

PURCHASE AND SALE AGREEMENT
(Dry Dock #2)

by and between

CITY AND COUNTY OF SAN FRANCISCO,
acting by and through the
SAN FRANCISCO PORT COMMISSION,
as Seller

and

as Buyer

For the sale and purchase of

[Dry Dock #2 and specified personal property]

_____, 202_

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LIST OF EXHIBITS

EXHIBIT A	PROPERTY DESCRIPTION
EXHIBIT B	FORM BILL OF SALE
SCHEDULE 1	PROPERTY REPORTS

PURCHASE AND SALE AGREEMENT
(Dry Dock #2)

THIS PURCHASE AND SALE AGREEMENT (this “**Agreement**”) dated for reference purposes only as of _____, 202_, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“**City**” or “**Seller**”) acting by and through the San Francisco Port Commission (“**Port**” or “**Department**”), and _____, a _____ (“**Buyer**”).

THIS AGREEMENT IS MADE WITH REFERENCE TO THE FOLLOWING FACTS AND CIRCUMSTANCES:

A. Port owns the Property, as more particularly described in Section 1 below, which is located at the Port’s Pier 68 shipyard in the City and County of San Francisco.

B. The Port and the City’s Purchaser have each declared the Property to be surplus and the Port desires to sell the Property pursuant to a Request for Offers issued on _____ [date] and in accordance with Administrative Code section 21.03(i).

C. Buyer successfully responded to the Request for Offers.

D. Buyer desires to purchase the Property and City is willing to sell the Property, subject to approval by the Port Commission [and the City’s Board of Supervisors and Mayor], on the terms and conditions set forth below.

ACCORDINGLY, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Buyer hereby agree as follows:

1. SALE AND PURCHASE

Subject to the terms, covenants and conditions set forth herein, City and Port agree to sell to Buyer, and Buyer agrees to purchase from City and Port, all of City’s and Port’s interest in Dry Dock #2 and related personal property, all as more particularly described in Exhibit A, which is attached to and incorporated in this Agreement, and collectively referred to as the “**Property**”.

2. PURCHASE PRICE

The purchase price for the Property is _____ Dollars (\$ _____) (the “**Purchase Price**”). Buyer shall pay the Purchase Price as follows:

(a) Within five (5) business days after the date this Agreement is executed by City, Buyer shall:

(i) transfer the sum of _____ Dollars (\$ _____) directly to the Port (the “**Down Payment**”); and

(ii) provide [cash, surety bond, standby letter of credit or other financial assurances] in the amount of _____ Dollars (\$ _____) (as more particularly described in section 6.2, below, the “**Financial Assurance**”);

(iii) provide a duly authorized and executed bill of sale in a form reasonably acceptable to Port that transfers ownership of the Property from Buyer to Port, which document shall be held in trust [by Port or deposited into Escrow) until the Closing (the “**Assurance Bill of Sale**”).

(b) Upon receipt of the Down Payment, the Financial Assurance, and the Assurance Bill of Sale, City and Port shall immediately transfer all right, title, and interest in the Property to Buyer, which transfer shall be memorialized by delivery to Buyer of a bill of sale in substantially the form attached as Exhibit B.

(c) Buyer shall pay the remaining balance of the Purchase Price, which balance is _____ Dollars (\$ _____), to Port upon the earlier to occur of (i) the removal of the Property from the City, or (ii) December 29, 2023 (the “**Closing**”).

All sums payable hereunder including, without limitation, the Down Payment, shall be paid in immediately-available funds of lawful money of the United States of America.

3. “AS-IS” PURCHASE; RELEASE OF CITY

3.1 Buyer’s Independent Investigation

Buyer represents and warrants to City and Port that Buyer has performed a diligent and thorough inspection and investigation of each and every aspect of the Property, either independently or through its Agents, including, without limitation, the following matters (collectively, the “**Property Conditions**”):

(a) All matters relating to ownership including, without limitation, the existence, quality, nature and adequacy of City and Port’s interests in the Property.

(b) The legal status of the Property, including, without limitation, the compliance of the Property or its operation with any applicable codes, laws, regulations, statutes, ordinances and private or public covenants, conditions and restrictions, and all governmental and other legal requirements such as taxes, assessments, use permit requirements and building and fire codes.

