

PORT OF SAN FRANCISCO

**REQUEST FOR PROPOSALS
LEASE OPPORTUNITY:**

**EcoCenter at Heron's Head Park
32 Jennings Street
(foot of Cargo Way, at Cargo and Jennings)**

CITY AND COUNTY OF SAN FRANCISCO

Edwin M. Lee., Mayor

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I. THE OPPORTUNITY

The Port of San Francisco (“Port”) is soliciting proposals from qualified entities (“Proposers”) for the operation and programming of a unique building: The EcoCenter at Heron’s Head Park (the EcoCenter), located at 32 Jennings Street. The EcoCenter occupies approximately 2,300 square feet within the Port’s Heron’s Head Park. Heron’s Head Park is a 22-acre open space dedicated to wetland and wildlife habitat and passive recreation, owned and operated by the Port of San Francisco. It is a signature park on the “Blue Greenway”¹ and a destination for San Francisco residents and visitors from throughout the Bay Area.

Through this RFP and subsequent evaluation process, the Port will select a qualified Proposer that has the demonstrated ability to operate the EcoCenter in a manner consistent with its authorized purpose and goals, as described below. The Port Commission intends to select a Proposer that can successfully promote public access and deliver high quality programs that serve the surrounding community as well as a broad spectrum of participants of various ages and backgrounds. The selected Proposer must have experience in operating an environmental education program and/or community center. Selection of a tenant and approval of the required lease will be subject to approval by the Port Commission.

II. THE ECOCENTER

The EcoCenter is a free-standing, one-story, 2,292 square-foot building. The lease will include a surrounding 6,058 square-foot non-exclusive outdoor space (“License Area”, see Appendix A). The EcoCenter consists of a large open meeting space (maximum occupancy: 64 people), adjacent wastewater treatment room, two unisex disabled-accessible restrooms, and two very small office and utility rooms.

A non-profit organization in the Bayview-Hunters Point neighborhood, Literacy for Environmental Justice (LEJ) envisioned and constructed the EcoCenter as an educational resource for the surrounding community. The EcoCenter serves as a demonstration of green building technology, including solar power, a living roof², sustainable building materials, on-site wastewater treatment, and rainwater capture and reuse. In July 2013, the EcoCenter was certified by the United States Green Building Council as a Leadership in Energy and Environmental (LEED) Platinum

¹ The Blue Greenway is the City of San Francisco's project to improve San Francisco's southern portion of the 500 mile, 9-county, region-wide Bay Trail, the newly established Bay Area Water Trail, and associated waterfront open space system. The alignment of the Blue Greenway generally follows the alignment of the Bay Trail and Bay Area Water Trail from Mission Creek on the north to the San Francisco County line on the south.

² A “living roof”, or “green roof” is a roof a building that is partially or completely covered with vegetation and a growing medium, planted over a waterproof membrane. Green roofs absorb and sometimes capture rainwater, provide insulation, and create habitat for plants and wildlife.

building. It is the first LEED Platinum – Zero Net Energy Building³ in San Francisco. Its location in Heron’s Head Park makes the EcoCenter a valuable resource for environmental education and stewardship.

The permits, authorizations, and funding agreements that enabled creation of the EcoCenter authorized its construction for use as an environmental education center to educate the public regarding wetland ecology, natural systems-based wastewater treatment, and sustainable, energy efficient building technology (“green building”). The entitlements for the EcoCenter are based on the premise that it will be used to house environmental education programs, demonstrate green building technology, and provide meeting space for community uses that do not adversely impact public access or wildlife habitat in Heron’s Head Park.

LEJ has owned and operated the EcoCenter since it opened in 2010. LEJ’s lease for the Port-owned land upon which the EcoCenter sits allows the EcoCenter to be used as a home base for environmental education programs, and specifies that the primary function of the building and associated programs is to educate visitors about sustainable building design, ecology of the surrounding park, and sustainability in all of its forms (cultural, economic, and environmental). LEJ and the Port are currently negotiating a termination agreement through which ownership and operation of the EcoCenter will transition from LEJ to the Port.

III. THE ENVIRONS: Heron’s Head Park

Heron’s Head Park is located just north of Hunter’s Point and India Basin, northeast of the India Basin Industrial Park and south of Pier 96. In 1998, with funding from the Port, the City and County of San Francisco Public Utilities Commission, and the California State Coastal Conservancy, the Port constructed habitat and park improvements to the site formerly known as “Pier 98”. The Port removed thousands of tons of fill (all of which was reused on-site or recycled off-site) to create new wetland area and improve tidal circulation in the existing wetlands. In the upland, the Port constructed park amenities including a half-mile trail, interpretive signs, picnic area, and fishing pier. The former Pier 98 re-opened to the public as Heron’s Head Park in 1999. In 2012, the Port completed a major expansion of Heron’s Head Park funded by proceeds of the 2008 Clean and Safe Parks Bond, including parking and traffic flow improvements, two composting restrooms, solar-powered lighting, signage, barbeque and seating areas, and an off-leash dog play area.

Heron’s Head Park supports over 100 species of birds, and other marine and terrestrial wildlife. It is home to an endangered plant, California Sea Blite, and an endangered bird, the California Clapper Rail. Many other bird species reside at Heron’s Head Park or stop for critical rest and feeding on their annual migration. Heron’s Head Park is

³ Platinum is the highest rating for new building construction. A Zero Net Energy Building is generally defined as an energy efficient building enabled to generate energy from renewable sources to compensate its own energy demand.

used for education and recreation by thousands of bird-watchers, hikers, students, teachers, and visitors from San Francisco and the surrounding Bay Area. It has recently been named among the “10 Best Hikes with Kids” in the Bay Area and one of “10 Great Hikes in Southeastern San Francisco”.

IV. PORT ENVIRONMENTAL EDUCATION PROGRAMS

Since Heron’s Head Park opened, the Port has funded environmental education and public participation programs there. These programs serve thousands of people each year. For the past three years, the Port has partnered with the San Francisco Recreation and Parks Department’s Youth Stewardship Program (YSP) to provide education programs at Heron’s Head Park. As part of that partnership, in 2012 the Port and RPD launched “the Greenagers” program, which offers structured service-learning and leadership skills development to high school students from District 10 who are interested in environmental issues. The Greenagers program will continue to focus on Heron’s Head Park through 2013.

While Port-funded programs fill a need for educational and recreational opportunities in the community, they also return great benefits to Heron’s Head Park. The Port finds that engagement of a broad range of community members is essential to the health and vitality of the park and intends to continue its partnership with YSP. The education programs currently lead by LEJ and YSP educate participants in both the EcoCenter and the park. The programs benefit from integrating learning about the green building technologies at the EcoCenter with learning about how those operations relate to the outdoor environment.

V. PROJECT OBJECTIVES

The Port has the following objectives for operation and programming of the EcoCenter:

1. **Promote public access and participation** through structured programming and interpretive resources. Under the terms of the lease, the tenant will be required to open the EcoCenter free to the public at least four days per week, including at least one weekend day. Programming should offer opportunities that serve a range of users from casual park visitors, to drop-in and recurring volunteers, students and professionals. The EcoCenter tenant will also be responsible for developing interpretive material that educates visitors to the EcoCenter when it is closed, such as signage, audio tour, or web-accessible programs.
2. **Maximize the educational and other public benefits that the EcoCenter offers.** At a minimum, the tenant will provide educational programs for San Francisco public schools and coordinate with existing environmental education programs offered by the Port through its partnership with YSP. The tenant’s program must include education about green building technologies and bay and wetland ecology. The tenant may also propose programming that addresses elements not currently specified but offer added value.

3. **Engage the local community.** The Port considers community participation to be an essential component of EcoCenter operations and strongly encourages partnerships that enable significant participation from the citizens of San Francisco, with a particular emphasis on the southeastern sector. Programs should be designed to meet the needs and interests of local schools, youth groups and community groups. The EcoCenter must also be available to public agencies or community organizations hosting or sponsoring public meetings that serve the local community, such as the Port's Southern Waterfront Advisory Committee.
4. **Operate the building systems and maintain surrounding landscaping in good condition.** The tenant's obligations will include routine visual observation of water (including rainwater collection), wastewater and energy systems in the building, and tending native plant landscaping in the non-exclusive license area. Building systems must be inspected each day that the tenant is present and not less than four days per week. The Port will be primarily responsible for maintenance and repair of the building, including water, wastewater and electrical service. A breakdown of tenant and Port responsibilities is provided in Appendix C.
5. **Coordinate with the Port staff** to facilitate the Port's maintenance of the EcoCenter. The tenant will be responsible for routine operation of the building systems, including observing and reporting problems to the Port. The EcoCenter tenant will also be required coordinate with existing environmental education programs offered by the Port through its partnership with YSP, provided that such access does not unreasonably impact the tenant's use.

VI. PROJECT APPROVALS

The Proposer is responsible for determining which permits and approvals will be required for its proposed use of the building. The following information is intended to help Proposers make this determination. It is not meant to be an exhaustive summary of all permits that may be required.

The initial construction and ongoing operation of the EcoCenter are authorized by a Port Building Permit (No. B-2008-001, issued 8/11/08), and a permit from the Bay Conservation and Development Commission ("BCDC", Permit No. 98-3, Amendment No. 2, 4/27/06). EcoCenter construction and operation meet the requirements of the California Environmental Quality Act ("CEQA"), as documented by Addendum to the Negative Declaration (City and County of San Francisco Planning Department File No. 1997.432E, issued 7/26/02). Although the Port does not anticipate changes in use that require amendment to existing approvals from BCDC or to comply with CEQA, it is the Proposer's responsibility to evaluate its proposed use and programming of the building to determine whether it is consistent with original project approvals or whether changes could cause adverse environmental impacts not yet analyzed or otherwise not considered in existing approvals. The Proposer is solely responsible for obtaining any licenses, permits, or other approvals required to administer its proposed activities.

Port of San Francisco

The Port Commission must approve the selected Proposer and the final lease.

Any repair or alteration to the interior or exterior of the building, construction within the lease or non-exclusive license area, or installation of any signs or art installations outside the building, or inside the building but visible outside the building, require review and approval by the Port Engineering Department/Building Permit Group.

Department of Public Health

Operation of the Wastewater Treatment System is subject to regulation by the City and County of San Francisco Department of Public Health (DPH). The Port will be responsible for completing the water quality monitoring and reporting required by DPH. The Tenant will be responsible for regular visual observation of the wastewater treatment system (each day that the tenant is present and no less than 4 days per week) and informing the Port of any problems or indications of malfunction.

Business Licenses

Tenant may sell limited quantities of branded and other program-related merchandise for the purposes of promoting its own organization, fundraising for the EcoCenter, and providing amenities to park and EcoCenter visitors. Tenant may charge fees for certain programs, only as-needed to recover cost for materials used or other direct expenses related to providing the subject program. If the Proposer anticipates any retail sales or other revenue-generating activities, Proposers should investigate, and will be solely responsible for obtaining the required license(s), including but not limited to those from the City's Department of Public Health and Treasurer/Tax Collector.

With Port's prior written consent in its sole discretion, Tenant may host special events, including after hours, invitation-only gatherings, for the sole purpose of fund raising for the EcoCenter. Tenant may charge fees, and serve food and beverages at such events. Direct sale of alcoholic beverages is prohibited.

VII. PROPOSED RENT AND KEY LEASE TERMS

The Port anticipates entering into a lease for the EcoCenter in substantially similar form to the one provided in Appendix B (the "Lease"). This Section briefly describes key lease terms established by the Port. In its submittal, each Proposer is required to indicate acceptance of these key lease terms, and to make a proposal that is consistent with these key lease terms. The actual terms of the Lease will be subject to final approval by the San Francisco Port Commission.

Permitted Use

The EcoCenter will be used primarily for education and public access with a focus on green building, sustainability, San Francisco Bay habitats, environmental health, and natural resources conservation. The EcoCenter must be open for free public access at

least four days per week, including at least one weekend day. However the Tenant will be expected to use its best efforts to use the EcoCenter to its fullest potential.

The EcoCenter will also be used for community meetings and assembly space for purposes related to its education and public benefit mission. Subject to prior consent by the Port, the Tenant may hold a limited number of Special Events to support Tenant's fundraising for operation and programming of the EcoCenter.

As described above, a Tenant may sell branded merchandise for the purposes of promoting its own organization and fundraising for the EcoCenter, charge fees for certain programs as-needed to recover cost to provide the subject program, and host special events subject to Port consent. During special events, with prior written approval of the Port, the tenant may temporarily restrict or block-off all or any portion of the Premises or the License Area for use by the tenant during special events. At all other times, the tenant may not close, prevent, or impede access to the License Area without the prior written consent of Port, which consent may be withheld in Port's sole and absolute discretion.

Term

The Port intends to execute a minimum 5-year lease with two possible 2-year options to be offered at the Port's sole discretion, provided that the tenant has met its performance obligations and is in good standing with respect to all other lease provisions. Proposers may propose other extension option or options.

Base Rent

The tenant will be required to pay one dollar (\$1.00) annually, to be paid prior to the Commencement Date for the entire term of the lease.

Operations and Program Plan

Proposers must submit an Operations and Program Plan that documents its proposed use of the EcoCenter, consistent with the Port's objectives (see Section V - Project Objectives). The required contents of the Operations and Program Plan are described further in Section 10 – Submittal Requirements. The final Operations and Program Plan will become an exhibit to the Lease. The Tenant will be required to keep records regarding the nature of the programs and participation, and submit quarterly reports regarding EcoCenter operations and programming to the Port. Either Port or Tenant may propose revisions to the Operations and Program Plan as warranted to ensure that the public benefit goals for the EcoCenter are realized. Revisions to the Operations and Program Plan will be subject to Port staff approval

Prohibited Use

The following are prohibited:

- Use of the premises for overnight stays, sleeping, or for personal living quarters;

- Activities that would prevent or impede public access to the non-exclusive license area, except during special events as described above regarding Permitted Activities;
- Any activity that requires an After Hours Permit from the San Francisco Police Department or Entertainment Commission;
- Parties or events that use any amplified music, or any live music that can be heard 120 feet or more from the building to avoid impact to wildlife and/or neighbors;
- Parties or events requiring an entry fee sponsored by entities other than the tenant; and
- Retail sales other than branded items or other park-related items sold as part of the tenant's fundraising activities.

Facility Maintenance and Repair

During the term of the lease, the tenant will be responsible for observing building system functions and reporting to the Port Property Manager of any indication of malfunction or other maintenance needs in a timely manner. These observations will include inspecting the building interior tanks, piping, sumps, etc. for leaks and monitoring state of charge on battery system to identify need to temporarily reduce electricity demand. The tenant will be responsible for weeding, watering, and replacing plants in the non-exclusive License Area.

The Port will be responsible for monitoring (as required for regulatory compliance), maintenance and repair of the building, including water, wastewater and electrical service, and required capital improvement, repair or replacement. The operation and maintenance responsibilities of the Port and the tenant are described in Appendix C. By mutual agreement of the Port and the tenant, the tenant may perform maintenance or repair for which the Port is responsible and request reimbursement from the Port. Required notice to the Port and procedures for completing the work and requesting reimbursement are provided in Appendix C. See also Section 11 of Appendix B (the "Standard Form of Lease").

Possessory Interest and Other Taxes

The tenant may be required to pay possessory interest taxes on the assessed value of the leasehold interest. Proposers may contact the City Assessor's office for more information on how this tax will be calculated. The tenant also will be required to pay other applicable city taxes, including sales and payroll taxes.

Security Deposit

A security deposit of \$5,000 will be required upon execution of the lease.

Insurance and Bond Requirements

Throughout the term of the lease, the tenant will be required to maintain the insurance coverage listed in Section 18 of the Standard Form of Lease (Appendix B), in the amounts and with limits specified and with carriers acceptable to the Port

Hazardous Materials

Heron's Head Park has been the subject of previous environmental site investigations, the findings of which are available at sfport.com/ecocenter-rfp. There are no hazardous materials (i.e. asbestos, lead paint) in the building materials used to construct the EcoCenter. Tenants are encouraged to use "green cleaning" practices, avoiding or minimizing the use of hazardous materials in cleaning products, during operation of the facility. No hazardous materials can be used or stored at the EcoCenter.

Parking

Public parking for Heron's Head Park in the lot and on adjacent streets is available for the staff and visitors to the EcoCenter. There will be no parking spots reserved for EcoCenter use only

Assignment/Sublease

The Port, in its sole and absolute discretion, will have the right to approve any assignment, sublease or transfer of the Lease.

Form of Lease

The successful Proposer will be required to enter into a lease substantially similar to the form lease attached hereto as Appendix B (the "Standard Form of Lease"). However, the final lease may be revised to: a) reflect details of the final terms negotiated between the successful Proposer and the Port; b) incorporate any City requirements adopted after the drafting of the Form of Lease; and c) incorporate any other provisions desired by the Commission or negotiated by the parties.

