiz Construction Company & Associates, Inc.  
1601 Cortland Avenue  
San Francisco, CA 94110  
Bid Amount: \$1,454,844
  
- M H Construction Management Company, Inc.  
1630 17<sup>th</sup> Street  
San Francisco, California 94107  
Bid Amount: \$1,815,110

## **PAGE 4.**

As the lowest responsive and responsible bidder, staff recommends awarding to Bay Area Lightworks, Inc. in the amount of \$1,293,084 and for a term not to exceed 270 calendar days. This bid is 13 percent below the engineer's estimate.

Bay Area Lightworks, Inc. is a responsible contractor with extensive experience in traffic signal installations in the City. Bay Area Lightworks, Inc. has completed or is in the process of completing the following recent Sales Tax funded traffic signal contracts: DPW Contract No. 0985J: Contract 32 Traffic Signal Modifications (completed October 2009), DPW Contract No. 1577J: Accessible Pedestrian Signal (APS) Pole & Conduit Installation (completed December 2009), DPW Contract No. 1734J: Clarendon Avenue and Panorama Drive – New Traffic Signals (completed December 2010), and DPW Contract No. 1685J: Van Ness Corridors Project – Gough Street (currently under construction).

In its bid for DPW Contract No. 1812J, Bay Area Lightworks, Inc. listed the following subcontractors:

- Azco Supply (Stockton, CA)
- Bode Concrete (San Francisco, CA)
- JAM Services (Livermore, CA)
- North Tipp Construction (San Francisco, CA)
- Phoenix Electric Company (San Francisco, CA)
- Vickers Concrete (San Jose, CA)

The City Attorney's Office has reviewed this report.

## **ALTERNATIVES CONSIDERED**

Instead of contracting out using the competitive bid process for the construction of DPW Contract No. 1812J: Contract 60 New Traffic Signals, the following alternatives were also considered but not selected:

- Replacement and/or refurbishment – Replacement and/or refurbishment of existing equipment was not a viable option since the new signal installations require new equipment such as poles, signal heads, conduits, wiring, and signal controllers. Some existing poles such as streetlight poles are reused when possible.
- No-build option – This option was not chosen because the installation of traffic signals at key intersections has been found to enhance safety.
- Rebidding and/or renewing an existing contract – This option does not apply to Contract No. 1812J.
- Use of SFMTA in-house staff – Construction of the new signals through the use of in-house staff was found to not be feasible. SFMTA in-house staff such as the SSD Traffic Signal Shop are primarily staffed and equipped to perform maintenance of existing traffic signals rather than the construction of new traffic signals.

**PAGE 5.**

Staff concluded that contracting out through the use of the competitive bidding process was the best alternative to proceed with the construction of DPW Contract No. 1812J. Historically, contracting out via competitive bidding has been the primary way that most signals have been constructed in the City; SSD has found this method to be a cost effective and efficient way to construct new traffic signal installations.

**FUNDING IMPACT**

The Work is funded through local Sales Tax Proposition K revenues, the Mayor's Office of Housing, and the Red Light Photo Enforcement Program. Please refer to the attached Project Budget and Financial Plan – Enclosure 2, for details.

For the design phase of this project, the San Francisco County Transportation Authority (SFCTA) approved \$425,000 from Proposition K, and the Mayor's Office of Housing has already transferred \$62,500 to cover the design phase for Folsom and Russ streets.

For the construction phase of this project, the SFCTA has also already approved \$2,147,248 in Proposition K funds. The Mayor's Office of Housing has already transmitted to SFCTA the \$287,500 in funds needed for the work at Folsom and Russ streets. The SFMTA Red Light Photo Enforcement Program has committed to the \$107,756 in funds needed for the red light camera installation work at Fell Street and Masonic Avenue.

Operating funds required for the maintenance of traffic signals to be constructed as part of DPW Contract No. 1812J: Contract 60 New Traffic Signals are included in the SFMTA SSD budget for FY 11-12.

**OTHER APPROVALS RECEIVED OR STILL REQUIRED**

The Contract Compliance Officer from the Human Rights Commission has reviewed this calendar item and has confirmed that Bay Area Lightworks, Inc. will meet the 25 percent Local Business Enterprise subcontractor participation goal for this project.