(c) The quality, nature, adequacy and physical condition of the Property, including, but not limited to, the structural elements, roof, interior, facilities, and the electrical, mechanical, HVAC, plumbing, sewage and utility systems, facilities and appliance, and all other physical and functional aspects of the Property.

(d) The quality, nature, adequacy, and physical and environmental condition of the Property, and the presence or absence of any Hazardous Materials in, on, under or about the Property or any other real property in the vicinity of the Property. As used in this Agreement, “Hazardous Material” shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is now or hereafter 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.

(e) The suitability of the Property for Buyer’s intended uses. Buyer represents and warrants that its intended use of the Property is _____ *[insert brief description]*.

(f) The economics and reuse or development potential, if any, of the Property.

- (g) All other matters of material significance affecting the Property.

3.2 Property Disclosures

(a) California law requires sellers to disclose to buyers the presence or potential presence of certain Hazardous Materials. Accordingly, Buyer is hereby advised that use or occupation of the Property may lead to exposure to Hazardous Materials such as, but not limited to, gasoline, diesel and other vehicle fluids, vehicle exhaust, tobacco smoke, methane and building materials containing chemicals, such as formaldehyde. By execution of this Agreement, Buyer acknowledges that the notices and warnings set forth above satisfy the requirements of California Health and Safety Code Section 25359.7, if applicable, and any related statutes.

(b) Buyer acknowledges that City and Port have disclosed the matters relating to the Property referred to in Exhibit C attached hereto. Nothing contained in such schedule shall limit any of the provisions of this Article or relieve Buyer of its obligations to conduct a diligent inquiry hereunder, nor shall any such matters limit any of the provisions of Section 4.4 (“As-Is” Purchase) or Section 4.5 (Release of City) of this Agreement.

3.3 Entry and Indemnity

In connection with any entry by Buyer or its Agents onto the Property, Buyer shall give Port reasonable advance written notice of such entry and shall conduct such entry and any inspections in connection therewith so as to minimize, to the extent possible, interference with uses being made of the Property and otherwise in a manner and on terms and conditions acceptable to Port. All entries by Buyer or its Agents onto the Property to perform any testing or other investigations which could affect the physical condition of the Property (including, without limitation, operational testing or submergence) or the uses thereof will be made only pursuant to the terms and conditions of a permit to enter or other written agreement in form and substance satisfactory to Port. Without limiting the foregoing, prior to any entry to perform any on-site testing prior to the Closing, Buyer must give Port written notice thereof, including the identity of the company or persons who will perform such testing, the precise time and location of the testing, and the proposed scope of the testing. Port shall have the right to approve, disapprove, or condition and limit the proposed testing, in Port’s sole discretion, within ten (10) business days after receipt of such notice. If Buyer or its Agents, employees or contractors take any sample from the Property in connection with any approved testing, Buyer shall provide to Port a portion of such sample being tested to allow Port, if it so chooses, to perform its own testing. Port or its representative may be present to observe any testing or other inspection performed on the Property. Buyer shall promptly deliver to Port copies of any reports relating to any testing or other inspection of the Property performed by Buyer or its Agents, employees or contractors, but shall not deliver copies of any such reports to any other person or entity without Buyer’s prior written approval. Buyer shall keep all test results and information strictly confidential, and shall indemnify, reimburse, defend and hold City and Port harmless from and against any loss, cost, expense, or damage resulting from Buyer’s failure to keep any information obtained from an inspection or testing of the Property strictly confidential; provided, however, Buyer shall not be liable if and to the extent Buyer is required to disclose such information pursuant to a court order. Buyer shall comply with all laws, ordinances, rules, regulations, orders and the like in connection with any entry onto or testing of the Property.

Buyer shall maintain, and shall require that its Agents maintain, public liability and property damage insurance in amounts and in form and substance adequate to insure against all liability of Buyer and its Agents, arising out of any entry or inspection of the Property in connection with the transaction contemplated hereby, and Buyer shall provide City with evidence of such insurance coverage upon request from City.

To the fullest extent permitted under law, Buyer shall indemnify, defend and hold harmless City and Port, their Agents, and each of them, from and against any liabilities, costs, damages, losses, liens, claims and expenses (including, without limitation, reasonable fees of attorneys, experts and consultants and related costs) arising out of or relating to any entry on, under or about the Property by Buyer, its Agents, contractors and subcontractors in performing the inspections, testings or inquiries provided for in this Agreement, whether prior to the date of this Agreement or during the term hereof, including, without limitation, any injuries or deaths to any persons (including, without limitation, Buyer's Agents) and damage to any property, from any cause whatsoever. The foregoing indemnity shall survive beyond the Closing, or, if the sale is not consummated, beyond the termination of this Agreement.