City Requirements

The Form of Lease attached as Appendix B requires the Tenant to comply with all City and Port requirements in effect, including without limitation: (1) Non-Discrimination in Contracts and Property Contracts (including providing equal benefits) (SF Admin. Code Section 12B and C); (2) Tropical Hardwood and Virgin Redwood Ban (SF Admin. Code Section 12I); (3) MacBride Principles – Northern Ireland (SF Admin. Code Section 12F); (4) Tobacco Products Advertising Ban (SF Admin. Code Section 4.20); (5) San Francisco Integrated Pest Management Program (SF Admin. Code Section 39.1); (6) First Source Hiring Program (SF Admin. Code Section 83.1); (7) Health Care Accountability Ordinance (SF Admin. Code Section 12Q); and (8) Wages and Working Conditions (Prevailing Wages) Copies of these City requirements are attached as Appendix E.

As part of the proposal, all Proposers must submit a written acknowledgment in the form attached hereto as Appendix F, confirming that it has reviewed, understands, and

can comply with the City Requirements set forth in Section 28 of the Form of Lease and other terms and conditions set forth in Section IX hereof.

The Port will also require the Tenant to pay prevailing wages in any construction of the project in accordance with prevailing wage and labor standards adopted by the San Francisco Board of Supervisors pursuant to San Francisco Charter.

VIII. SELECTION PROCESS

The Port of San Francisco will conduct the selection process. The Port is the sole and final decision-maker regarding this selection, and it reserves the right to reject any or all proposals or to terminate lease negotiations at any time.

Request for Proposals

Interested parties are requested to make the required submittals described in this Request For Proposals (the "RFP") within the relevant time frames.

A Pre-Submittal Conference will be held on **Thursday October 10, 2013 at 2:00 P.M.** at the EcoCenter. This Pre-submittal Conference will present the Port's RFP and selection process, and include a tour of the site. Attendance at the Pre-submittal Conference is strongly encouraged but is not required.

Questions from potential tenants may be addressed to Port staff at this conference. Questions may be answered orally at the conference, or in writing afterward. All questions raised at the Pre-submittal Conference and answers will be documented and posted at sfport.com/ecocenter-rfp, and notification of posting will be sent to parties who have registered at sfport.com/ecocenter-rfp or signed in at the Pre-submittal Conference.

A complete and timely response to the RFP is a prerequisite to further consideration. Proposers must deliver complete written submittals by the deadline indicated herein, accompanied by a signed Statement of Ability to Comply with City Requirements and Other Terms and Conditions of the RFP.

Objections to RFP

Should a prospective Proposer object on any ground to any provision or legal requirement set forth in the RFP (including all Appendices and all Addenda), including but not limited to Objections based on allegations that: (i) the RFP is unlawful in whole or in part; (ii) one or more of the requirements of the RFP is onerous, unfair or unclear; (iii) the structure of the RFP does not provide a correct or optimal process for the solicitation of a tenant; (iv) the RFP contains one or more ambiguity, conflict, discrepancy or other error; or (v) the RFP unnecessarily precludes alternatives to the subject opportunity, the prospective Proposer must provide timely written notice of Objection as set forth below.

- A. **An Objection must be received in writing to the Port no later than 5:00 p.m. on the 14th calendar day after the RFP has been issued.** Objections must be emailed to ecocenter-rfp@sfport.com. If an Objection is mailed, the prospective Bidder bears the risk of non-delivery within the required time period. Objections should be transmitted by a means that will objectively establish the date of receipt by the Port. Objections delivered orally (e.g., by telephone) will not be considered.
- B. The Objection shall state the basis for the Objection, refer to the specific requirement or portion of the RFP at issue, and shall describe the modification to the RFP sought by the prospective Proposer. The Objection shall also include the name, address, telephone number, and email address of the person representing the prospective Proposer.
- C. The Port, at its discretion, may make a determination regarding an Objection without requesting further documents or information from the prospective Proposer who submitted the Objection. Accordingly, the initial Objection must include all grounds of objection and all supporting documentation or evidence reasonably available to the prospective Proposer at the time the Objection is submitted. If the prospective Proposer later raises new grounds or evidence that were not included in the initial Objection, but which could have been raised at that time, then the Port may not consider such new grounds or new evidence.
- D. Upon receipt of a timely and proper Objection, the Port will review the Objection and conduct an investigation as it deems appropriate. As part of its investigation, the Port may consider information provided by sources other than prospective Proposer. At the completion of its investigation, the Port will provide a written determination to the prospective Proposer who submitted the Objection. If required, the Port may extend the proposal submittal deadline to allow sufficient time to review and investigate the Objection, and issue Addenda to incorporate any necessary changes to the RFP.
- E. Objections not received within the time and manner specified will not be considered. A Proposer's failure to provide the Port with a written Objection as specified above on or before the time specified above shall constitute a complete and irrevocable waiver of the ground(s) of objection and forfeit the Proposer's right to raise such ground(s) of objection later in the procurement process, in a Government Code Claim, or in other legal proceedings.

A Proposer may not rely on an Objection submitted by another Proposer, but must timely pursue its own Objection.

Evaluation Process

Port staff will initially review all submittals for compliance with minimum qualifications. Those that meet minimum qualifications will be further reviewed by Port staff and other appropriate parties for quality based on the evaluation criteria. A panel of qualified reviewers will assist Port staff with this review, and public presentations may be required. In addition, Port staff may, at its sole discretion, independently investigate

the qualifications of certain Proposers and/or conduct interviews with members of certain Proposers' team. The Port staff reserves the right to request clarification or additional information from a Proposer.

IX. SELECTION CRITERIA

Minimum Qualifications

Each Proposer individually or collectively (as a team), must have the following minimum qualifications to be considered for this opportunity:

Minimum Qualifications	Submittal Requirement
Five years of experience managing a facility and/or program similar in nature to the EcoCenter and/or its program goals	List Proposer's team members, key personnel and their collective experience. Identify experience in environmental education, community programs, or other discipline related to the proposed program, including type and name of facility or program, and nature and duration of experience. Provide resumes of key staff. This qualification may be demonstrated by existing organizational experience or a proposed staffing/partnering program to provide these qualifications.
Ability to plan and develop a program that meets the Port's objectives (Section V,1-5 above).	Submit an Operations and Program Plan that provides a detailed description of the activities and programs proposed for the EcoCenter, including targeted participants, activities and programs to be provided, and fees that would be charged if any. The Operations and Program Plan must also describe how the Proposer will meet the minimum program-related obligations set forth in this RFP, including staffing for opening to the public 4 days/week, coordinating with existing environmental education programs provided through the Port's partnership with YSP, and how the programs will integrate the EcoCenter with the surrounding Heron's Head Park, including service learning and volunteer opportunities that support stewardship of the upland and wetland habitats at Heron's Head Park. The Operations and Program plan must include measurable performance goals for the proposed program and describe how the Proposer will document and report to the Port on its performance relative to those goals.
Sufficient financial capacity to provide the program described in the Proposer's Funding Plan.	Submit two (2) hard copies of the fully-completed Lease Application and Funding Plan under separate cover and marked "Financial Materials - Confidential". The initial budget and funding shown in the Funding Plan must be sufficient to demonstrate ability to perform the minimum program-related obligations referenced above. The Funding Plan must also describe the budget and identify funding for the full range of programs proposed. The Funding Plan may include a schedule for implementation if funding sources for certain components of the proposed program will become available over time.

While documentation of the ability to obtain all required insurance policies (listed in Appendix B – Standard Form of Lease, Section 16) and all other permits, licenses or approvals required for the proposed program is not required at the time a proposal is submitted, the tenant will be required to provide documentation that insurance and required permits, licenses and approvals are in place prior to lease execution. Any submittal that does not demonstrate that the Proposer meets these minimum requirements, or lacks other required components of the submittal (see Section X – Submittal Requirements) will not be eligible for further consideration. Proposals meeting minimum requirements will be analyzed with respect to the following evaluation criteria to identify the most qualified Proposer.

Evaluation Process and Criteria

The Port’s primary objective for this RFP is to identify a financially viable Tenant that can operate the EcoCenter in a manner that meets the Port’s Project Objectives as described above in Section V. Port staff will initially review all submittals for compliance with minimum qualifications. Those that meet minimum qualifications will be further reviewed by Port staff and other appropriate parties. To evaluate proposals, the Port will use the following criteria and weight relative to total score for each proposal:

Evaluation Criteria	Points
<p>Experience, Qualifications and Response to Port Goals:</p> <ul style="list-style-type: none"> • Proposer’ team members, key personnel and their collective experience. • Proposer’s organizational structure, history of the organization or team • Demonstrated experience and education to professionally staff and manage the proposed operation in a safe and secure manner, comply with the requirements of the lease, and achieve the Port’s objectives for the EcoCenter (see Section V,1-5). • Experience in environmental education or other discipline related to the proposed program, demonstrated by either organizational experience or a proposed staffing/partnering program to provide those services. • Demonstrated experience working with civic institutions. 	35
<p>Operation and Program Plan:</p> <ul style="list-style-type: none"> • Ability of proposed programming to meet the goals and objectives of the Port, as outlined in the RFP. Proposed programming may include elements not currently specified but offering added value. • Proposed education and public outreach activities, including hours of operation, key staff, targeted participant groups, anticipated type and number of programs provided and participants served. • Proposer’s plan to integrate existing environmental education and public participation programs currently provided by a partnership between the Port and the Recreation and Parks District’s Youth Stewardship Program, including service learning and volunteer opportunities that support stewardship of the upland and wetland habitats ad Herons’ Head Park. • Proposed measures and reporting to demonstrate to the Port that its goals for the EcoCenter are being achieved. 	40

Funding Plan, Financial Capacity: <ul style="list-style-type: none"> Proposer’s ability to finance the proposed operations as determined by review of financial information submitted with the lease application and Proposer’s description of funding development experience and plan for the EcoCenter as described in the Proposer’s Funding Plan. 	25
Total points	100

A selection panel may assist Port staff with this review, and public presentations may be required. Port staff and/or selection panel may also consider other factors as appropriate in their evaluation, including without limitation, community support and potential for the proposed operation to secure required regulatory approvals. In addition, Port staff may, at its sole discretion, independently investigate the qualifications of certain Proposers and/or conduct interviews with members of certain Proposers’ team. The Port staff reserves the right to request clarification or additional information from a Proposer.

Recommendation to Port Commission

After evaluation and determination of the most qualified Proposer, Port staff intends to request that the Port Commission authorize staff to execute a lease substantially similar to the one provided in Appendix B. After review of the evaluation findings and recommendation, the Port Commission may elect to direct staff to enter into negotiations with the recommended Proposer. The Port Commission, in its sole discretion, will make such decision. The selection of a Proposer recommended to be the tenant at the EcoCenter will not imply the Port's acceptance of all terms of the selected Proposer’s submittal, which will be subject to further negotiations and approvals before the Port may be legally bound.

With Port Commission authorization and completed negotiations (e.g. regarding details of Operations and Program Plan and/or Funding Plan), the tenant will submit the security deposit and signed lease with all related documents (i.e. documentation of insurance, final Operations and Program Plan, final Funding Plan, any project-specific approvals) for review and approval by the San Francisco City Attorney’s office. With approval of the City Attorney’s office as to form, the lease will be executed by Port staff.

Approval of Transaction

Upon completion of any required environmental review and finalization of negotiations by Port staff, the Port Commission can, but is not required to approve a lease and any related documents. If the lease contains a term in excess of ten (10) years or would have anticipated revenues to the Port in excess of \$1 million, the lease would also require approval by the City of San Francisco Board of Supervisors.

Schedule

Issue RFP:	September 25, 2013
Site Tours for prospective Bidders:	October 12, 18, 23, 2013
Pre-submittal Conference	October 10, 2013, 2:00

Last day to submit objection to the RFP:	October 9, 5:00
Final Q&A posted:	October 25, 2013
Submittal Deadline:	November 8, 2013, 2:00
Selection of recommended Tenant:	November 2013
Port Commission Authorization to award lease:	December 2013

Contact for Information

Any questions from potential Proposers regarding this RFP should be submitted in writing to: ecocenter-rfp@sfport.com. Responses to questions received by email, or raised at the site tours or Pre-proposal Conference and answers will be posted at sfport.com/ecocenter-rfp as they become available, and no later than October 25, 2013. Proposers are responsible for checking the website for new information as it is posted. Oral inquiries will not be accepted, except at the Pre-submittal Meeting.

X. SUBMITTAL REQUIREMENTS

All proposals must be submitted electronically by email to ecocenter-rfp@sfport.com, with the exception of Financial Capacity materials (the Lease Application and the Funding Plan), two (2) hard copies of which are to be submitted to the Port under separate cover. In accordance with the Sunshine Ordinance (Section 67.24(e) of the San Francisco Administrative Code), all responses and other communications from interested parties shall be open to inspection by the public upon request, immediately after a contract is awarded.

Proposals submitted in response to this RFP must meet the specifications set forth herein. Any major deviation from these specifications will be cause for the rejection of the proposal at the Port's discretion. Submittals must include the following:

1. Cover Letter

A one-page cover letter should be provided describing the Proposer, the name and address of the entity submitting the submittal, the date the entity was established, and the name, address, and telephone number of the person or persons who will serve as the entity's principal contact person with the Port and be authorized to make representations on behalf of the entity. The letter must bear the original signature of the person having proper authority to make the submittal for the entity.

2. Submittal Summary

A brief synopsis of the highlights of the proposed program should be presented which summarizes the key benefits of your ideas for the neighborhood, and the City at large.

3. Qualifications and Capacity to Perform

At a minimum, the statement of qualifications should describe the following:

- A description of the Proposer's organization, its history, principal ownership structure, and staff.

- Proposer's experience and abilities for specifically developing, managing and marketing the type of education/recreation programs being proposed.
- Written business and personal references to better substantiate respondent's financial sustainability for the proposed operation(s), past history of work experience.
- A description of the Proposer's experience working with the public and civic institutions.

4. Operations and Program Plan

The submittal must include an Operations and Program Plan that describes the proposed use of the EcoCenter and how it will fulfill the Port's goals for the EcoCenter as an educational and community resource.

The Operations and Program Plan must specify programming proposed to be provided at the EcoCenter that can be tracked by measurable goals, such as type (age, school, volunteer, professional) and number of participants or programs, participation by local entities (businesses, community organizations, students, families), or other measures relevant to the nature of the tenant's program. These measures will form the basis for the tenant's performance criteria that will be incorporated into the lease. The tenant will be required to keep records regarding programming and achievement of established performance criteria, and submit quarterly reports regarding EcoCenter operations and programming to the Port. Either Port or the tenant may propose revisions to the Operations and Program Plan as warranted to ensure that the public benefit goals for the EcoCenter are realized. Revisions to the Operations and Program Plan will be subject to Port approval and will be incorporated into the lease.

If the Proposer intends to charge fees for certain programs to recover direct costs related to providing the subject program, the subject programs and fees must be described in the Operations and Program Plan, along with a proposed process for review of any future fee changes.

5. Financial Capability and Terms

At a minimum, the respondent should discuss the following:

- Proposer should describe its financial position and include a copy of its most recent financial statements, if a publicly held entity. Proposer should indicate whether it will have any financial partners in the proposed operation and, if applicable, include a description of such partners' financial position and contribution to the proposed operation and programs.
- Proposer should generally describe its financial proposal, including a plan for funding its activities as described in the Operations and Program Plan, including existing or anticipated funding sources. If applicable, this description should include a schedule for implementing certain program elements for which funding will become available.
- Proposer should describe its previous experience funding similar facilities or activities operated by the Proposer, if applicable.

Submittals must include two copies of financial information in a separate sealed envelope, marked "Financial Materials - Confidential". Each Proposer must clearly

mark any of the financial materials that it in good faith believes to be a trade secret or confidential proprietary information protected from disclosure under applicable law. To the extent permitted by law, the Port will attempt to maintain the confidentiality of marked financial materials, but Proposers are cautioned that, in accordance with the Sunshine Ordinance (Administrative Code Section 67.24(e)), responses and other communications from interested parties must be open to inspection by the public upon request immediately after a contract is awarded.

6. Statement of Ability to Comply with City Requirements and Agreement to Conditions

Proposals must include a “Statement of Ability to Comply with City and Other Governmental Requirements and Agreement to Conditions”, the form of which is attached as Appendix F, signed by an authorized representative of the Proposer.

Submittal Deadline

Submittals must be delivered electronically to ecocenter-rfp@sfport.com, Subject: “Request for Proposals: The EcoCenter at Heron’s Head Park” **no later than 2:00 P.M. on November 8, 2013.**

XI. OTHER TERMS AND CONDITIONS

- The Port will convey the EcoCenter facility to the Proposer in “AS IS” condition. It shall be the sole responsibility of the Respondent to investigate and determine conditions of the facility, including but not limited to the suitability of conditions for the use and/or any proposed improvements contemplated by the Proposer.
- The information presented in this RFP and in any report or other information provided by the Port is provided solely for the convenience of the interested parties. It is the responsibility of interested parties to assure themselves that the information contained in this RFP or other documents is accurate and complete. The Port or its advisors provide no representations, assurances, or warranties pertaining to the accuracy of such information.
- The issuance of this RFP does not constitute an agreement by the Port that any contract will actually be entered into by the Port Commission. The Port expressly reserves the right at any time to:
 - a. waive any defect or informality in any response, proposal, or procedure;
 - b. reject any or all proposals;
 - c. suspend any and all aspects of the process indicated in this RFP;
 - d. reissue a Request for Proposals;
 - e. request some or all Respondents to submit revised or new bids;
 - f. select a Tenant by any other means;
 - g. extend deadlines for accepting proposals, or accept amendments to proposals after expiration of deadlines; or
 - h. determine that no project will be pursued.