DPW will proceed to award DPW Contract No. 1812J: Contract 60 New Traffic Signals following the SFMTA Board's approval of this calendar item.

**RECOMMENDATION**

Staff recommends that the SFMTA Board authorize DPW to award DPW Contract No. 1812J: Contract 60 New Traffic Signals, to Bay Area Lightworks, Inc., 1350 Van Dyke Avenue, Suite B, San Francisco, California 94124, for a total contract amount not to exceed \$1,293,084 and for a term not to exceed 270 calendar days.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

RESOLUTION No. \_\_\_\_\_

WHEREAS, SFMTA Sustainable Streets Division (SSD) identifies intersections for new traffic signal installations to be funded by Propositions K Sales Tax revenues, a half-cent sales tax approved by the voters of the City and County of San Francisco in 2003, respectively; and,

WHEREAS, SSD has identified the following nine intersections as appropriate locations for new traffic signal installations and one intersection for red light camera installation to improve vehicle and pedestrian safety based on the presence of public transit vehicles, and heavy vehicle and pedestrian traffic: 16th and Rhode Island streets; Folsom and Russ streets; California and Pierce streets; Divisadero and Grove streets; Page and Stanyan streets; Quintara Street and Sunset Boulevard; Ashton and Ocean avenues; Capitol and Ocean avenues; Alemany Boulevard and San Juan Avenue; and Fell Street and Masonic Avenue (the Work); and,

WHEREAS, SSD proposes to perform the Work under Department of Public Works (DPW) Contract No. 1812J: Contract 60 New Traffic Signals; and,

WHEREAS, The Work involves the installation of new wiring, conduits, poles, traffic signal controllers, vehicle signals, pedestrian signals with countdown timers, curb ramps, and red light camera; and,

WHEREAS, The Work will be funded through local Propositions K sales tax revenues; the Mayor's Office of Housing; and the Red Light Photo Enforcement Program; and,

WHEREAS, On April 11, 2011, the SFMTA Board was notified that the Executive Director/CEO had authorized a bid call for DPW Contract No. 1812J: Contract 60 New Traffic Signals; and,

WHEREAS, The City advertised bids for DPW Contract No. 1812J and received three bids, which were opened publicly on May 25, 2011; and,

WHEREAS, DPW has determined that Bay Area Lightworks, Inc. is the lowest responsive and responsible bidder, with a bid of \$1,293,084; and,

WHEREAS, The Contract Compliance Officer from the Human Rights Commission has confirmed that Bay Area Lightworks, Inc. will meet the established Local Business Enterprise subcontractor participation goal of 25 percent for this contract; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Department of Public Works to award DPW Contract No. 1812J: Contract 60 New Traffic Signals, to Bay Area Lightworks, Inc., 1350 Van Dyke Avenue, Suite B, San Francisco, California 94124, for a total contract amount not to exceed \$1,293,084 and for a term not to exceed 270 calendar days.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of \_\_\_\_\_.

\_\_\_\_\_  
Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency

**ENCLOSURE 2**  
**DEPARTMENT OF PUBLIC WORKS**  
**CONTRACT NO. 1812J: CONTRACT 60 NEW TRAFFIC SIGNALS**

**PROJECT BUDGET AND FINANCIAL PLAN**

**PROJECT BUDGET**

<b>Category</b>	<b>Budget Amount</b>
SFMTA SSD Transportation Engineering & DPW Bureau of Engineering (Design, Planning Coordination, & Detailed Electrical Design)	\$487,500
Construction Contract Cost, 10 percent Construction Cost Contingency, Other Direct and Indirect Cost, and Intersection Traffic Signal Controllers, Cabinets and Wireless Sensors.	\$2,542,504
<b>TOTAL (DESIGN AND CONSTRUCTION PHASES)</b>	<b>\$3,030,004</b>

**FINANCIAL PLAN**

<b>Funding Source</b>	<b>Amount</b>	<b>Percentage</b>
Local Sales Tax Proposition K	\$2,572,248	84.89%
Mayor's Office of Housing	\$350,000	11.55%
Red Light Photo Enforcement Program	\$107,756	3.56%
<b>TOTAL</b>	<b>\$3,030,004</b>	<b>100%</b>