3.4 "As-Is" Purchase

BUYER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT CITY AND PORT ARE SELLING AND BUYER IS PURCHASING CITY'S AND PORT'S INTEREST IN THE PROPERTY ON AN "AS-IS WITH ALL FAULTS" BASIS. BUYER IS RELYING SOLELY ON ITS INDEPENDENT INVESTIGATION AND NOT ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM CITY, PORT, OR THEIR AGENTS AS TO ANY MATTERS CONCERNING THE PROPERTY, ITS SUITABILITY FOR BUYER'S INTENDED USES OR ANY OF THE PROPERTY CONDITIONS. CITY AND PORT DO NOT GUARANTEE THE LEGAL, PHYSICAL, GEOLOGICAL, ENVIRONMENTAL OR OTHER CONDITIONS OF THE PROPERTY, NOR DOES IT ASSUME ANY RESPONSIBILITY FOR THE COMPLIANCE OF THE PROPERTY OR ITS USE WITH ANY STATUTE, ORDINANCE, OR REGULATION. IT IS BUYER'S SOLE RESPONSIBILITY TO DETERMINE ALL BUILDING, PLANNING, TRANSPORTATION AND OTHER REGULATIONS RELATING TO THE PROPERTY AND THE USES TO WHICH IT MAY BE PUT.

3.5 Release of City and Port

As part of its agreement to purchase the Property in its "As-Is With All Faults" condition, Buyer, on behalf of itself and its successors and assigns, waives any right to recover from, and forever releases and discharges, City, Port, and their officers, employees, agents, contractors and representatives, and their respective heirs, successors, legal representatives and assigns, from any and all demands, claims, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs or expenses whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with (i) Buyer's and its Agents and customer's past, present and future use of the Property, (ii) the physical, geological or environmental condition of the Property, including, without limitation, any Hazardous Material in, on, under, above or about the Property, and (iii) any federal, state, local or administrative law, rule, regulation, order or requirement applicable thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended by Superfund Amendments and Reauthorization Act of 1986 ("SARA") (42 U.S.C. Sections 9601-9657), the Resource Conservation and Recovery Act of 1976, as amended by the Solid Waste and Disposal Act of 1984 (collectively, "RCRA") (42 U.S.C. Sections 6901-6987), the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 (collectively the "Clean Water Act") (33 U.S.C. Section 1251 et seq.), the Toxic Substances Control Act ("TSCA") (15 U.S.C. Sections 2601-2629), Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.), the Carpenter-Presley-Tanner Hazardous Substance Account Law (commonly known as the "California Superfund" law) (California Health and Safety Code Sections 25300-25395), Hazardous Waste Control Act (California Health and Safety Code Section 25100 et seq.), Hazardous Materials Release Response Plans and Inventory Law (commonly known as the "Business Plan Law") (California Health and Safety Code Section 25500 et seq.), Porter-

Cologne Water Quality Control Act (California Water Code Section 13000 et seq.), Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as “Proposition 65”) (California Health and Safety Code Section 25249.5 et seq.).

In connection with the foregoing release, Buyer expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

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

BY PLACING ITS INITIALS BELOW, BUYER SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THE VALIDITY OF THE RELEASES MADE ABOVE AND THE FACT THAT BUYER WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THE ABOVE RELEASES.

INITIALS: _____
Name: _____
Title: _____

4. CONDITIONS PRECEDENT

4.1 Buyer’s Conditions Precedent [Reserved.]

4.2 City’s Conditions Precedent

The following are conditions precedent to City and Port’s obligation to sell the Property to Buyer (“City’s Conditions Precedent”):

(a) Buyer shall have performed all of its obligations hereunder and all of Buyer’s representations and warranties shall be true and correct.

(b) A resolution approving and authorizing the transactions contemplated hereby and finding that the public interest or necessity demands, or will not be inconvenienced by the sale of the Property, shall have been adopted by the Port Commission and, if applicable, City’s Board of Supervisors and Mayor, in their respective sole and absolute discretion, and duly enacted on or before _____, 20__.