- The Port reserves the right to reject any or all proposals submitted and to waive any technical defect in a submittal which does not affect or alter the substantive provisions thereof. Failure by the Port to object to an error, omission, or deviation in any proposal will in no way modify this RFP or excuse Proposers from full compliance with the requirements of this RFP or the Lease.
- In awarding this opportunity and finalizing the lease, the Port may modify, refine, and otherwise clarify the permitted uses to reflect the selected proposal, with such changes therein as may be desired by the Port, provided that such changes shall not change the overall substance of the proposal.
- The Port may modify, clarify, and change this RFP by issuing one or more written addenda. Such addenda will be posted at sfport.com/ecocenter-rfp and sent by email to those who registered as interested in receiving information about the RFP at sfport.com/ecocenter-rfp or signed in at the Pre-submittal Conference.
- The Port will make reasonable efforts to make timely notification of modifications to this RFP to interested parties. Notwithstanding this provision, each Proposer assumes the risk of submitting its proposal on time.
- Recommendation of a selected Proposer as a tenant, or Port Commission authorization to execute a lease with a new tenant should not be construed as an approval of all proposed uses or facility improvements at the EcoCenter. Although all significant environmental effects for construction and current use of the EcoCenter have been adequately analyzed for compliance with the California Environmental Quality Act (CEQA) subsequent changes could require additional environmental review. If such additional environmental review is required and the project is found to cause significant adverse impacts that have not already been analyzed and/or have not been mitigated, the Port retains absolute discretion to require additional environmental analysis, and to; (1) modify the project to mitigate significant adverse environmental impacts; (2) select feasible alternatives which avoid significant adverse impacts of the proposed project; or (3) reject the project as proposed if the economic and social benefits of the project do not outweigh otherwise unavoidable significant adverse impacts of the project.
- The Proposer shall be responsible for obtaining all government approvals required for use of the facility and complying with existing regulatory requirements. The Proposer shall pay all permit and processing fees related to such use. Approvals for the proposed use of the EcoCenter may be required from governmental agencies other than the Port, including but not limited to the Board of Supervisors. In issuing this RFP, the Port makes no representations or warranties about which government approvals will be required, or that the necessary governmental approvals can be obtained. Respondents should understand that the Port is issuing this RFP in its capacity as a landowner with a proprietary interest in the project and not as a regulatory agency of the City and County of San Francisco (“City”) with certain police powers. The Port’s status as an agency of the City shall in no way limit the obligation of the lessee to obtain

approvals from City departments, boards or commissions which have jurisdiction over the project.

- In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, contractor's bids, leases, agreements, responses to RFQ's and RFP's and all other records of communications between the Port and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Submittals must include two copies of financial information in a separate sealed envelope, designated "Financial Materials". Each Proposer must clearly mark any of the financial materials that it in good faith believes to be a trade secret or confidential proprietary information protected from disclosure under applicable law. To the extent permitted by law, the Port will attempt to maintain the confidentiality of marked financial materials, but potential Proposers are cautioned that, in accordance with the Sunshine Ordinance (Administrative Code Section 67.24(e)), responses and other communications from interested parties must be open to inspection by the public upon request immediately after a contract is awarded.
- Except as limited by this paragraph, the Respondent's proposal will become the property of the Port and may be used by the Port in any way deemed appropriate.
- The Port accepts no financial responsibility for any costs incurred by a Respondent in responding to this RFP.

XII. POLICY OF NONDISCRIMINATION ON THE BASIS OF DISABILITY AND EQUAL EMPLOYMENT OPPORTUNITY STATEMENT

The Port of San Francisco does not discriminate on the basis of disability in employment or in the admission and access to its programs or activities.

Wendy Proctor, Port of San Francisco, Pier 1, San Francisco, CA 94111, has been designated to coordinate and carry out the Port's compliance with the nondiscrimination requirements of Title II of the Americans with Disabilities Act (ADA). Information concerning the provisions of the ADA, and the rights provided thereunder, are available from the ADA Coordinator.

PORT OF SAN FRANCISCO

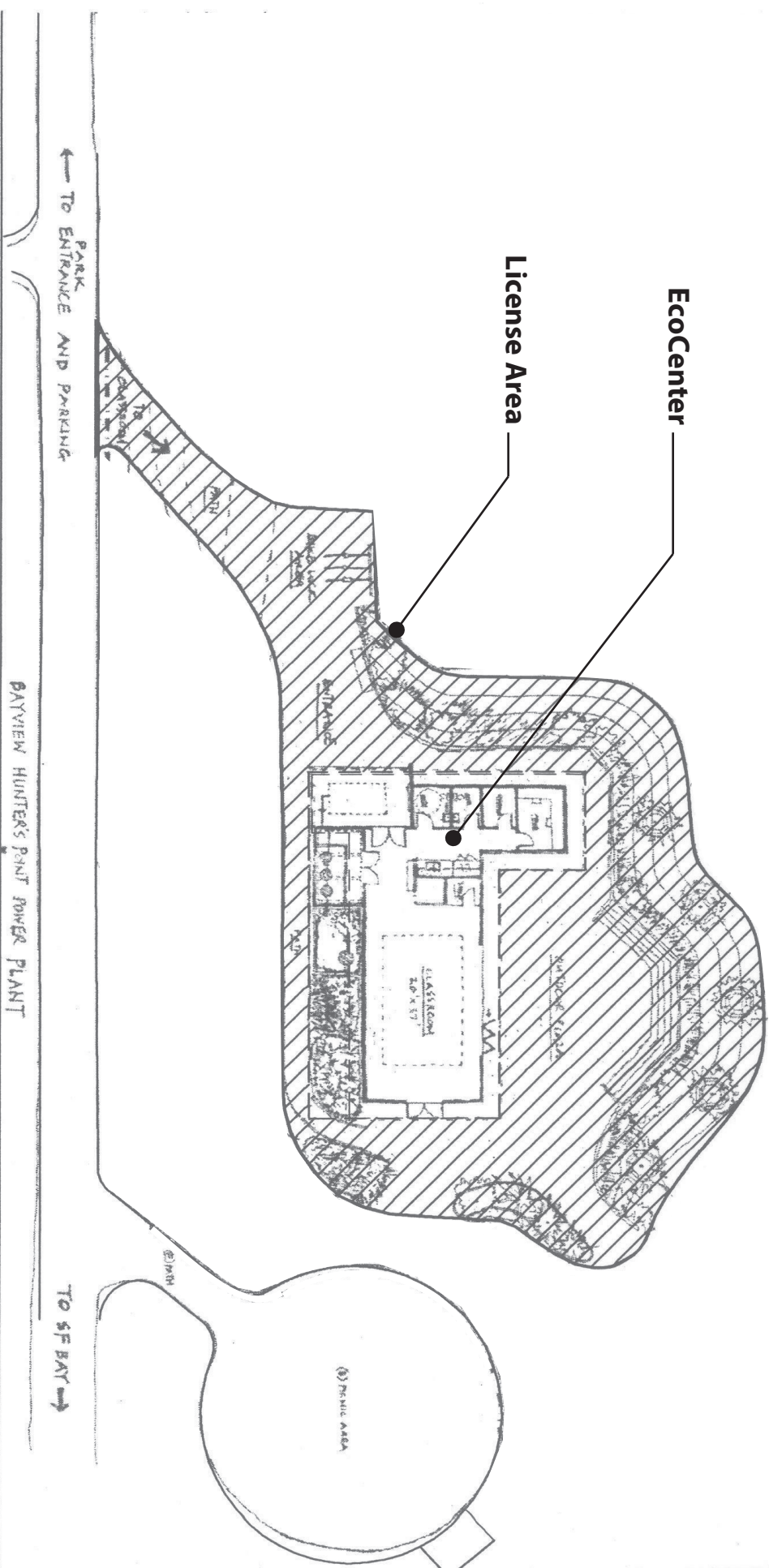
**APPENDICES
TO
REQUEST FOR PROPOSALS
LEASE OPPORTUNITY:**

**EcoCenter at Heron's Head Park
32 Jennings Street
(foot of Cargo Way, at Cargo and Jennings)**

APPENDIX A

Site Plan

Appendix A. Site Plan



 NON-EXCLUSIVE LICENSE
AREA ≈ 6,058 SQ. FT.
(NOT INCLUDING FLOOR PLAN AREA)

APPENDIX B

Standard Form of Lease



**CITY AND COUNTY OF SAN FRANCISCO
EDWIN M. LEE, MAYOR**

LEASE NO. L-

BY AND BETWEEN

**THE CITY AND COUNTY OF SAN FRANCISCO
OPERATING BY AND THROUGH THE
SAN FRANCISCO PORT COMMISSION**

AND

[INSERT NAME OF TENANT]

ECOCENTER LEASE

**MONIQUE MOYER
EXECUTIVE DIRECTOR**

SAN FRANCISCO PORT COMMISSION

**DOREEN WOO HO, PRESIDENT
KIMBERLY BRANDON, VICE PRESIDENT
WILLIE ADAMS, COMMISSIONER
LESLIE KATZ, COMMISSIONER
MEL MURPHY, COMMISSIONER**

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EXHIBITS AND SCHEDULES

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EXHIBIT B	COMMENCEMENT DATE AND EXPIRATION DATE MEMORANDUM
EXHIBIT C	ESTOPPEL CERTIFICATE
EXHIBIT D	OPERATIONS AND PROGRAM PLAN [TO BE DETERMINED DURING LEASE NEGOTIATIONS]
EXHIBIT E	PORT AND TENANT MAINTENANCE AND REPAIR RESPONSIBILITIES [TO BE DETERMINED DURING LEASE NEGOTIATIONS]

SCHEDULE 1 FEMA DISCLOSURE NOTICE

**LEASE AGREEMENT
BASIC LEASE INFORMATION**

<i>Lease Date:</i>	
<i>Lease Number:</i>	L-
<i>Landlord or Port:</i>	CITY AND COUNTY OF SAN FRANCISCO , a municipal corporation, operating by and through the SAN FRANCISCO PORT COMMISSION
<i>Landlord's Address:</i>	Port of San Francisco Pier 1 San Francisco, California 94111 Attention: Director of Real Estate Telephone: (415) 274-0400 Facsimile: (415) 274-0494
<i>Tenant:</i>	_____, a
<i>Tenant's Contact Person:</i>	
<i>Tenant's Mailing Address:</i>	Telephone: () Facsimile: () Email:
<i>Tenant's Billing Address:</i>	Telephone: () Facsimile: () Email:
<i>Contact Information for Tenant's Agent for Service of Process (if Tenant is a corporation):</i>	
<i>Premises:</i>	The EcoCenter at Heron's Head Park 32 Jennings St. San Francisco, California 94124
<i>Premises Rentable Square</i>	Approx. 2,292 rentable square feet in a free-standing one-story building known as "the EcoCenter at Heron's Head Park", located at 32 Jennings Street, within Heron's Head Park

<i>Footage:</i>	
<i>Heron's Head Park/License Area:</i>	<p>In connection with this Lease, Port hereby grants to Tenant a non-exclusive, non-possessory revocable license ("License") for approximately 6,058 square feet of park land adjacent to and surrounding the Premises, known as Heron's Head Park, including but not limited to a footpath, sitting areas and landscaping, which shall be collectively referred to herein as the "License Area Improvements", as more particularly described in Exhibit A attached hereto and made a part hereof, together with any and all Improvements and Alterations thereto ("License Area").</p> <p>Except as specifically provided herein, the License is for the same purposes and is subject to all of the terms and conditions of this Lease as if the License Area is part of the Premises, but Tenant agrees and acknowledges that, except as explicitly provided herein, the License is non-exclusive, non-possessory and revocable and that Port may, in its sole and absolute discretion, upon prior written notice to Tenant, revoke or terminate the License at any time prior to the Expiration Date, without cause and without obligation to pay any consideration to Tenant. The parties agree that provisions regarding the nature of the License are material and that the Port would not have granted the License absent such provisions.</p>
<i>Special Conditions of Lease and Port's Reservation of Rights</i>	<p>Tenant acknowledges that the Premises and the License Area are within a public park that is open to members of the general public for use and enjoyment, and that the park is subject to certain Regulatory Requirements imposed by BCDC under Permit M98-3 (as amended through Amendment No. Two, dated April 27, 2006), as amended.</p> <p>Tenant further acknowledges that the Port regularly funds environmental education programs at Heron's Head Park and that the recipients of such funds are providing programs that serve the public interest. Based on the foregoing and notwithstanding anything to the contrary in this Lease, Tenant agrees that: (i) the general public may continue to use any portion of the Premises and License Area; and (ii) Port and its designated recipients of funding may conduct environmental educational programs at the EcoCenter and/or License Area, provided such use does not unreasonably interfere with Tenant's use of the Premises; and (iii) any such uses will not be deemed an infringement or violation of Tenant's quiet enjoyment rights hereunder.</p>
<i>Length of Term:</i>	Sixty (60) months
<i>Commencement Date:</i>	The first day of the first calendar month following Port's execution and delivery of this Lease. Promptly following the actual Commencement Date, Port and Tenant shall execute a Commencement Date and Expiration Date Memorandum substantially in the form attached hereto as Exhibit B , confirming the actual Commencement Date and Expiration Date, but either party's failure to do so shall not affect the commencement or expiration of the Term.

<i>Expiration Date:</i>	The last day of the sixtieth (60 th) month following the Commencement Date.
<i>Rent:</i>	One Dollar (\$1.00) annually to be paid prior to the Commencement Date for the entire Term.
<i>Security Deposit:</i>	Five Thousand Dollars (\$5,000)
<i>Extension Option:</i>	As further described in Section 33, Port may, in its sole discretion, offer Tenant two (2) options to extend this Lease for twenty-four months each (“ Extension Option(s) ”) for an “ Extension Term ”) commencing after the expiration of the initial Term. If Port offers an Extension Option, it will do so no later than one hundred eighty (180) days prior to the expiration of the initial Term or the subsequent Extension Term. Tenant may exercise an Extension Option by giving Port written notice that it accepts the Extension Option no later than one hundred twenty (120) days after the date of Port’s notice of an Extension Option.
<i>Permitted Use:</i>	<p>The Premises shall be used solely for education and public access with focus on green building, sustainability, and the San Francisco Bay environment, and community meeting and assembly space for purposes related to the educational mission. The EcoCenter must be open for free public access at least four (4) days/week, including at least one weekend day. Tenant shall use its best efforts to ensure that all of the Premises are used continuously during the Term for the Permitted Use and requirements of this Lease and Tenant shall not close or allow any portion of the Premises to remain unused without the prior written consent of Port, which consent may be withheld in Port's sole and absolute discretion.</p> <p>Tenant may sell limited quantities of branded and other program-related merchandise for the purposes of promoting its own organization and fundraising for the EcoCenter.</p> <p>With Port's prior written consent in its sole discretion, Tenant may host special events, including after hours, invitation-only gatherings, for the sole purpose of fund raising for the EcoCenter. Community meetings are not considered to be Special Events and may be held outside of regular operating hours.</p> <p>The License Area shall be open to the public at all times except between thirty minutes after sunset and thirty minutes before sunrise.</p>
<i>Additional Prohibited Uses:</i>	<p>In addition to, and without limiting, the Prohibited Uses specified in Section 8.2 below, Tenant shall be prohibited from using the Premises for any of the following activities:</p> <p>(a) Overnight stays, sleeping, or for personal living quarters.</p> <p>(b) Activities that would prevent or impede public access to the Premises or License Area. Specifically, Tenant agrees not to undertake any activities, construct any Improvements, or erect or maintain any objects within the License Area that would materially interfere with views of San Francisco Bay and other such intended public use. Notwithstanding the foregoing, from time to time upon receipt of prior written approval of the Port, and subject to Tenant’s receipt of all other necessary Regulatory Approval(s) (including,</p>

	<p>without limitation, the Port in its regulatory capacity), Tenant may temporarily restrict or block-off all or any portion of the Premises or the License Area for use by Tenant for Special Events.</p> <p>(c) Special Events held or hosted by persons other than Tenant;</p> <p>(d) Except with Port's prior written consent for a Special Event, any activity that requires an After Hours Permit from the San Francisco Police Department;</p> <p>(e) Retail sales other than sale of limited quantities of branded and other program-related merchandise for the purposes of promoting its own organization and fundraising for the EcoCenter.</p> <p>Port shall have all remedies set forth in this Lease, and at law or equity in the event Tenant performs any of the Prohibited Uses.</p>
<p><i>Operations and Program Plan</i></p>	<p>Tenant shall provide the environmental programming described in the Port-approved "Operations and Program Plan" attached as Exhibit D and Tenant's failure to do so is a material breach of this Lease. If approved by Port as part of the Operations and Program Plan, Tenant may charge fees for certain programs to the extent needed to recover costs for materials or other direct expenses related to providing the subject program. Port may, from time to time, review Tenant's Operations and Program Plan and recommend revisions. All revisions to the Operations and Program Plan, whether initiated by Port or Tenant, are subject to Port approval, in its sole discretion. Tenant agrees to maintain records regarding its programming, including type of program, organization or institution participating, and number of participants, and to provide quarterly reports to Port describing same. Tenant shall cooperate with the Port representatives during the course of any review of Tenant's operations and programming.</p>
<p><i>Maintenance and Repair</i> <i>Check for consistency with Ex. E. Port is drafting:</i></p>	<p>Port and Tenant's maintenance and repair obligations for the EcoCenter are set forth in Exhibit E. This section provides a summary of these obligations. In case of any inconsistency between this section and Exhibit E, Exhibit E shall control.</p> <p>Port shall be responsible for maintenance and repair of the substructure, superstructure, roof and exterior walls, windows, and doors of the Facility. Port is responsible for maintenance and repair of Facility Systems, including plumbing, electrical, fire protection, life safety, security, and other mechanical and electrical systems in their current configuration and condition. The Port's obligation includes operation of the wastewater treatment system including sampling, analysis, reporting to the San Francisco Department of Public Health ("DPH"), and quarterly service by a qualified professional.</p> <p>Any item of maintenance and repair which is not explicitly assigned to Port is Tenant's sole responsibility, including maintenance, repair and replacement in good and working order, condition and repair, reasonable wear and tear excepted of all non-structural interior portions of the Premises and all Tenant Improvements or Alterations. Tenant's obligation includes routine visual observation of water storage and wastewater treatment system tanks piping and sumps for leaks or other evidence of malfunction; and monitoring energy generation and use as needed to keep the water, power, and wastewater systems in good operating condition.</p> <p>By mutual written agreement of the parties, Tenant may perform Port Maintenance Obligations, using Port-approved staff or contractor, at Port's</p>

	<p>cost. Tenant shall pay Prevailing Wage for all such work and shall apply the hours and days of labor requirements that are established under San Francisco Administrative Code Section 6.22(F). Port and Tenant will agree on the maximum budget and deadline for each Port Maintenance Obligation that Tenant will perform. Tenant shall be reimbursed for such work after final completion based on an itemized statement of the actual costs expended by Tenant accompanied by documentation reasonably satisfactory to Port evidencing all said expenditures. Such appropriate proofs of expenditure shall include, without limitation, (i) copies of canceled checks, (ii) copies of executed contracts, (iii) invoices for labor services and/or materials marked "Paid"; or otherwise evidenced as having been paid; bills of lading marked "Paid"; other bills, contracts and receipts for goods, materials and/or services marked "Paid", (iv) and such other proofs of expenditure as may be reasonably approved by Port, and (v) unconditional lien waivers from all the general contractors and all subcontractors and suppliers for the particular items of the work. All such proofs of expenditure must be attributable directly to work or materials performed, constructed or installed in connection with the Port-approved work. Costs for items related to Tenant's trade fixtures, office equipment and supplies, furniture, communications facilities (whether voice or data) or any other items not intended to be affixed to or become a part of the Facility or Facility Systems, nor any fees, exactions, impositions, or similar charges imposed as a condition to permit approval will not be reimbursed. To the extent Tenant (through its employees, contractors, or any party in which Tenant has a direct financial interest) performs any of the labor, the costs for such labor shall be no more than the commercially reasonable, market-rate labor charges typically charged for such work by parties in an arms-length transaction. In no event shall the cost of any volunteers, donated materials, construction management fees, or general administrative costs be reimbursed. Notwithstanding anything to the contrary contained herein, in no event shall Tenant receive reimbursement in the event Tenant is in default, or an event has occurred which, with the passage of time or the giving of notice, or both, would constitute a default.</p> <p>Unless explicitly assigned to Port, Tenant is solely responsible for maintenance and repair of the License Area including maintenance and repair of the License Area Improvements; and weeding, watering, and replacement of plants as-needed.</p>
<p><i>Accessibility:</i></p>	<p>Tenant is hereby advised that the Premises have been inspected by a Certified Access Specialist and have been found to meet all applicable construction-related accessibility requirements under federal and state disability access Laws, including requirements of the ADA, pursuant to California Civil Code Section 55.53. Port will continue to be responsible for construction-related accessibility requirements. Tenant will be responsible for compliance with all operational accessibility requirements under federal and state disability access Laws. Tenant understands and agrees that Tenant may be subject to legal and financial liabilities if its uses of the Premises are not conducted in compliance with applicable accessibility Laws.</p>
<p><i>Rules & Regulations:</i></p>	<p>Unless Port's prior written approval is given in Port's sole discretion and except for use of the EcoCenter for community meetings, Heron's Head Park including the Premises and License Area shall be closed between thirty minutes after sunset and thirty minutes before sunrise.</p>

<i>Lease Prepared By:</i>	Jeffrey A. Bauer, Senior Leasing Manager, Real Estate Divison Carol Bach, Environmental & Regulatory Affairs Manager, Planning & Development Division
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LEASE AGREEMENT

This Lease Agreement, dated for reference purposes only as of the Lease Date set forth in the Basic Lease Information, is by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation ("**City**"), operating by and through the **SAN FRANCISCO PORT COMMISSION** ("**Port**"), as landlord, and the Tenant identified in the Basic Lease Information ("**Tenant**"). The basic lease information (the "**Basic Lease Information**"), the exhibits, schedule and the Lease Agreement are and shall be construed as a single instrument and are referred herein as this "**Lease**". In event of any conflict or inconsistency between the Basic Lease Information and the Lease Agreement, the Basic Lease Information will control.

1. DEMISE.

In consideration for the rents and all other charges and payments payable by Tenant, and for the agreements, terms and conditions to be performed by Tenant in this Lease, Port does hereby lease to Tenant, and Tenant does hereby hire and take from Port, the Premises upon the agreements, terms and conditions of this Lease for the Term hereinafter stated.

2. DEFINITIONS.

Definitions used in this Lease, are found in the specified locations in this Lease or are set forth below. Definitions that are not capitalized below are not capitalized when used in this Lease.

"**ADA**" means the Americans with Disabilities Act, a federal law codified at 42 U.S.C. §§ 12101 et seq., including, but not limited to, Title III thereof, and all regulations and guidelines related thereto, together with any and all laws, rules, regulations, ordinances, codes and statutes now or hereafter enacted by local or state agencies having jurisdiction thereof, including all requirements of Title 24 of the State of California, as the same may be in effect on the date of this Lease and may be hereafter modified, amended or supplemented.

"**Additional Rent**" means all taxes, assessments, insurance premiums, operating and maintenance charges, fees, costs, expenses, liabilities and obligations of every description which Tenant assumes or is obligated to pay or discharge pursuant to this Lease, together with every fine, penalty, interest or other charge which may be added for non-payment or late payment, whether payable to Port or to other persons, parties or entities designated herein.

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

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

"**Anniversary Date**" means the first and each subsequent anniversary of the Commencement Date; provided, however, that if the Commencement Date is not the first day of a month, then each Anniversary Date shall be calculated from the first day of the thirteenth (13th) month after the Commencement Date.

"**Assignment**" means a proposed or actual Transfer of Tenant's rights, title, and interest in all or any part of the Premises under a contractual assignment or an assignment by operation of Law.

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

"**BCDC**" means the Bay Conservation and Development Commission.

"**business day**" means any week day during which businesses are generally open for business, excluding local, state, and federal holidays observed by Port.

"**Changes**" is defined in Section 10.2 below.

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

"**Claims**" means all liabilities, injuries, losses, costs, claims, demands, rights, causes of action, judgments, settlements, damages, liens, fines, penalties and expenses, including without limitation, direct and vicarious liability of any kind for money damages, compensation, penalties, liens, fines, interest, attorneys' fees, costs, equitable relief, mandamus relief, specific performance, or any other relief.

"**Commencement Date**" means the date on which the Term commences as specified in the Basic Lease Information.

"**Commission**" means the San Francisco Port Commission.

"**Common Areas**" means all areas outside of the Premises and within the boundaries of the Facility that are not now or hereafter exclusively leased or exclusively permitted to other tenants or permittees, and that are designated by Port from time to time for the general common use or convenience of Port, Tenant, or other tenants of Port, and the respective authorized Agents and Invitees of the same. The Common Areas include, without limitation, driveways, delivery areas, pedestrian walkways, service corridors accessing loading docks, utility rooms, and other areas or improvements provided or designated by Port for common use. The Common Areas shall not include any parking areas located outside the boundaries of the Facility.

"**Conduct Code**" is defined in Section 28.13 below.

"**Concession**" is defined in Section 30.8 below.

"**Control**" means a Person that: (a) owns or has the right to acquire 50 percent or more (25 percent or more if publicly traded) of each class of equity interests in the second Person or 50 percent or more (25 percent or more if publicly traded) of each class of interests that have the right to nominate, vote for, or otherwise select the members of the governing body that directs or causes the direction of substantially all of the management and policies of the second Person; or (b) otherwise has the right to direct or cause the direction of substantially all of the management and policies of the second Person.

"**Core Benefits**" is defined in Section 28.1(c) below.

"**CPA**" means an independent certified public accounting firm acceptable to Port in its reasonable discretion.

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

"**Encroachment Area**" is defined in Section 3.2 below.

"**Encroachment Area Charge**" is defined in Section 3.2 below.

"**Environmental Laws**" means any Laws relating to Hazardous Material (including its Handling, Release, or Remediation) or to human health and safety, industrial hygiene, or environmental conditions in the environment, including structures, soil, air, bay water, and groundwater, and any environmental mitigation measure adopted under Environmental Law affecting any portion of the Facility.

"**Environmental Regulatory Action**" when used with respect to Hazardous Materials means any inquiry, investigation, enforcement, Remediation, agreement, order, consent decree, compromise, or other action that is threatened, instituted, filed, or completed by an

Environmental Regulatory Agency in relation to a Release of Hazardous Materials, including both administrative and judicial proceedings.

"Environmental Regulatory Agency" means the United States Environmental Protection Agency, OSHA, any California Environmental Protection Agency board, department, or office, including the Department of Toxic Substances Control and the San Francisco Bay Regional Water Quality Control Board, Cal-OSHA, the Bay Area Air Quality Management District, the San Francisco Department of Public Health, the San Francisco Fire Department, the San Francisco Public Utilities Commission, Port, or any other Regulatory Agency now or later authorized to regulate Hazardous Materials.

"Environmental Regulatory Approval" means any approval, license, registration, permit, or other authorization required or issued by any Environmental Regulatory Agency, including any hazardous waste generator identification numbers relating to operations on the Premises and any closure permit.

"Exacerbate" or "Exacerbating" when used with respect to Hazardous Materials means any act or omission that increases the quantity or concentration of Hazardous Materials in the affected area, causes the increased migration of a plume of Hazardous Materials in soil, groundwater, or bay water, causes a Release of Hazardous Materials that had been contained until the act or omission, or otherwise requires Investigation or Remediation that would not have been required but for the act or omission. Exacerbate also includes the disturbance, removal or generation of Hazardous Materials in the course of Tenant's operations, Investigations, maintenance, repair, Improvements and Alterations under this Lease. **"Exacerbation"** has a correlating meaning.

"Expiration Date" means the date on which the Term expires as specified in the Basic Lease Information.

"Event of Default" is defined in 21 below.

"Facility" means the EcoCenter as defined in the Basic Lease Information.

"Facility Systems" means the plumbing, electrical, fire protection, life safety, security and other mechanical, electrical, communications systems of the Facility.

"financial statements" mean a current balance sheet and profit and loss statements that have been reviewed or examined by a CPA.

"Handle" or "Handling" means to use, generate, process, manufacture, produce, package, treat, transport, store, emit, discharge, or dispose of a Hazardous Material.

"Hard costs" is defined in Section 11.3 below.

"Hazardous Material" means any substance, waste, or material that is now or in the future designated by any Regulatory Agency to be capable of posing a present or potential risk of injury to human health or safety, the environment, or property. This definition includes anything designated or defined in any Environmental Law as hazardous, hazardous substance, hazardous waste, toxic, pollutant, or contaminant; any asbestos, ACMs, and PACMs, whether or not part of the structure of any existing Improvements on the Premises, any Improvements to be constructed on the Premises by or on behalf of Tenant, or occurring in nature; and other naturally-occurring substances such as petroleum, including crude oil or any fraction, and natural gas or natural gas liquids.

"Hazardous Material Claim" means any Environmental Regulatory Action or any Claim made or threatened by any third party against the Indemnified Parties, or the Premises or the Facility, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence or Release 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, any other part of the Facility, or other Port property, the loss or restriction of the use or any amenity of the Premises, any other part of the Facility, or other Port property, and attorneys' fees and consultants' fees and experts' fees and costs.

"Hazardous Material Condition" means the presence, Release, or threatened Release of Hazardous Materials in, on, or about the Premises, the Facility, other Port property, or the environment, or from any vehicles or vessels Tenant, or its Agents and Invitees uses during Tenant's occupancy of the Premises.

"Improvements" means any and all buildings, structures, fixtures or other improvements constructed or installed on the Premises or any other part of the Facility, including those constructed by or on behalf of Tenant pursuant to this Lease (including, without limitation, any trailers, signs, roads, trails, driveways, parking areas, curbs, walks, fences, walls, stairs, poles, plantings and landscaping).

"Improvement Costs" is defined in Section 4.2 below.

"Improvements Pertaining to the Realty" means machinery or equipment installed for use on the Property that cannot be removed without a substantial economic loss or without substantial damage to the property on which it is installed, regardless of the method of installation. In determining whether particular property can be removed "without a substantial economic loss," the value of the property in place considered as part of the realty should be compared with its value if it were removed and sold.

"Indemnified Parties" is defined in Section 19.1 below.

"Indemnify" means to indemnify, protect, defend, and hold harmless forever. **"Indemnification"** and **"Indemnity"** have correlating meanings.

"Interest Rate" means ten percent (10%) per year or, if a higher rate is legally permissible, the highest rate an individual is permitted to charge under Law.

"Investigate" or **"Investigation"** when used with reference to Hazardous Materials means any activity undertaken to determine and characterize the nature and extent of Hazardous Materials that have been, are being, or are threatened to be Released in, on, under or about the Premises, any other part of the Facility, other Port property, or the environment, and includes, without limitation, preparation and publication of site history, sampling, and monitoring reports, performing equipment and facility testing such as testing the integrity of secondary containment and above and underground tanks, and sampling and analysis of environmental conditions before, during, and after Remediation begins and continuing until the appropriate Environmental Regulatory Agency has issued a no further action letter, lifted a clean-up order, or taken similar action.

"Invitees" means Tenant's clients, customers, invitees, patrons, guests, members, licensees, permittees, concessionaires, assignees, subtenants, and any other person whose rights arise through them, except that for the purposes of Article 20 (Assignment and Subletting), **"Invitees"** excludes Tenant's licensees, assignees, subtenants, and any other person whose rights arise through them.

"Late Charge" means a fee equivalent to fifty dollars (\$50.00).

"Law" means any present or future law, statute, ordinance, code, resolution, rule, regulation, judicial decision, requirement, proclamation, order, decree, policy (including the Waterfront Land Use Plan), and Regulatory Approval of any Regulatory Agency with jurisdiction over any portion of the Premises and any and all recorded and legally valid covenants, conditions, and restrictions affecting any portion of the Facility, whether in effect when this Lease is executed or at any later time and whether or not within the present contemplation of the parties, as amended from time to time.

"Lease" is defined in the preamble to this Lease.

"**Notice of Removal**" is defined in Section 13.4 below.

"**Notice to Cease Prohibited Use**" is defined in Section 8.3 below.

"**Notice to Vacate**" is defined in Section 3.2 below.

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

"**Person**" means any natural person, corporation, limited liability entity, partnership, joint venture, or governmental or other political subdivision or agency.

"**Pesticide Ordinance**" is defined in Section 28.9 below.

"**Port**" means the San Francisco Port Commission.

"**Port program or project**" shall mean (a) any development or renovation, by public and/or private parties, of the building, pier or seawall lot in, on or in the vicinity of the Premises (including, but not limited to the Event as described in Section 3.4 and any Development Project described in the Basic Lease Information), or (b) with respect to any areas owned by Port or under Port's jurisdiction between and including Piers 80-96, maritime uses (by way of example only and not as a limitation, cargo shipping, fishing, passenger cruises, ship repair, ferries and excursion boats, historic ships and recreational boating).

"**Port representative**" means Port, a City auditor, or any auditor or representative designated by Port.

"**Port Work**" is defined in Section 13.8 below.

"**Premises**" means the real property described in Section 3.1 below and depicted on *Exhibit A*.

"**preservative-treated wood containing arsenic**" is defined in Section 28.12 below.

"**prevailing party**" is defined in Section 23.1 below.

"**Prevailing Wage**" means a wage not less than the highest prevailing rate of wages as determined under San Francisco Administrative Code 6.22(E)(3).

"**Prohibited Use(s)**" is defined in Section 8.2 below.

"**Regulatory Agency**" means the municipal, county, regional, state, or federal government and their bureaus, agencies, departments, divisions, courts, commissions, boards, officers, or other officials, including the Bay Conservation and Development Commission, any Environmental Regulatory Agency, Port (in its regulatory capacity), other departments, offices, and commission of the City and County of San Francisco (each in its regulatory capacity), Port's Chief Harbor Engineer, the Dredged Material Management Office, the State Lands Commission, the Army Corps of Engineers, the United States Department of Labor, the United States Department of Transportation, or any other governmental agency now or later having jurisdiction over Port property.