4.3 Failure of City’s Conditions Precedent

Each of City’s Conditions Precedent are intended solely for the benefit of City and Port. If either of City’s Conditions Precedent are not satisfied as provided above, City and Port may, at their option, terminate this Agreement. Upon any such termination, neither party shall have any further rights or obligations hereunder except as provided in Sections 3.3 (Entry and Indemnity), 7.2 (Brokers), or 9.4 (Authority of Buyer) or as otherwise expressly provided herein.

5. CLOSING

5.1 Closing Date

The Closing hereunder shall be held, and delivery of all items to be made at the Closing under the terms of this Agreement shall be made, at the offices of the Port on (i) December 29, 2023 before 1:00 p.m. San Francisco time or (ii) such earlier date and time as Buyer and Port may mutually agree upon in writing (the “Closing Date”). Such date and time may not be extended without the prior written approval of Port and Buyer.

5.2 Escrow [Reserved].

5.3 Closing Procedure

(a) At [or before] the Closing, City shall provide the following items [to Buyer / into escrow]:

(i) return or release of the Financial Assurance, less any duly incurred debts or obligations, if applicable; and

(ii) the Assurance Bill of Sale.

(b) At or before the Closing, Buyer shall provide the following items:

(i) the funds necessary to close this transaction in accordance with the wire transfer instructions.

(c) City and Buyer shall each exchange such other instruments as are reasonably required to close and consummate the purchase of the Property in accordance with the terms hereof.

6. RISK OF LOSS

6.1 Loss

In the event there occurs, through no fault of Buyer or one or more of Buyer’s Agents, any partial damage to the Property or destruction of any of the improvements thereon between the date this Agreement is fully executed and the Closing Date, Buyer shall nonetheless be bound to purchase the Property for the full Purchase Price pursuant to the terms hereof, without regard to the occurrence or effect of any such damage or destruction.

6.2 Financial Assurance

(a) To ensure Buyer fulfills its obligation to complete the purchase and remove the Property, Buyer must deliver to Port the Financial Assurance in the amount specified in subsection 2(a)(ii) of this Agreement, as collateral for the full and faithful performance by Tenant of its obligations under this Agreement; provided, however, that the Financial Assurance will not be deemed and advance payment of the Purchase Price, an advance of any other payment due to Port under this Agreement or any other agreement between Port and Buyer, a security deposit subject to the California Civil Code, or a measure of Port’s damages upon an Event of Default.

(b) The Financial Assurance may be provided by an irrevocable, stand-by and unconditional negotiable letter of credit (“**Letter of Credit**”) with a face amount equal to the Financial Assurance and in a form approved by Port in its sole discretion. The Letter of Credit must:

(i) be in a form acceptable to Port and issued by a nationally-chartered bank with capitalization of at least \$100 million, and otherwise reasonably satisfactory to Port (the “**Issuer**”);

(ii) be replaced, renewed, or extended at least sixty (60) days before any expiration date stated in the Letter of Credit, if necessary to ensure that the full Letter of Credit value is available to Port at all times until sixty (60) days after the Expiration Date;

(iii) be Issuer’s irrevocable, unconditional independent and binding obligation to honor any draw, including partial and multiple draws, presented to Issuer at sight upon the presentation at a branch in San Francisco of Port’s signed statement to the Issuer (A) stating that a Buyer default has occurred and is continuing under this Agreement, and any applicable grace period has expired or Port is otherwise entitled to draw on the Letter of Credit; or (B) requesting an extension of the Letter of Credit’s expiration date to the maximum time allowed, or, in the alternative, a draw of the full face amount of the Letter of Credit, because Buyer has not presented Port with a replacement, renewal, or extension as required under this section, all in accordance with applicable rules; and

(iv) be freely transferable upon Port’s (or Port’s successors’) delivery of any documents required by Issuer confirming a transfer.

(c) The Financial Assurance may be provided by a payment bond issued by a bank or surety acceptable to Port naming Port as co-obligee in a principal amount of not less than the Financial Assurance value.

(d) The Financial Assurance may be provided as a cash payment held by [Port or escrow agent].