"**Regulatory Approval**" means any authorization, approval, license, registration, or permit required or issued by any Regulatory Agency.

"**Release**" when used with respect to Hazardous Materials means any actual or imminent spilling, introduction, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the Premises, any other part of the Facility, other Port property, or the environment.

"**Remediate**" or "**Remediation**" when used with respect to Hazardous Materials means to clean up, abate, contain, treat, stabilize, monitor, remediate, remedy, remove, or otherwise control Hazardous Materials, or to restore the affected area to the standard required by the applicable Environmental Regulatory Agency in accordance with applicable Environmental

Laws and any additional Port requirements. "**Remediation**" also includes the creation of a remedial work plan to be approved by the appropriate Environmental Regulatory Agency when required.

"**Rent**" means the Rent specified in the Basic Lease Information, Additional Rent and all other sums payable by Tenant to Port hereunder, including, without limitation, any Late Charge and any interest assessed pursuant to Section 5.

"**Repair Period**" means two hundred ten (210) days after the date of damage to the Premises or the Facility by fire or other casualty.

"**Rules and Regulations**" means the Rules and Regulations, if any, applicable to the Facility, as may be amended from time to time.

"**saltwater immersion**" is defined in Section 28.12 below.

"**Security Deposit**" means the amount specified in the Basic Lease Information and as further described in Section 7 below.

"**Sublease**" means a proposed or actual Transfer of all or any part of the Premises under a sublease or a sub-sublease.

"**Subletting Expenses**" means verifiable, and reasonable brokerage commissions incurred in connection with a Sublease and the costs of any new tenant improvements for which Tenant is responsible under the Sublease.

"**SWPPP**" is defined in Section 15.8(a) below.

"**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.

"**Tenant's Property**" means all furniture, trade fixtures, office equipment, and articles of movable personal property installed in the Premises by or for the account of Tenant, and any Improvements or Alterations constructed on or affixed to the Premises if designated under this Lease as Tenant's Property, in either case without cost to Port.

"**Term**" is defined in Section 4.1 below.

"**trade fixtures**" means those items of personalty, furniture, equipment, machinery used in trade by Tenant which are customarily removed without damage to the Premises at the end of a lease term in the ordinary course of businesses of the type operated by Tenant at the Premises.

"**Transfer**" means any of the following events or proposed events, whether voluntary, involuntary, or by operation of Law: (a) Tenant sells, assigns, encumbers, subleases, or otherwise transfers any of its interest in this Lease or in the Premises; (b) any Person other than Tenant occupies or claims a right of possession to any part of the Premises; (c) Tenant dissolves, merges, consolidates, or otherwise reorganizes, or sells, assigns, encumbers, or otherwise transfers cumulatively or in the aggregate 50 percent or more (25 percent or more if publicly traded) of its equity interests or business assets, such as goodwill, inventory, and profits; or (d) any subtenant, assignee, or other Transferee of Tenant sells, assigns, encumbers, sub-subleases, or otherwise Transfers any of its interest in its Sublease or premises.

"**Transfer Agreement**" means all document(s) effecting or evidencing Tenant's proposed sale, assignment, encumbrance, sublease, or other Transfer.

"**Transfer Date**" means the effective date of a Transfer.

"**Transfer Notice**" means Tenant's prior written notice to Port of an intent to Transfer, specifying: (a) the Transferee's name, address, other contact information, and, if the Transferee is not a natural Person, its form of organization and the identity of each Person with Control of the Transferee; (b) the proposed Transfer Date and a full description of the Transfer Terms; (c) a description of the Transferee's proposed use of the Premises, including any required or desired Alterations or Improvements to the Premises that the Transferee may undertake in order to facilitate its proposed use; and (d) a list of the Transferee's personal, business, and credit references.

"**Transfer Terms**" means the terms and conditions in the proposed or final Transfer Agreement, as appropriate in context.

"**Transferee**" means the Person to which Tenant makes or proposes to make a Transfer.

"**Utilities**" means electricity, water, gas, heat, sewers, oil, telecommunication services and all other Utilities.

"**Waiving Party**" is defined in Section 16.5 below.

"**Work**" when used in reference to construction is defined in Section 13.2(c) below.

"**worth at the time of the reward**" is defined in Section 22.1 below.

3. PREMISES; AS-IS CONDITION.

3.1. Premises.

(a) Subject to the provisions of this Lease, Port hereby leases to Tenant, and Tenant hereby leases from Port, the Premises in the Facility identified in the Basic Lease Information. The Premises has the address and contains the square footage specified in the Basic Lease Information. The location and dimensions of the Premises are depicted on *Exhibit A* attached hereto and incorporated herein by reference (the "**Premises**"). Port and Tenant agree and acknowledge that any statement of rentable or usable (if applicable) square footage set forth in this Lease is an approximation which Port and Tenant agree is reasonable and that the usable square footage of the Premises may be less than the rentable square footage of the Premises.

3.2. No Right to Encroach.

(a) If Tenant (including, its Agents, Invitees, successors and assigns) uses or occupies space outside the Premises without the prior written consent of Port (the "**Encroachment Area**"), then upon written notice from Port ("**Notice to Vacate**"), Tenant shall immediately vacate such Encroachment Area and pay as Additional Rent for each day Tenant used, occupied, uses or occupies such Encroachment Area, an amount equal to the rentable square footage of the Encroachment Area, multiplied by the higher of the (i) highest rental rate then approved by the San Francisco Port Commission for the Premises or the Facility, or (ii) then current fair market rent for such Encroachment Area, as reasonably determined by Port (the "**Encroachment Area Charge**"). If Tenant uses or occupies such Encroachment Area for a fractional month, then the Encroachment Area Charge for such period shall be prorated based on a thirty (30) day month. In no event shall acceptance by Port of the Encroachment Area Charge be deemed a consent by Port to the use or occupancy of the Encroachment Area by Tenant, its Agents, Invitees, successors or assigns, or a waiver (or be deemed as waiver) by Port of any and all other rights and remedies of Port under this Lease (including Tenant's obligation to Indemnify Port as set forth in the last paragraph of this Section), at law or in equity.

(b) In addition, Tenant shall pay to Port, as Additional Rent, an amount equaling Two Hundred Dollars (\$200.00) upon delivery of the initial Notice to Vacate plus the actual cost associated with a survey of the Encroachment Area. In the event Port determines during subsequent inspection(s) that Tenant has failed to vacate the Encroachment Area, then Tenant shall pay to Port, as Additional Rent, an amount equaling Three Hundred Dollars (\$300.00) for each additional Notice to Vacate, if applicable, delivered by Port to Tenant

following each inspection. The parties agree that the charges associated with each inspection of the Encroachment Area, delivery of each Notice to Vacate and survey of the Encroachment Area represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection of the Premises, issuance of each Notice to Vacate and survey of the Encroachment Area. Tenant's failure to comply with the applicable Notice to Vacate and Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights and remedies of Port under this Lease, at law or in equity.

(c) In addition to Port's rights and remedies under this Section, the terms and conditions of the indemnity and exculpation provision set forth in Section 19 below shall also apply to Tenant's (including, its Agents, Invitees, successors and assigns) use and occupancy of the Encroachment Area as if the Premises originally included the Encroachment Area, and Tenant shall additionally Indemnify Port from and against any and all loss or liability resulting from delay by Tenant in so surrendering the Encroachment Area including, without limitation, any loss or liability resulting from any Claims against Port made by any tenant or prospective tenant founded on or resulting from such delay and losses to Port due to lost opportunities to lease any portion of the Encroachment Area to any such tenant or prospective tenant, together with, in each case, actual attorneys' fees and costs.

(d) All amounts set forth in this Section shall be due within three (3) business days following the applicable Notice to Vacate and/or separate invoice relating to the actual cost associated with a survey of the Encroachment Area. By placing their initials below, each party specifically confirms the accuracy of the statements made in this Section 3.3 and the reasonableness of the amount of the charges described in this Section 3.3.

Initials:

Port

Tenant

3.3. Proximity of Development Project. Tenant acknowledges that during the Term, a Port program or project and/or the Development Project(s) described in the Basic Lease Information, if any, is scheduled to be, or may be, constructed on property in the vicinity of the Premises. Tenant is aware that the construction of such project(s) and the activities associated with such construction will generate certain adverse impacts which may result in some inconvenience to or disturbance of Tenant. Impacts may include, but are not limited to, increased vehicle and truck traffic, traffic delays and re-routing, loss of street and public parking, dust, dirt, construction noise and visual obstructions. Tenant hereby waives any and all Claims against Port, City and their Agents arising out of such inconvenience or disturbance.

3.4. America's Cup. Tenant acknowledges that the Golden Gate Yacht Club has selected San Francisco as the host city for the 34th America's Cup. The selection could result in activities and impacts, all of which are subject to review under the California Environmental Quality Act. The potential activities and impacts include events related to the America's Cup, which will include the 34th America's Cup match, anticipated to occur in 2013, pre-match races, possible future successive defense(s) of the America's Cup, related events and potential long-term development uses, to be determined after the racing events in 2013 (collectively the "Event"). The Event, if held, will be, or may be, on property, including land and water, in the immediate vicinity of the Premises. Tenant is aware that the Event as proposed will include construction projects, racing in the Bay, and public and private events. The activities associated with the Event, if held, are expected to create certain impacts, some of which may result in some inconvenience to or disturbance of Tenant.

Impacts of the Event may include, but are not limited to, increased pedestrian, vessel, vehicle and truck traffic, traffic delays and re-routing of street traffic, loss of street and public parking, temporary re-routing or interruption of land and water transit, dust, dirt, land- and water-based construction, dredging, and other noise and visual obstructions. Tenant hereby

waives any and all Claims against Port, City and their Agents arising out of impacts, inconvenience or disturbance as a result of the Event.

3.5. No Light, Air or View Easement. This Lease does not include an air, light, or view easement. Any diminution or shutting off of light, air or view by any structure which may be erected on lands near or adjacent to the Facility or by any vessels berthed near the Facility shall in no way affect this Lease or impose any liability on Port, entitle Tenant to any reduction of Rent or Additional Rent, or affect this Lease in any way or Tenant's obligations hereunder.

3.6. Unique Nature of Premises. Tenant acknowledges that: (a) the Facility is located along the waterfront in a building on a pier and/or wharf, supported by a partially-submerged substructure in a marine environment, which was originally built approximately 100 years ago; and/or (b) Port's regular maintenance may involve activities, such as pile driving, that create noise and other effects not normally encountered in locations elsewhere in San Francisco due to the unique nature of the Premises; and (c) Port cannot guarantee that piers, decks, wharves, and aprons will be suitable for leased occupancy during the entire Term of the Lease.

3.7. As-Is Condition. Tenant acknowledges and agrees that Tenant is familiar with the Premises, the Premises are being leased and accepted in their "as-is" condition, without any improvements or alterations by Port, without representation or warranty of any kind, and subject to all applicable laws governing their use, occupancy and possession. Tenant represents and warrants to Port that Tenant has received and reviewed the FEMA disclosure notice attached as *Schedule 1*. Tenant further represents and warrants to Port that Tenant has investigated and inspected, either independently or through agents of Tenant's own choosing, the condition of the Premises and the suitability of the Premises for Tenant's business and intended use. Tenant acknowledges and agrees that neither Port nor any of its agents have made, and Port hereby disclaims, any representations or warranties, express or implied, concerning the rentable area of the premises, the physical or environmental condition of the Premises or the Facility (including, but not limited to the substructure), the present or future suitability of the Premises for Tenant's business, or any other matter whatsoever relating to the Premises, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

3.8. Port's Rights Regarding Premises. Port shall have the full right and authority to make, revoke, impose, and amend any Rules and Regulations pertaining to and reasonably necessary for the proper use, operation and maintenance of the Facility. If no Rules and Regulations currently exist for the Facility, Tenant agrees to be bound by any Rules and Regulations Port later imposes on the Facility. Tenant also acknowledges that Port's exercise of any of its rights regarding the Premises and other Port property in the vicinity of the Premises will not entitle Tenant to any abatement or diminution of Rent.

4. TERM OF LEASE; TERMINATION BY PORT.

4.1. Term. The term of this Lease (the "Term") shall be for the period of months specified in the Basic Lease Information commencing on the Commencement Date and expiring on the Expiration Date. If the Commencement Date and Expiration Date occur on a date other than the Commencement Date and the Expiration Date set forth in the Basic Lease Information, then promptly following the actual Commencement Date, Port and Tenant shall execute a Commencement Date and Expiration Date Memorandum substantially in the form attached hereto as *Exhibit B*, confirming the actual Commencement Date and Expiration Date, but either party's failure to do so shall not affect the commencement or expiration of the Term.

If Port is unable to deliver possession of the Premises to Tenant on or before the Commencement Date, then the validity of this Lease shall not be affected thereby and Port shall not be liable to Tenant for any Claims resulting therefrom, and Tenant waives all provisions of any Laws to the contrary. In such case, the Term and regular payments of Rent shall not commence until Port delivers possession of the Premises. Notwithstanding anything to the contrary above, if Port's inability to deliver possession of the Premises on the estimated

Commencement Date results from Tenant's or its Agents' acts or omissions, then Rent and Additional Rent payable by Tenant hereunder shall commence on the date when Port would have delivered possession of the Premises but for such acts or omissions.

4.2. Termination Rights.

(a) Port has the right to terminate this Lease under this Section when the Premises are needed in connection with a Port program or project. Port may exercise this right without liability or expense, except as specifically set forth in this Subsection, upon thirty (30) days' prior written notice. Tenant agrees and shall be required to surrender possession of the Premises by the end of the 30-day period.

(b) Port has the right to terminate the Lease under this Section if Port determines, in its sole and absolute discretion, that the condition of the Facility's structures, substructure or utilities has deteriorated to a condition that would create a foreseeable risk of hazard to health or safety. Port may exercise this right without liability or expense, except as specifically set forth in this Subsection. Port will attempt to provide Tenant with no less than ninety (90) days' prior written notice of termination under this Subsection, but reserves the right to terminate this Lease upon any shorter notice that the Port in its sole and absolute discretion determines is justified given the risk of hazard. Tenant agrees and shall be required to surrender possession of the Premises by the end of the notice period, except as provided in this Subsection.

(i) For a period ending fifteen (15) calendar days after receipt of Port's notice of termination, Tenant may request Port's consent, in Port's sole and absolute discretion, to allow Tenant to make the repairs required by Port in accordance with this Lease and any additional conditions reasonably imposed by Port, in consideration of Concessions from Port. If Port consents, Port's notice of termination will be deemed rescinded and of no further effect.

(c) Within sixty (60) days after Tenant's surrender under this Section, Port agrees to pay Tenant a portion of those expenses which are documented by Tenant as having been incurred by Tenant prior to the delivery of Port's termination notice in making alterations, additions and improvements to the Premises which were approved in advance and in writing by Port and which were not previously reimbursed to Tenant through rent credits, rent abatement or other form of compensation ("**Improvement Costs**"). Such Improvement Costs shall be determined by the value attributable to any alterations, additions and improvements in any Port building permits for such work obtained by Tenant and which are approved in advance in writing by a Port Property Manager to the extent supported by reasonable evidence of such expenditures provided by Tenant. If no building permits are required for such work, value shall only be attributed to such alterations, additions or improvements if the value is approved in writing by a Port Property Manager prior to the commencement of the work and if the cost is supported by reasonable evidence of such expenditures provided by Tenant. The portion of the Improvement Costs paid by Port shall be a fraction, of which the numerator shall be the number of months remaining in the initial term of the Lease after Tenant surrenders the Premises, and the denominator shall be the number of months in the initial term of this Lease, or for work undertaken following the Commencement Date, the number of months beginning at the second month following the Port's approval of the improvements and ending at the Expiration Date of the initial term of the Lease. In no event shall Port be responsible for paying any moving or relocation expense or other expense incurred by Tenant due to any termination under this Section.

under the Special Tax Financing Law in Chapter 43 Article X of the Administrative Code. Tenant shall not permit any such taxes, assessments or other charges to become a defaulted lien on the Premises or the Improvements thereon; provided, however, that in the event any such tax, assessment or similar charge is payable in installments, Tenant may make, or cause to be made, payment in installments; and provided, further, that Tenant may, through such proceeding as Tenant considers necessary or appropriate, contest the legal validity or the amount of any tax, assessment or similar charge so long as such assessment or charge does not become a defaulted lien. In the event of any such dispute, Tenant shall indemnify and hold Port, City, and their Agents harmless from and against all losses, damages, costs, or expenses, including attorneys' fees, resulting therefrom.

6.2. Possessory Interest Tax. Tenant recognizes and understands 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. Tenant further recognizes and understands that any sublease or assignment permitted under this Lease and any exercise of any option to renew or other extension of this Lease may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder. Tenant agrees to pay taxes of any kind, including, but not limited to, possessory interest taxes, that may be lawfully assessed on the leasehold interest hereby created and to pay all other taxes, excises, licenses, permit charges and assessments based on Tenant's usage of the Premises that may be imposed upon Tenant by Law, all of which shall be paid when the same become due and payable and before delinquency. Tenant agrees not to allow or suffer a lien for any such taxes to be imposed upon the Premises or upon any equipment or property located thereon without promptly discharging the same, provided that Tenant, if so desiring, may have reasonable opportunity to contest the validity of the same. San Francisco Administrative Code Sections 23.38 and 23.39 (or any successor statute) require that the City and County of San Francisco report certain information relating to this Lease, and any renewals thereof, to the County Assessor within sixty (60) days after any such transaction and that Tenant report certain information relating to any assignment of or sublease under this Lease to the County Assessor within sixty (60) days after such assignment or sublease transaction. Tenant agrees to provide such information as may be requested by the City or Port to enable the Port to comply with this requirement within thirty (30) days of a request in writing by Port to do so.

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7. SECURITY DEPOSIT. Tenant shall pay to Port upon execution of this Lease the Security Deposit, in cash, in the sum specified in the Basic Lease Information, as security for the faithful performance by Tenant of all terms, covenants and conditions of this Lease.

Tenant agrees that Port may (but shall not be required to) apply the Security Deposit in whole or in part to (a) pay any sum due to Port under this Lease; (b) compensate Port for any expense incurred or damage caused by Tenant, its Agents or Invitees; (c) cure any default by Tenant; or (d) cure, or attempt to cure, any failure of Tenant to perform any other covenant, term or condition contained herein. Tenant shall immediately upon demand pay Port a sum equal to the portion of the Security Deposit expended or applied by Port. Port shall not be required to keep the Security Deposit separate from its general funds, and Tenant shall not be entitled to any interest on the Security Deposit. Nothing contained in this Section shall in any way diminish or be construed as waiving any of Port's other remedies set forth in this Lease or provided by law or equity.

Tenant hereby waives the provisions of California Civil Code Section 1950.7 and/or any successor statute, it being expressly agreed that Port may apply all or any portion of the Security Deposit in payment of any and all sums reasonably necessary to compensate Port for any other loss or damage, foreseeable or unforeseeable, caused by the act or omission of Tenant or any

Agent or Invitee of Tenant, and that following a default by Tenant, all or any portion of the Security Deposit may be retained by Port following a termination of this Lease and applied to future damages, including damages for future Rent, pending determination of the same.

8. USE OF THE PREMISES.

8.1. Permitted Use. The Premises shall be used and occupied only for the Permitted Use specified in the Basic Lease Information and for no other purpose.

8.2. Prohibited Use. Tenant agrees that the following activities, by way of example only and without limitation, and any other use that is not a Permitted Use (in each instance, a "Prohibited Use" and collectively, "Prohibited Uses"), are inconsistent with this Lease, are strictly prohibited and are considered Prohibited Uses:

- (a) any activity, or the maintaining of any object, which is not within the Permitted Use;
- (b) any activity, or the maintaining of any object, which will in any way increase the existing rate of, affect or cause a cancellation of, any fire or other insurance policy covering the Premises, any part thereof or any of its contents;
- (c) any activity or object which will overload or cause damage to the Premises;
- (d) any activity which constitutes waste or nuisance, including, but not limited to, the preparation, manufacture or mixing of anything that might emit any objectionable odors, noises or lights onto adjacent properties, or the use of loudspeakers or sound or light apparatus which can be heard or seen outside the Premises;
- (e) any activity which will in any way injure, obstruct or interfere with the rights of other tenants in the Facility or of owners or occupants of adjacent properties, including, but not limited to, rights of ingress and egress;
- (f) use of the Premises for residential, sleeping or personal living quarters and/or "Live/Work" space;
- (g) any auction, distress, fire, bankruptcy or going out of business sale on the Premises without the prior written consent of Port, which consent may be granted, conditioned, or withheld in the sole and absolute discretion of Port;
- (h) the operation, use, or berthing of any vessels, watercraft or floating barges owned or operated by Tenant;
- (i) Tenant's employment of any maritime workers within the Premises for loading, unloading, building, repairing, dismantling, or longshoring of any vessel;
- (j) any vehicle and equipment maintenance, including but not limited to fueling, changing oil, transmission or other automotive fluids;
- (k) the storage of any and all excavated materials, including but not limited to dirt, concrete, sand, asphalt, and pipes;
- (l) the storage of any and all aggregate material, or bulk storage, such as wood or of other loose materials;
- (m) the washing of any vehicles or equipment;
- (n) the placement of any object, machinery or equipment on any portion of the Premises that exceeds the load restrictions, if any, described in the Basic Lease Information; or
- (o) any other Prohibited Uses identified in the Basic Lease Information, if any.

payment of Rent, or to compel Port to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

10. PORT ACTING AS OWNER OF PROPERTY; REGULATORY APPROVALS; COMPLIANCE WITH CITY'S RISK MANAGER'S REQUIREMENTS.

10.1. *Port Acting as Owner of Property.* Tenant understands and agrees that Port is entering into this Lease in its capacity as a landowner with a proprietary interest in the Premises and not as a Regulatory Agency of the City with certain police powers. By entering into this Lease, Port is in no way modifying or limiting the obligation of Tenant to obtain any required Regulatory Approvals from Regulatory Agencies, and to cause the Premises to be used and occupied in accordance with all Laws and required Regulatory Approvals. Examples of Port actions as a Regulatory Agency include Port Commission approval of entitlements to develop Port property, Port staff issuance of building and other construction-related permits, Port staff issuance of licenses and regulation of certain sidewalks and streets, and the Chief Harbor Engineer's actions to protect public health and safety.

10.2. *Regulatory Approvals.* Tenant understands that Tenant's operations on the Premises, changes in use, or Improvements or Alterations to the Premises (individually and collectively, "**Changes**") may require Regulatory Approvals, including Regulatory Approvals issued by Port in its capacity as a Regulatory Agency.

Tenant shall be solely responsible for obtaining any Regulatory Approvals, and Tenant shall not seek any Regulatory Approval without first obtaining the prior written approval of Port. All costs associated with applying for and obtaining any necessary Regulatory Approval shall be borne solely and exclusively by Tenant. Tenant shall be solely responsible for complying with any and all conditions imposed by Regulatory Agencies as part of a Regulatory Approval; provided, however, Tenant shall not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a permit or other entitlement from any Regulatory Agency (other than Port), if the Port is required to be a co-permittee under such permit or other entitlement, or if the conditions or restrictions it would impose on the project could affect use or occupancy of the Facility or Port's interest therein or would create obligations on the part of Port (whether on or off of the Premises) to perform or observe, unless in each instance Port has previously approved such conditions in writing, in Port's sole and absolute discretion.

Any fines or penalties imposed as a result of the failure of Tenant to comply with the terms and conditions of any Regulatory Approval shall be promptly paid and discharged by Tenant, and Port shall have no liability, monetary or otherwise, for any fines and penalties. To the fullest extent permitted by Law, Tenant agrees to indemnify and hold City, Port and their Agents harmless from and against any loss, expense, cost, damage, attorneys' fees, penalties, claims or liabilities which City or Port may incur as a result of Tenant's failure to obtain or comply with the terms and conditions of any Regulatory Approval.

Without limiting the terms and conditions of Sections 10.1 and 10.2, by initialing below, Tenant agrees and acknowledges that (i) Port has made no representation or warranty that Regulatory Approvals to allow for the Changes, if any, can be obtained, (ii) although Port is an agency of the City, Port has no authority or influence over any Regulatory Agency responsible for the issuance of such required Regulatory Approvals, (iii) Port is entering into this Lease in its capacity as a landowner with a proprietary interest in the Facility and not as a Regulatory Agency of the City with certain police powers, and (iv) Tenant is solely responsible for obtaining any and all required Regulatory Approvals in connection with any Changes. Accordingly, Tenant understands that there is no guarantee, nor a presumption, that any required Regulatory Approvals will be issued by the appropriate Regulatory Agency and Port's status as an agency of the City shall in no way limit the obligation of Tenant to obtain approvals from any Regulatory Agencies (including Port) that have jurisdiction over the Facility. Tenant hereby releases and discharges Port from any liability relating to the failure of any Regulatory Agency (including Port) from issuing any required Regulatory Approval.

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10.3. *Compliance with City's Risk Manager's Requirements.* Tenant shall not do anything, or permit anything to be done, in or about the Premises that would be prohibited by or increase rates under a standard form fire insurance policy or subject Port to potential premises liability. Tenant shall faithfully observe, at no cost to Port, any and all requirements of City's Risk Manager with respect to Tenant's use and occupancy of the Premises, so long as such requirements do not unreasonably interfere with Tenant's use of the Premises or are otherwise connected with standard prudent commercial practices of other landlords.

11. MAINTENANCE AND REPAIRS.

11.1. *Tenant Maintenance and Repair Obligations.* Unless otherwise set forth in the Basic Lease Information, Tenant shall at all times during the Term, including any period of early entry if any under this Lease, or occupancy or use of the Premises by Tenant under another lease or license with Port, and at its sole cost and expense, maintain, repair and replace in good and working order, condition and repair the Premises and all Improvements and Alterations thereon, including, but not limited to, glazing. Port shall not be obligated to make any repairs, replacement or renewals of any kind, nature or description whatsoever to the Premises nor to any Improvements or Alterations now or hereafter located thereon. Tenant hereby waives all rights to make repairs at Port's expense under Sections 1932(1), 1941 and 1942 of the California Civil Code or under any similar Law now or hereafter in effect.

Notwithstanding any maintenance obligations of Port that may be set forth in the Basic Lease Information, in the event that Tenant, its Agents or Invitees cause any damage to the Premises or any other property within Port's jurisdiction, Port may repair the same at Tenant's sole cost and expense and Tenant shall immediately reimburse Port therefor. Tenant shall not make, nor cause or suffer to be made any repairs or other work for which a permit is required by an applicable building code, standard or regulation, including, without limitation, the Port Building Code, the Port Facility Code, or of any rule or regulation of Port without first obtaining Port's prior written consent and a permit therefor.

11.2. *Port's Right to Inspect.* In the event that damage or deterioration to the Premises or any portion thereof which is Tenant's obligation to maintain results in the same not meeting the standard of maintenance required by Port for such uses as Tenant is making of the Premises, then Tenant shall have the independent responsibility for, and shall promptly undertake, maintenance or repair of the Premises and complete the same with due diligence. Without limiting Section 24 below, Port may make periodic inspections of the Premises and may advise Tenant when maintenance or repair of the Premises is required, but such right of inspection shall not relieve Tenant of its independent responsibility to maintain such Premises and Improvements

in a condition as good as, or better than, their condition at the Commencement Date, excepting ordinary wear and tear.

11.3. Port's Right to Repair. In the event Tenant fails to maintain the Premises in accordance with Sections 11.1, 11.2 or 12.1, or Tenant fails to promptly repair any damage to the Facility or the Facility Systems caused by Tenant or its Agents, Port may repair the same at Tenant's sole cost and expense and Tenant shall immediately reimburse Port therefore. If the cost (including, but not limited to, salaries of Port staff and attorneys' fees) of any such repairs or replacements made at Tenant's expense is in excess of Two Thousand Dollars (\$2,000), then Tenant shall pay to Port an administrative fee equal to ten percent (10%) of the total "**Hard costs**" of the work. "**Hard costs**" shall include the cost of materials and installation, but shall exclude any costs associated with design, such as architectural fees.

With respect to any work where the total hard costs of such work are less than Two Thousand Dollars (\$2,000), Tenant shall pay to Port, as Additional Rent, an amount equaling Two Hundred Dollars (\$200) upon delivery of the initial notice relating to Tenant's failure to maintain the Premises in accordance with Section 11 ("**Maintenance Notice**"). In the event Port determines during subsequent inspection(s) that Tenant has failed to maintain the Premises in accordance with Section 11, then Tenant shall pay to Port, as Additional Rent, an amount equaling Three Hundred Dollars (\$300) for each additional Maintenance Notice, if applicable, delivered by Port to Tenant following each inspection. Parties agree that the charges associated with each inspection of the Premises and delivery of each Maintenance Notice represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection of the Premises and issuance of each Maintenance Notice. Tenant's failure to comply with the applicable Maintenance Notice and Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights and remedies of Port under this Lease, at law or in equity. The amounts set forth in this Section 11.3 shall be due within three (3) business days following delivery of the applicable Maintenance Notice.

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For purposes of this Lease, the term "**ordinary wear and tear**" shall not include any deterioration in the condition or diminution of the value of any portion of the Premises and/or the Facility in any manner whatsoever related to directly, or indirectly, to Tenant's failure to comply with the terms and conditions of this Lease.

11.4. Acts of Nature. Nothing contained herein shall require Port to repair or replace the Premises or the Improvements thereon as a result of damage caused by acts of war, earthquake, tidal wave or other acts of nature, except that this provision shall not affect any obligation to make repairs to the Premises pursuant to Section 17 in the event of any damage or destruction of the Premises.

12. UTILITIES AND SERVICES.

12.1. Utilities. Except as may be otherwise provided in the Basic Lease Information, Tenant shall make arrangements and shall pay all charges for all Utilities to be furnished on, in or to the Premises or to be used by Tenant as described in this Section.

Tenant shall be obligated, at its sole cost and expense, to repair and maintain in good operating condition all utilities serving the Premises (whether within or outside the Premises and regardless of who installed same). The obligation to repair and maintain includes the obligation to routinely inspect and assess such Utilities using qualified licensed professionals and to report the results of such inspections to Port. If Tenant requests Port to perform such maintenance or repair, whether emergency or routine, Port shall charge Tenant for the cost of the work performed at the then prevailing standard rates, and Tenant agrees to pay Port promptly upon billing. Tenant shall pay for repair of utilities located outside the Premises (regardless of who

installed the same) which are damaged by or adversely affected by Tenant's use of such utility and shall be responsible for all damages, liabilities and claims arising therefrom.

The parties agree that any and all utility improvements (not including telephone wiring and equipment) shall become part of the realty and are not trade fixtures or Tenant's Property. Port makes no representation or warranty that utility services, including telecommunications services, will not be interrupted. Port shall not be liable in damages or otherwise for any failure or interruption of any utility services, including telecommunications services, furnished to the Premises. No such failure or interruption shall constitute a basis for constructive eviction, nor entitle Tenant to terminate this Lease or abate Rent. Tenant hereby waives the provisions of California Civil Code Section 1932(1), 1941, and 1942, or any other applicable existing or future Laws permitting the termination of this Lease due to such interruption, failure or inability.

In the event any Law imposes mandatory or voluntary controls on Port, the Facility, or the property 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 Port is required or elects to make alterations to any part of the Facility in order to comply with such mandatory or voluntary controls or guidelines, such compliance and the making of such alterations shall in no event entitle Tenant to any damages, relieve Tenant of the obligation to pay the full Rent and Additional Rent reserved hereunder or to perform each of its other covenants hereunder or constitute or be construed as a constructive or other eviction of Tenant. Port 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 Tenant.

Without Port's prior written consent, which Port may give or refuse in its sole and absolute discretion, Tenant shall not place or install in the Premises any equipment that weighs in excess of the normal load-bearing capacity of the floors of the Facility or the pier, as applicable, and as may be further described in the Basic Lease Information. If Port consents to the placement or installation of any such machine or equipment in the Premises, Tenant, at no cost to the Port, shall reinforce the floor of the Premises, pursuant to plans and specifications approved by Port and otherwise in compliance with Section 13 below, to the extent necessary to assure that no damage to the Premises or the Facility or weakening of any structural or substructural supports, as the case may be, will be occasioned thereby.

12.2. Services. Except as may be otherwise provided in the Basic Lease Information, Tenant shall make arrangements and shall pay all charges for all services to be furnished on, in or to the Premises or to be used by Tenant, including, without limitation, garbage and trash collection, janitorial service and extermination service.

13. IMPROVEMENTS AND ALTERATIONS.

13.1. Port Consent Required.

(a) Tenant shall not make nor cause or suffer to be made, any Alterations or Improvements to the Premises (i) without the prior written consent of Port, which consent shall not be unreasonably withheld; provided, however, that Port shall have the right in its sole and absolute discretion to consent or to withhold its consent to any Alterations or Improvements which affect the structural portions of the Premises, the Facility or the Facility Systems, and (ii) until Tenant shall have procured and paid for all Port and other Regulatory Approvals of the various Regulatory Agencies having jurisdiction over the Premises, including, but not limited to, any building or similar permits required by Port or its Chief Harbor Engineer in the exercise of its jurisdiction with respect to the Premises.

(b) As a condition to giving consent, Port may require Tenant to provide Port, at Tenant's sole cost and expense, one or more financial guarantees, each in a form and issued by a bank or surety acceptable to Port, such as: (i) a standby letter of credit or bond; and (ii) a

payment and performance bond from Tenant's Contractors naming Port as co-obligee, each in a principal amount up to one hundred fifty percent (150%) but not less than one hundred percent (100%) of the estimated costs of the Alteration or Improvement, to ensure Port against any liability for mechanics' and materialmen's liens, stop notices and to ensure completion of work.

(c) At least thirty (30) days before commencing any Alterations or Improvements to the Premises, Tenant shall notify Port. Tenant's notice shall be accompanied by Final Construction Documents for the Alterations or Improvements, if applicable. Port shall have the right to object to any the Alterations or Improvements within sixty (60) days after receipt of notice from Tenant. Port's failure to notify Tenant of Port's objection within the 60-day period shall be deemed Port's disapproval of the Alterations.