(e) Port may use any portion of the Financial Assurance proceeds in the same manner as a security deposit and to fulfill any obligation of Buyer to the Port under this Agreement or any other agreement between Port and Buyer or Buyer’s Agent, and is in addition to any other security deposit, guaranty, or other assurance under any other agreement. Buyer expressly agrees that Port shall have immediate and unlimited right to the Financial Assurance proceeds without further obligation to Buyer if any of the following occurs: (i) the Closing does not occur on or before December 29, 2023 and there is no signed, written agreement between Port and Buyer extending the date for the Closing, or (ii) Buyer has abandoned the Property (for purposes of this section “abandoned” includes but is not limited to: Buyer’s failure to secure and maintain the Property, Buyer’s failure to maintain itself as a duly authorized and existing entity that is qualified to do business in California, and Buyer files for bankruptcy, becomes insolvent, or a receiver is appointed for a substantial part of Buyer’s assets).

(f) If Port makes a draw in any amount, Buyer must deliver to Port an amendment, supplement, or replacement Financial Assurance providing Port with the full

Financial Assurance value within five (5) business days after notice from Port to Buyer specifying the amount of the draw and the particular purpose to which the Financial Assurance proceeds were applied.

(g) Buyer agrees that Port will have until three (3) months after the expiration date of the Financial Assurance (or later date of the Closing) to return any Financial Assurance proceeds drawn but not applied towards Port costs or damages; and that Port will have no further liability to Buyer with respect to the Financial Assurance or Financial Assurance proceeds following a transfer of the beneficial interest to a transferee in accordance with the Issuer's requirements.

7. EXPENSES

7.1 Expenses

Buyer shall pay any taxes applicable to the sale, personal property taxes, escrow fees and recording charges and any other costs and charges of the escrow for the sale.

7.2 Brokers

The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction and that there are no claims or rights for brokerage commissions or finder's fees in connection with the transactions contemplated by this Agreement. If any person brings a claim for a commission or finder's fee based on any contact, dealings, or communication with Buyer or City or Port, then the party through whom such person makes a claim shall defend the other party from such claim, and shall indemnify the indemnified party from, and hold the indemnified party against, any and all costs, damages, claims, liabilities, or expenses (including, without limitation, reasonable attorneys' fees and disbursements) that the indemnified party incurs in defending against the claim. The provisions of this Section shall survive the Closing, or, if the purchase and sale is not consummated for any reason, any termination of this Agreement.

8. LIQUIDATED DAMAGES

IF THE CLOSING IS NOT CONSUMMATED DUE TO THE FAILURE OF ANY CONDITION PRECEDENT OR CITY'S DEFAULT HEREUNDER AND BUYER IS NOT THEN IN DEFAULT, THEN THE CITY SHALL RETURN THE FINANCIAL ASSURANCE TO BUYER. IF THE CLOSING IS NOT CONSUMMATED DUE TO ANY DEFAULT BY BUYER HEREUNDER AND CITY IS NOT THEN IN DEFAULT, THEN THE CITY SHALL RETAIN FINANCIAL ASSURANCE AND CITY SHALL BE ENTITLED TO RETAIN SUCH SUM AS LIQUIDATED DAMAGES. THE PARTIES HAVE AGREED THAT CITY'S ACTUAL DAMAGES, IN THE EVENT OF A FAILURE TO CONSUMMATE THE CLOSING AS SPECIFIED IN THE PRECEDING SENTENCE, WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. AFTER NEGOTIATION, THE PARTIES HAVE AGREED THAT, CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, THE AMOUNT OF THE FINANCIAL ASSURANCE IS A REASONABLE ESTIMATE OF THE DAMAGES THAT CITY WOULD INCUR IN SUCH AN EVENT. BY PLACING THEIR RESPECTIVE INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION.

INITIALS: CITY: _____ BUYER: _____

9. GENERAL PROVISIONS

9.1 Notices

Any notices required or permitted to be given under this Agreement shall be in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, or (c) by U.S. Express Mail or commercial overnight courier that guarantees next day delivery and provides a receipt, and such notices shall be addressed as follows:

CITY:

Andre Coleman
Maritime Director
Pier 1, The Embarcadero
Port of San Francisco
San Francisco, CA 94111
Re: Dry Docks

BUYER:

with a copy to:

Michelle Sexton
Port General Counsel
Pier 1, The Embarcadero
Port of San Francisco
San Francisco, CA 94111
Re: Dry Docks

with a copy to:

or such other address as either party may from time to time specify in writing to the other party. Any notice shall be deemed given when actually delivered if such delivery is in person, two (2) days after deposit with the U.S. Postal Service if such delivery is by certified or registered mail, and the next business day after deposit with the U.S. Postal Service or with the commercial overnight courier service if such delivery is by overnight mail.

9.2 Successors and Assigns

This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, legal representatives, administrators and assigns. Buyer's rights and obligations hereunder shall not be assignable without the prior written consent of City; provided, however, even if City approves any such proposed assignment, in no event shall Buyer be released of any of its obligations hereunder.

9.3 Amendments

This Agreement may be amended or modified only by a written instrument signed by the Buyer and City.

9.4 Authority of Buyer

Buyer represents and warrants to City that Buyer is a _____ duly organized, validly existing, and in good standing under the laws of the State of _____. Buyer further represents and warrants to City that this Agreement and any documents executed by Buyer which are to be delivered to City at Closing: (a) are or at the time of Closing will be duly authorized, executed and delivered by Buyer; (b) are or at the time of Closing will be legal,

valid and binding obligations of Buyer; and (c) do not and at the time of Closing will not violate any provision of any agreement or judicial order to which Buyer is a party or to which Buyer is subject. Notwithstanding anything to the contrary in this Agreement, the foregoing representations and warranties and any and all other representations and warranties of Buyer contained herein or in other agreements or documents executed by Buyer in connection herewith, shall survive the Closing Date.

9.5 Buyer's Representations and Warranties

Buyer makes the following representations as of the date of this Agreement and at all times throughout this Agreement:

(a) Buyer is a [_____] duly organized and validly existing and in good standing under the laws of the jurisdiction in which it was formed. Buyer has duly authorized by all necessary action the execution, delivery and performance of this Agreement. Buyer has duly executed and delivered this Agreement and this Agreement constitutes a legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with the terms hereof.

(b) Buyer represents and warrants to City that it has not been suspended, disciplined or disbarred by, or prohibited from contracting with, any federal, state or local governmental agency. In the event Buyer has been so suspended, disbarred, disciplined or prohibited from contracting with any governmental agency, it shall immediately notify the City of same and the reasons therefore together with any relevant facts or information requested by City. Any such suspension, debarment, discipline or prohibition may result in the termination or suspension of this Agreement.

(c) No document or instrument furnished or to be furnished by the Buyer to the City in connection with this Agreement contains or will contain any untrue statement of material fact or omits or will omit a material fact necessary to make the statements contained therein not misleading, under the circumstances under which any such statement shall have been made.

9.6 Governing Law

This Agreement shall be governed by, subject to, and construed in accordance with the laws of the State of California and City's Charter and Administrative Code.

Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the Superior Court for the City and County of San Francisco, and each party agrees to the exclusive jurisdiction of such court in any such suit, action, or proceeding (excluding bankruptcy matters). The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such court and irrevocably waive and agree not to plead or claim that any suit, action, or proceeding brought in San Francisco Superior Court relating to this Agreement has been brought in an inconvenient forum.

9.7 Merger of Prior Agreements

This Agreement, together with the exhibits hereto, contain any and all representations, warranties and covenants made by Buyer and City and constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are replaced in total by this Agreement together with the exhibits hereto.

9.8 Parties and Their Agents

The term “Buyer” as used herein shall include the plural as well as the singular. If Buyer consists of more than one (1) individual or entity, then the obligations under this Agreement imposed on Buyer shall be joint and several. As used herein, the term “Agents” when used with respect to either party shall include the agents, employees, officers, contractors and representatives of such party.

9.9 Interpretation of Agreement

The article, section and other headings of this Agreement and the table of contents are for convenience of reference only and shall not affect the meaning or interpretation of any provision contained herein. Whenever the context so requires, the use of the singular shall be deemed to include the plural and vice versa, and each gender reference shall be deemed to include the other and the neuter. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purposes of the parties and this Agreement.

9.10 Attorneys' Fees

If either party hereto fails to perform any of its respective obligations under this Agreement or if any dispute arises between the parties hereto concerning the meaning or interpretation of any provision of this Agreement, then 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 on account of such default or in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements. For purposes of this Agreement, the reasonable fees of attorneys of the Office of the City Attorney of the City and County of San Francisco 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 City Attorney's Office.

9.11 Time of Essence

Time is of the essence with respect to the performance of the parties' respective obligations contained herein.

9.12 No Merger

The obligations contained herein shall not merge with the transfer of title to the Property but shall remain in effect until fulfilled.