(d) None of the following will constitute Alterations or Improvements requiring Port's consent, unless the installation will affect Facility Systems or the structure of the building: (i) installation of furnishings, trade fixtures, equipment, or decorative improvements; (ii) painting the interior of the Premises; and (iii) carpeting the Premises.

13.2. Construction Requirements. All Alterations and Improvements to the Premises made by or on behalf of Tenant shall be subject to the following conditions, which Tenant covenants faithfully to perform:

(a) All Alterations and Improvements shall be performed in a good and workmanlike manner in accordance with plans and specifications previously approved by Port in writing and in compliance with the applicable building, zoning and other applicable Laws, including, but not limited to, compliance with the ADA, and in compliance with the terms of and conditions imposed in any Regulatory Approval or any permit or authorization for the Premises.

(b) All Alterations and Improvements shall be performed at the sole cost and expenses of Tenant, with reasonable dispatch and prosecuted to completion, and only by duly licensed and bonded contractors or mechanics approved by Port, and subject to any conditions that Port may reasonably impose.

(c) Tenant, while performing any subsequent construction or maintenance or repair of the Improvements (for purposes of this Section only, "Work"), shall undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or damage to adjoining portions of the Premises and Improvements and the surrounding property, or the risk of injury to members of the public, caused by or resulting from the performance of its Work. Tenant shall undertake commercially reasonable measures to minimize damage, disruption or inconvenience caused by the Work and make adequate provision for the safety and convenience of all persons affected by the Work. Dust, noise and other effects of the Work shall be controlled using commercially-accepted methods customarily used to control deleterious effects associated with construction projects in populated or developed urban areas. Tenant shall erect appropriate construction barricades substantially enclosing the area of such construction and maintain them until the Work has been substantially completed, to the extent reasonably necessary to minimize the risk of hazardous construction conditions.

(d) At the completion of any Work described in this Section, Tenant shall furnish to Port one reproducible "as built" drawing of all Alterations and Improvements made in the Premises. If Tenant fails to provide such as-built drawings to Port within sixty (60) days after completion of the Improvements, Port, after giving notice to Tenant shall have the right, but not the obligation, to cause the preparation by an architect of Port's choice of "as-built" drawings, at Tenant's sole cost, to be paid by Tenant to Port within thirty (30) days after Port's request therefor.

13.3. Improvements Part of Realty. Except as set forth in Section 13.4 below, all Alterations and Improvements constructed on or affixed to the Premises by or on behalf of Tenant shall immediately upon construction or installation become part of the realty owned by Port and shall, at the end of the Term hereof, remain on the Premises without compensation to

Tenant. Tenant may not remove any such property at any time during or after the Term unless Port so requires as further provided in Section 25 (Surrender).

13.4. Removal of Improvements. Prior to the Expiration Date or earlier termination of this Lease, Port shall give written notice to Tenant (herein "**Notice of Removal**") specifying the Alterations or Improvements that are designated as Tenant's Property as defined in this Lease or as may be specifically provided in the relevant permits or plans approved by Port, which Tenant shall be required to remove and relocate or demolish and remove from the Premises in accordance with Section 25. Any such removal is subject to the requirements of this Section, including the requirement to obtain a Port building or similar permit. If termination of this Lease is the result of loss or destruction of the Premises or any Improvements thereon, Port shall deliver the Notice of Removal to Tenant within a reasonable time after the loss or destruction. Tenant shall be obligated at its own expense to remove all Alterations or Improvements specified in the Notice of Removal, including without limitation all telephone wiring and equipment installed by Tenant. Tenant shall promptly repair, at its own expense, in good and workmanlike fashion any damage occasioned thereby. If Tenant fails to complete any required demolition or removal on or before the termination of this Lease, Port may perform such removal or demolition at Tenant's expense, and Tenant shall reimburse Port within three (3) business days after demand therefor.

13.5. Removal of Non-Permitted Improvements. If Tenant constructs any Alterations or Improvements without Port's prior written consent or without complying with Section 13.2 above, then, in addition to any other remedy available to Port, Port may require Tenant to remove, at Tenant's expense, any or all such Alterations or Improvements and to promptly repair, at Tenant's expense and in good workmanlike fashion, any damage occasioned thereby. Tenant shall pay to Port all special inspection fees as set forth in any applicable building code, standard or regulation, including, without limitation, the Port Building Code, for inspection of work performed without required permits. The foregoing obligation of Tenant to reimburse Port for all cost and expenses incurred by Port in connection with Tenant's failure to comply with the provisions of Section 13 shall survive the expiration or earlier termination of this Lease.

13.6. Signs. Tenant shall not install business signage, awnings or other exterior decoration or notices on the Premises without Port's prior written consent. Any sign that Tenant is permitted to place, construct or maintain on the Premises shall comply with all Laws relating thereto, including but not limited to Port's Tenant Sign Guidelines and building permit requirements, and Tenant shall obtain all Regulatory Approvals required by such Laws. Port makes no representation with respect to Tenant's ability to obtain such Regulatory Approval. Tenant, at its sole cost and expense, shall remove all signs placed by it on the Premises at the expiration or earlier termination of this Lease.

13.7. Improvements on Roof. Tenant shall not install any equipment on the roof or any other part of the Facility outside of the Premises without Port's prior written consent. If Port consents, then Tenant shall have a non-exclusive revocable license on and over the roof and/or other areas of the Facility necessary to install, maintain and repair the equipment in a location mutually agreeable to Port and Tenant, subject to and consistent with all necessary Regulatory Approvals, including a building or encroachment permit issued by Port. Port makes no representation with respect to Tenant's ability to obtain such Regulatory Approvals. Tenant's use of any licensed areas shall be subject to all the terms and conditions of this Lease and Tenant shall have the obligations and liabilities as if the licensed areas are included in the Premises under this Section, and Sections 3.7, 9-11, 13, 15, 16, 19 and 25 of this Lease. The license granted to Tenant hereunder is for the sole purpose of constructing, maintaining, restoring, replacing and operating Tenant's approved equipment, including any necessary conduits, only in connection with Tenant's Permitted Uses under this Lease and Tenant shall not have the right to install any other equipment outside of the Premises, including without limitation a telecommunications (cell) site or any other equipment that can be used for any commercial purpose. The license granted hereby includes the right of ingress and egress through the Facility

during non-business hours for access to or from the Premises and Tenant's equipment, provided that Tenant must notify the Port's designated person set forth above at least 24 hours in advance of any access and shall comply with all reasonable requirements of such designated person with respect to Tenant's requested access. In the event of an emergency, Tenant shall have the right to enter the licensed areas provided it makes good faith efforts if possible to notify Port in advance of such entry.

13.8. Port's Alterations. Port reserves the right at any time to make Alterations, additions, repairs, deletions or improvements to the Common Areas or any other part of the Facility, the Facility Systems, or adjacent Port property ("**Port Work**"). Port shall use commercially reasonable efforts to conduct any of the foregoing activities in a manner that, to the extent reasonably practicable, will minimize inconvenience or disturbance to Tenant; Port will have no obligation to minimize inconvenience or disturbance to Tenant for Port Work when the Port Work is necessary, in Port's sole and absolute discretion, to maintain Port property in safe, hazard-free condition. In no event will inconvenience or disturbance caused by Port Work constitute an actual or constructive eviction of Tenant, entitle Tenant to any abatement or diminution of Rent, or otherwise relieve Tenant from any of its obligations under this Lease. Tenant hereby waives any and all Claims against Port, City and their Agents arising out of any inconvenience or disturbance occasioned by Port Work.

14. LIENS.

Tenant shall keep the Premises free from any liens arising out of any work performed, materials furnished or obligations incurred by Tenant or its Agents. In the event that Tenant shall not, within twenty (20) days following the imposition of any such lien, cause the same to be released of record, Port shall have, in addition to all other remedies provided by this Lease or by Law, the right but not the obligation to cause the same to be released by such means as it shall deem proper, including without limitation, payment of the claim giving rise to such lien. All sums paid by Port for such purpose, plus interest at the Interest Rate, and all reasonable expenses incurred by Port in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to Port by Tenant upon demand. Port shall have the right to post on the Premises any notices that Port may deem proper for the protection of Port, the Premises, and the Facility, from mechanics' and materialmen's liens. Tenant shall give to Port at least fifteen (15) days' prior written notice of commencement of any Alteration, repair or construction on the Premises. Tenant agrees to indemnify, defend and hold Port, City and their respective Agents harmless from and against any claims for mechanic's, materialmen's or other liens in connection with any Alterations, repairs or construction on the Premises, or materials furnished or obligations incurred by or for Tenant.

Without limiting the foregoing, Tenant shall not create, permit or suffer any liens or encumbrances affecting any portion of the Premises, the Facility or Port's interest therein or under this Lease.

15. HAZARDOUS MATERIALS.

15.1. Requirements for Handling. Neither Tenant nor its Agents or Invitees may Handle or permit any other person to Handle any Hazardous Material in, on, under or about the Premises, any other part of the Facility, or other Port property, subject only to the following exceptions, provided that Handling is at all times in full compliance with all Environmental Laws: janitorial and office supplies in limited amounts customarily used for general office purposes.

15.2. Tenant Responsibility. Tenant agrees to protect its Agents and Invitees in its operations on the Premises from hazards associated with Hazardous Materials in accordance with all Environmental Laws and also agrees, for itself and on behalf of its Agents and Invitees, that during its use and occupancy of the Premises, each of them:

- (a) will not permit any Hazardous Materials to be present in, on, under or about the Premises, any other part of the Facility, or other Port property except as permitted under Section 15.1;
- (b) will not cause or permit any Hazardous Material Condition; and
- (c) will comply with all Environmental Laws relating to the Premises and any Hazardous Material Condition, and will not engage in or permit any activity at the Premises, any other part of the Facility, other Port property, or in the operation of any vehicles or vessels used in connection with the Premises in violation of any Environmental Laws.

15.3. Tenant's Environmental Condition Notification Requirements.

(a) Tenant must notify Port immediately, orally or by other means that will transmit the earliest possible notice to Port staff, followed within twenty-four (24) hours by written notice, of and when Tenant learns or has reason to believe Hazardous Materials were Released or, except as allowed under Section 15.1, Handled, in, on, or about the Premises, the Facility, other Port property, or the environment, or from any vehicles or vessels that Tenant or its Agents or Invitees use during Tenant's occupancy of the Premises, whether or not the Release or Handling is in quantities that would be required under Environmental Laws to be reported to an Environmental Regulatory Agency.

(b) Tenant must notify Port immediately, orally or by other means that will transmit the earliest possible notice to Port staff, followed within twenty-four (24) hours by written notice, and contemporaneously provide Port with an electronic copy, of:

(i) Any notice of the Release or Handling of Hazardous Materials, in, on, or about the Premises, the Facility, other Port property, or the environment, or from any vehicles or vessels Tenant, or its Agents and Invitees uses during Tenant's occupancy of the Premises that Tenant or its Agents or Invitees provides to an Environmental Regulatory Agency;

(ii) Any notice of a violation, or a potential or alleged violation, of any Environmental Law that Tenant or its Agents or Invitees receives from any Environmental Regulatory Agency;

(iii) Any other Environmental Regulatory Action that is instituted or threatened by any Environmental Regulatory Agency against Tenant or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, or about the Premises, the Facility, other Port property, or the environment, or from any vehicles or vessels Tenant, or its Agents and Invitees uses during Tenant's occupancy of the Premises;

(iv) Any Hazardous Materials Claim that is instituted or threatened by any third party against Tenant or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, or about the Premises, the Facility, other Port property, or the environment, or from any vehicles or vessels Tenant, or its Agents and Invitees uses during Tenant's occupancy of the Premises; and

(v) Any notice of the termination, expiration, or substantial amendment of any Environmental Regulatory Approval needed by Tenant or its Agents or Invitees for their operations at the Premises.

(c) Tenant must notify Port of any meeting, whether conducted face-to-face or telephonically, between Tenant and any Environmental Regulatory Agency regarding an Environmental Regulatory Action. Port will be entitled to participate in any such meetings at its sole election.

(d) Tenant must notify Port of any Environmental Regulatory Agency's issuance of an Environmental Regulatory Approval. Tenant's notice to Port must state the issuing entity, the Environmental Regulatory Approval identification number, and the date of issuance and expiration of the Environmental Regulatory Approval. In addition, Tenant must provide Port with a list of any plan or procedure required to be prepared and/or filed with any Environmental Regulatory Agency for operations on the Premises, including a "Spill Pollution Control and Countermeasure Plan." Tenant must provide Port with copies of any of the documents within the scope of this section upon Port's request.

(e) Tenant must provide Port with copies of all communications with Environmental Regulatory Agencies and all non-privileged communications with other persons regarding potential or actual Hazardous Materials Claims arising from Tenant's or its Agents' or Invitees' operations at the Premises. Upon Port's request, Tenant must provide Port with a log of all communications withheld under a claim of privilege that specifies the parties to and subject of each withheld communication.

(f) Port may from time to time request, and Tenant will be obligated to provide, information reasonably adequate for Port to determine that any and all Hazardous Materials are being Handled in a manner that complies with all Environmental Laws.

15.4. Requirement to Remediate.

(a) Tenant's Remediation obligations under this subsection are subject to subsection (b).

(i) After notifying Port in accordance with Section 15.3(a), Tenant must Remediate at its sole cost in compliance with all Environmental Laws and this Lease, any Hazardous Material Condition occurring during the Term or while Tenant or its Agents or Invitees otherwise occupy any part of the Premises. Tenant must obtain Port's approval of a Remediation work plan, whether or not required under Environmental Laws, then begin Remediation actions immediately following Port's approval of the work plan and continue diligently until Remediation is complete, as determined by Port, in its sole discretion.

(ii) In addition to its obligations under clause (i), before this Lease terminates for any reason, Tenant must Remediate at its sole cost in compliance with all Environmental Laws and this Lease: (A) any Hazardous Material Condition caused by Tenant's or its Agents' or Invitees' Handling Hazardous Materials during the Term; and (B) any Hazardous Material Condition discovered during Tenant's occupancy that any Regulatory Agency requires to be Remediated if Remediation would not have been required but for Tenant's use of or Changes to the Premises.

(iii) If Environmental Laws governing Remediation require a remedial action plan, Tenant must provide a draft of its plan to Port for comment and approval before submittal to the appropriate Environmental Regulatory Agency, and a copy of the final plan as submitted.

(iv) In all situations relating to Handling or Remediating Hazardous Materials, Tenant must take all actions that are reasonably necessary in Port's sole judgment to protect the value of the Premises or the Facility, such as obtaining Environmental Regulatory Approvals related to Hazardous Materials and taking measures to remedy any deterioration in the condition or diminution of the value of any portion of the Premises or the Facility in any manner related directly, or indirectly to Hazardous Materials.

(b) Unless Tenant or its Agents or Invitees Exacerbate the Hazardous Material Condition, Tenant will not be obligated to Remediate any Hazardous Material Condition: (i) caused solely by City, Port, or their Agents during Tenant's occupancy of the Premises; or (ii) arising before the Commencement Date or the date of Tenant's first use of the Premises, whichever is earlier.

15.5. *Port's Right to Audit.* Port will have the right, but not the obligation, to inspect and audit the Premises for any Hazardous Materials, including the right to Investigate, at reasonable times under Section 24. Port's failure to inspect or obtain samples or to detect conditions attributable to Tenant's operations if an inspection is conducted may not be deemed to be a release of any liability for any Hazardous Materials subsequently determined to be Tenant's responsibility under this Lease.

15.6. *Failure to Comply.* Failure to comply with Section 15 shall constitute a material default under the Lease. In the event of such default, Port shall have all rights available under the Lease and at law or equity including, without limitation, the right to either:

(a) Terminate this Lease and collect damages Port incurs as a result of such default, including, without limitation, Remediation costs incurred by Port resulting from the Remediation of any Hazardous Materials present in, on or under the Premises, the Facility, any other Port property; or

(b) Continue this Lease and require Tenant to Remediate such Hazardous Materials at the Tenant's sole cost and expense.

15.7. *Survival.* Tenant's obligations under Section 15 shall survive the expiration or earlier termination of the Lease.

15.8. *Storm Water Pollution Prevention.*

(a) Tenant must comply with the applicable provisions of the Statewide General Permit for Discharge of Industrial Storm Water issued by the State Water Resources Control Board, including filing a Notice of Intent to be covered, developing and implementing a site-specific Storm Water Pollution Prevention Plan ("SWPPP"), and conducting storm water monitoring and reporting. Tenant's SWPPP and a copy of a Notice of Intent for Tenant's Premises must be submitted to Port's Real Estate Division before beginning on-site.

(b) In addition to requiring compliance with the permit requirements under Subsection (a), Tenant shall comply with the post-construction stormwater control provisions of the Statewide General Permit for Discharge of Stormwater from Small Municipalities and the San Francisco Stormwater Design Guidelines, subject to review and permitting by the Port's Engineering Division.