9.13 Non-Liability of City and Port Officials, Employees, and Agents

Notwithstanding anything to the contrary in this Agreement, no elective or appointive board, commission, member, officer, employee or agent of City shall be personally liable to Buyer, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Buyer, its successors and assigns, or for any obligation of City under this Agreement.

9.14 Conflicts of Interest

Through its execution of this Agreement, Buyer acknowledges that it is familiar with the provisions of 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 constitute a violation of said provisions and agrees that if it becomes aware of any such fact during the term of this Agreement, Buyer shall immediately notify the City.

9.15 Notification of Prohibition on Contributions

Through its execution of this Agreement, Buyer 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 any department of the City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or twelve (12) months after the date the contract is approved. Buyer 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 \$100,000 or more. Buyer further acknowledges that the (i) prohibition on contributions applies to each Buyer; each member of Buyer's board of directors, and Buyer's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Buyer; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Buyer; and (ii) within thirty (30) days of the submission of a proposal for the contract, the City department with whom Grantee is contracting is obligated to submit to the Ethics Commission the parties to the contract and any subcontractor. Additionally, Buyer certifies that Buyer has informed each of the persons described in the preceding sentence of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

9.16 Sunshine Ordinance

Buyer understands and agrees that under the City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov. Code Section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to the City hereunder public records subject to public disclosure. Buyer hereby acknowledges that the City may disclose any records, information and materials submitted to the City in connection with this Agreement.

9.17 Tropical Hardwood and Virgin Redwood Ban

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 except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code.

9.18 MacBride Principles Northern Ireland

City and Port urge companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride

Principles. City and Port urge San Francisco companies to do business with corporations that abide by the MacBride Principles.

9.19 No Recording

Neither this Agreement nor any memorandum or short form thereof may be recorded by Buyer.

9.20 Effective Date

As used herein, the term “Effective Date” shall mean the date on which the City’s Board of Supervisors and Mayor enact *[a resolution / an ordinance]* approving and authorizing this Agreement and the transactions contemplated hereby, following execution of this Agreement by both parties.

9.21 Severability

If any provision of this Agreement or the application thereof to any person, entity or circumstance shall be invalid or unenforceable, the remainder of this Agreement, 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 Agreement shall be valid and be enforceable to the fullest extent permitted by law, except to the extent that enforcement of this Agreement without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this Agreement.

9.22 Acceptance by Buyer

This Agreement shall be null and void unless it is accepted by Buyer and two (2) fully executed copies hereof are returned to City on or before 5:00 p.m. San Francisco time on _____, 20____.

9.23 Counterparts

This Agreement 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.

[SIGNATURES ON FOLLOWING PAGE]

The parties have duly executed this Agreement as of the respective dates written below.

CITY:

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

By: _____
ELAINE FORBES
Executive Director

APPROVED AS TO FORM:

DAVID CHIU
City Attorney

By: _____
[NAME OF DEPUTY]
Deputy City Attorney

APPROVED:

Office of Contract Administration, and
Purchaser

By: _____
[NAME]

BUYER:

_____ a _____

By: _____
[NAME]

Its: _____

By: _____
[NAME]

Its: _____

EXHIBIT A

PROPERTY DESCRIPTION

DRAFT

EXHIBIT B

FORM BILL OF SALE

For good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“City”), does hereby sell, transfer and convey to _____, a _____ (“Buyer”), the personal property described in the attached Schedule 1 and used in connection with the operation of that certain real property located at _____, San Francisco, California.

WITHOUT LIMITING ANY OF THE PROVISIONS OF THE AGREEMENT OF PURCHASE AND SALE BETWEEN CITY AND BUYER, BUYER ACKNOWLEDGES AND AGREES THAT CITY IS SELLING AND BUYER IS PURCHASING SUCH PERSONAL PROPERTY ON AN “AS-IS WITH ALL FAULTS” BASIS AND THAT BUYER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM CITY, ITS AGENTS, EMPLOYEES OR OFFICERS, AS TO ANY MATTERS CONCERNING SUCH PERSONAL PROPERTY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Executed as of this _____ day of _____, 20__.

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation acting by and through,
THE SAN FRANCISCO PORT COMMISSION

By: _____
ELAINE FORBES
Executive Director

APPROVED AS TO FORM:

DAVID CHIU
City Attorney

By: _____
[NAME OF DEPUTY]
Deputy City Attorney

EXHIBIT C
PROPERTY REPORTS

DRAFT