15.9. *Presence of Hazardous Materials.* California Law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, Tenant is hereby advised that Hazardous Materials (as herein defined) may be present on or near the Premises, including, but not limited to vehicle fluids, janitorial products, tobacco smoke, and building materials containing chemicals, such as lead and formaldehyde. Further, the Hazardous Materials described in the following reports (copies of which have been delivered to or made available to Tenant) are known to be present on the property: "Results of Soil Sampling Investigation and Health Risk Assessment, Heron's Head Park – Pier 98, San Francisco, California", Geomatrix Consultants, February 2004; and "Responses to Comments on the Health Risk Assessment – Heron's Head Park, Pier 98, San Francisco, California", Geomatrix Consultants, May 9, 2005. By execution of this Lease, Tenant acknowledges that the notice set forth in this section satisfies the requirements of California Health and Safety Code Section 25359.7 and related Laws. Tenant must disclose the information contained in this Section 15.9 to any subtenant, licensee, transferee, or assignee of Tenant's interest in this Lease. Tenant also acknowledges its own obligations pursuant to California Health and Safety Code Section 25359.7 as well as the penalties that apply for failure to meet such obligations.

16. INSURANCE

16.1. Required Insurance Coverage. Tenant, at its sole cost and expense, shall maintain, or cause to be maintained, throughout the Term, the following insurance:

(a) General Liability Insurance. Comprehensive or commercial general liability insurance, with limits not less than One Million Dollars (\$1,000,000.00) each occurrence combined single limit for bodily injury and property damage, including coverages for contractual liability, independent contractors, broad form property damage, personal injury, products and completed operations, fire damage and legal liability with limits not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) and explosion, collapse and underground (XCU) coverage during any period in which Tenant is conducting any activity on or Alteration or Improvement to the Premises with risk of explosion, collapse, or underground hazards. This policy must also cover non-owned and for-hire vehicles and all mobile equipment or unlicensed vehicles, such as forklifts.

(b) Automobile Liability Insurance. Comprehensive or business automobile liability insurance with limits not less than One Million Dollars (\$1,000,000.00) each occurrence combined single limit for bodily injury and property damage, including coverages for owned and hired vehicles and for employer's non-ownership liability, which insurance shall be required if any automobiles or any other motor vehicles are operated in connection with Tenant's activity on the Premises or the Permitted Use. If parking is a Permitted Use under this Lease, Tenant must obtain, maintain, and provide to Port upon request evidence of personal automobile liability insurance for persons parking vehicles at the Premises on a regular basis, including without limitation Tenant's Agents and Invitees.

(c) Workers' Compensation; Employer's Liability; Jones Act; U.S. Longshore and Harborworker's Act Insurance. Worker's Compensation Insurance, U.S. Longshore and Harborworker's Act Insurance and Jones Act Insurance with Employer's Liability limit not less than One Million Dollars (\$1,000,000.00) for each accident, injury or illness, on employees eligible for each. In the event Tenant is self-insured for the insurance required pursuant to this Section 16.1(c), it shall furnish to Port a current Certificate of Permission to Self-Insure signed by the Department of Industrial Relations, Administration of Self-Insurance, Sacramento, California. Notwithstanding the foregoing, so long as Tenant complies with Sections 8.2(h) and 8.2(i) above, Tenant shall not be required to maintain insurance for claims under the Jones Act or U.S. Longshore and Harborworker's Act, respectively.

(d) Personal Property Insurance. Tenant, at its sole cost and expense, shall procure and maintain on all of its personal property and Alterations, in, on, or about the Premises, property insurance on an all risk form, excluding earthquake and flood, to the extent of full replacement value. The proceeds from any such policy shall be used by Tenant for the replacement of Tenant's personal property.

(e) Construction Activities. At all times during any period of Tenant's construction of Improvements or Alterations subject to Section 13.

(i) Tenant shall require Tenant's contractor to maintain (a) commercial general liability insurance with limits of not less than Three Million Dollars (\$3,000,000) combined single limit for bodily injury and property damage (including personal injury and death), and contractor's protective liability; and products and completed operations coverage in an amount not less than Five Hundred Thousand Dollars (\$500,000) per incident, One Million Dollars (\$1,000,000) in the aggregate; (b) comprehensive automobile liability insurance with a policy limit of not less than One Million Dollars (\$1,000,000) each accident for bodily injury and property damage, providing coverage at least as broad as the Insurance Services Office (ISO) Business Auto Coverage form covering Automobile Liability, "**any auto**", and insuring against all loss in connection with the ownership, maintenance and operation of automotive equipment that is owned, hired or non-owned; (c) worker's compensation with

statutory limits and employer's liability insurance with limits of not less than One Hundred Thousand Dollars (\$100,000) per accident, Five Hundred Thousand Dollars (\$500,000) aggregate disease coverage and One Hundred Thousand Dollars (\$100,000) disease coverage per employee. Tenant shall cause Tenant's Agents (other than Tenant's contractor) to carry such insurance as shall be reasonably approved by Port taking into account the nature and scope of the work and industry custom and practice.

(ii) In addition, Tenant shall carry "**Builder's All Risk**" insurance on a form reasonably approved by Port, in the amount of one hundred percent (100%) of the completed value of all new construction, insuring all new construction, including all materials and equipment incorporated in, on or about the Premises, and in transit or storage off-site, that are or will be part of the permanent Improvements, against "**all risk**" and "special form" hazards.

(iii) Tenant shall require all providers of professional services, including architectural, design, engineering, geotechnical, and environmental professionals under contract with Tenant for any Improvements or any Alterations to maintain professional liability (errors or omissions) insurance, with limits not less than One Million Dollars (\$1,000,000.00) each claim and aggregate, with respect to all professional services provided to Tenant therefor.

(f) Other Coverage. Such other insurance or different coverage amounts as is required by Law or as is generally required by commercial owners of buildings similar in size, character, age and location as the Facility, as may change from time to time, or as may be required by the City's Risk Manager.

16.2. Claims-Made Policies. If any of the insurance required in Section 16.1 above is provided under a claims-made form of policy, Tenant shall maintain such coverage continuously throughout the Term and without lapse for a period of three (3) years beyond the termination of this Lease, to the effect that should occurrences during the Term give rise to claims made after termination of this Lease, such claims shall be covered by such claims-made policies.

16.3. Annual Aggregate Limits. If any of the insurance required in Section 16.1 above is provided under a form of coverage which includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be double the occurrence limits specified herein.

16.4. Payment of Premiums. Tenant shall pay the premiums for maintaining all required insurance.

16.5. Waiver of Subrogation Rights. Notwithstanding anything to the contrary contained herein, Port and Tenant (each a "**Waiving Party**") each hereby waives any right of recovery against the other party for any loss or damage sustained by such other party with respect to the Facility or the Premises 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, to the extent such loss or damage is covered by insurance which is required to be purchased by the Waiving Party under this Lease or is actually covered by insurance obtained by the Waiving Party. Each Waiving Party agrees to cause its insurers to issue appropriate waiver of subrogation rights endorsements to all policies relating to the Facility or the Premises; provided, the failure to obtain any such endorsement shall not affect the above waiver.

16.6. General Insurance Matters.

(a) All liability insurance policies required to be maintained by Tenant hereunder shall contain a cross-liability clause, shall name as additional insureds by written endorsement the "**CITY AND COUNTY OF SAN FRANCISCO AND THE SAN FRANCISCO PORT COMMISSION AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS,**" shall be primary to any other insurance available to the additional insureds with respect to claims arising under this Lease, and shall provide that such

insurance applies separately to each insured against whom complaint is made or suit is brought except with respect to the limits of the company's liability.

(b) All insurance policies required to be maintained by Tenant hereunder shall be issued by an insurance company or companies reasonably acceptable to Port with an AM Best rating of not less than A-VIII and authorized to do business in the State of California. Tenant's compliance with this Section shall in no way relieve or decrease Tenant's liability under this Lease.

(c) All insurance policies required to be maintained by Tenant hereunder shall be endorsed to provide for thirty (30) days prior written notice of cancellation for any reason, intended non-renewal, or reduction in coverage to Tenant and Port.

(d) Tenant shall deliver to Port certificates of insurance, additional insured policy endorsements and waiver of subrogation endorsements in a form satisfactory to and at the direction of Port, such as hard copy documentation or use of an internet-based insurance compliance tracking systems such as EXIGIS, evidencing the coverages required herein, together with evidence of payment of premiums, on or before the Commencement Date, and upon renewal of each policy not less than thirty (30) days before expiration of the term of the policy. If Port is using an internet-based insurance compliance tracking system, Tenant's broker shall complete the insurance questionnaire and submit all required documentation. Tenant shall, upon Port's request, promptly furnish Port with a complete copy of any insurance policy required hereunder.

(e) Not more often than every year and upon not less than sixty (60) days prior written notice, Port may require Tenant to increase the insurance limits set forth in Section 16.1 above if Port finds in its reasonable judgment that it is the general commercial practice in San Francisco to carry insurance in amounts substantially greater than those amounts carried by Tenant with respect to risks comparable to those associated with the use of the Premises.

17. DAMAGE AND DESTRUCTION.

17.1. *Damage and Destruction.* If the Premises or the Facility is damaged by fire or other casualty, then Port shall repair the same provided that funds for such repairs are appropriated by Port, in its sole discretion, for such purpose and that such repairs can be made within the Repair Period. In the event such conditions are satisfied, this Lease shall remain in full force and effect without any reduction of Rent.

Port shall use its commercially reasonable efforts to notify Tenant within ninety (90) days after the date of such damage whether or not such repairs can be made within the Repair Period, and Port's determination thereof shall be binding on Tenant. If such repairs cannot be made within the Repair Period, Port shall have the option to notify Tenant of: (a) Port's intention to repair such damage and diligently prosecute such repairs to completion within a reasonable period after the Repair Period, subject to appropriation of funds, in which event this Lease shall continue in full force or (b) Port's election to terminate this Lease as of the date specified in such notice, which date shall be not less than thirty (30) nor more than sixty (60) days after notice is given by Port.

If Port elects not to appropriate funds for such repair, Port shall give written notice to Tenant within sixty (60) days after the date Port elects not to appropriate funds of its election to terminate this Lease as of the date specified in such notice, which date shall be not less than thirty (30) nor more than sixty (60) days after notice is given by Port.

If at any time during the last six (6) months of the Term, the Premises or the Facility is damaged or destroyed, then either Port or Tenant may terminate this Lease by giving written notice to the other party of its election to do so within thirty (30) days after the date of the occurrence of such damage; provided, however, Tenant may terminate only if such damage or destruction substantially impairs its use or occupancy of the Premises for the Permitted Use. The

effective date of termination shall be specified in the notice of termination, which date shall not be more than thirty (30) days from the date of the notice.

Notwithstanding anything to the contrary in this Lease, (i) Port shall have no obligation to repair the Premises or the Facility, (ii) Tenant shall not be entitled to any abatement of Rent, and (iii) Tenant shall not be entitled to terminate this Lease, in the event the damage or destruction is attributable to any act or omission of Tenant, its Agents, or Invitees. In no event shall Port be required to repair any damage to Tenant's Property or any paneling, decorations, railings, floor coverings, or any Improvements or other Alterations installed or made on the Premises by or at the expense of Tenant. In the event the Premises or the Facility is substantially damaged or destroyed and Port intends to rebuild for public purposes inconsistent with this Lease, Port may terminate this Lease upon written notice to Tenant.

17.2. Waiver. Port and Tenant intend that the provisions of Section 17 govern fully in the event of any damage or destruction and accordingly, Port and Tenant each hereby waives the provisions of Section 1932, subdivision 2, Section 1933, subdivision 4, Sections 1941 and 1942 of the Civil Code of California or under any similar Law now or hereafter in effect.

18. EMINENT DOMAIN.

18.1. General. If all or part of the Premises shall be taken by any public or quasi-public authority under the power of eminent domain or conveyance in lieu thereof, this Lease shall terminate as to any portion of the Premises so taken or conveyed on the Date of Taking.

18.2. Partial Takings. If (a) a part of the Premises shall be taken by any public or quasi-public authority under the power of eminent domain or conveyance in lieu thereof, and (b) Tenant is reasonably able to continue the operation of Tenant's business in that portion of the Premises remaining, and (c) Port elects to restore the Premises to an architectural whole, then this Lease shall remain in effect as to the portion of the Premises remaining. If, after a partial taking, Tenant is not reasonably able to continue the operation of its business in the Premises or Port elects not to restore the Premises to an architectural whole, this Lease may be terminated by either Port or Tenant by giving written notice to the other party no earlier than thirty (30) days prior to the Date of Taking and no later than thirty (30) days after the Date of Taking. Such notice shall specify the date of termination which shall be not less than thirty (30) or more than sixty (60) days after the date of notice.

18.3. Taking of the Facility. If any substantial portion of the Facility is taken under the power of eminent domain or conveyance in lieu thereof, whether any portion of the Premises is taken or not, Port shall have the right to terminate this Lease by written notice to Tenant within thirty (30) days of the Date of Taking.

18.4. Temporary Takings. Notwithstanding anything to the contrary contained in Section 18, if a taking occurs with respect to all or any part of the Premises for a limited period of time, this Lease shall remain unaffected thereby and Tenant shall continue to pay Rent and to perform all of the terms, conditions and covenants of this Lease. Tenant shall not be entitled to receive any portion of any award obtained by Port.

18.5. Award; Waiver; Termination of Lease. Upon termination of this Lease in its entirety pursuant to Section 18.3, or pursuant to an election under Section 18.2, then Port 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 any Improvements Pertaining to the Realty), and Tenant shall have no claim against Port 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 Property. Port and Tenant intend that the provisions of Section 18 shall govern fully in the event of condemnation and accordingly, Port and Tenant each hereby waive any right to terminate this

Lease in whole or in part under Sections 1265.110, 1265.120, 1265.130, and 1265.140 of the California Code of Civil Procedure or under any similar law now or hereafter in effect.

19. INDEMNITY AND EXCULPATION.

19.1. General Indemnity. Tenant shall Indemnify Port, City, including, but not limited to, all of their respective boards, commissions, departments, agencies, and other subdivisions, and their respective Agents (collectively, "**Indemnified Parties**") from, and, if requested, shall defend them, without cost to the Indemnified Parties, against any and all Claims, direct or vicarious liability, damage, injury or loss arising directly or indirectly out of: (a) any accident, injury to or death of any person, including any Agents and/or Invitees of Tenant, or loss or damage to or destruction of any property occurring in, on or about the Premises, the Facility or any other Port property, from any cause whatsoever, or (b) any default by Tenant in the observance or performance of any of the terms, covenants or conditions of this Lease, including the provisions of Section 20, or (c) the use, occupancy, manner of use or occupancy, or condition of the Premises or the activities therein by Tenant, its Agents, or Invitees, or (d) any construction or other work undertaken by Tenant on the Premises whether before or during the Term, or (e) any acts, omissions or negligence of Tenant, its Agents or Invitees, in, on or about the Premises, the Facility or any other Port property.

19.2. Hazardous Materials Indemnity.

(a) In addition to its obligations under Section 19.1, Tenant, for itself and on behalf of its Agents and Invitees, agrees to Indemnify the Indemnified Parties from any and all Claims and Hazardous Materials Claims that arise as a result of: (i) any Hazardous Material Condition, except where caused by the Indemnified Parties' sole willful misconduct; and (ii) Tenant's Exacerbation of any Hazardous Material Condition.

(b) Tenant's obligation to Indemnify the Indemnified Parties includes: (i) costs incurred in connection with any Investigation or Remediation requested by Port or required by any Environmental Regulatory Agency and to restore the affected area to its condition before the Release; (ii) damages for diminution in the value of the Premises or the Facility; (iii) damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises or the Facility; (iv) damages arising from any adverse impact on marketing the space; (v) sums paid in settlement of Claims, Hazardous Materials Claims, Environmental Regulatory Actions, including fines and penalties; (vi) natural resource damages; and (vii) attorneys' fees, consultant fees, expert fees, court costs, and all other litigation, administrative or other judicial or quasi-judicial proceeding expenses. If Port pays any costs within the scope of this section, Tenant must reimburse Port for Port's costs, plus interest at the Interest Rate from the date Port incurs each cost until paid, within three (3) business days after Port's payment demand. Tenant's obligations hereunder shall survive the expiration or earlier termination of this Lease.

19.3. Scope of Indemnities. The Indemnification obligations of Tenant set forth in this Lease shall be enforceable regardless of the active or passive negligence of the Indemnified Parties, and regardless of whether liability without fault is imposed or sought to be imposed on the Indemnified Parties. The Indemnification obligations of Tenant set forth in this Lease shall be enforceable except to the extent that such Indemnity is void or otherwise unenforceable under applicable law in effect on, or validly retroactive to, the date of this Lease. The Indemnification obligations of Tenant set forth in this Lease includes all Claims, including loss predicated in whole or in part, upon the active or passive negligence of the Indemnified Parties. Except as specifically provided otherwise, the Indemnification obligations of Tenant set forth in this Lease shall exclude claims, liability, damage or loss resulting solely and exclusively from the willful misconduct of the Indemnified Parties which is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on, Tenant, its Agents or Invitees.

In addition to Tenant's obligation to Indemnify the Indemnified Parties, Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to

defend the Indemnified Parties from any Claim which actually or potentially falls within the Indemnification obligations of Tenant set forth in this Lease, even if the allegations are or may be groundless, false or fraudulent. Tenant's obligation to defend shall arise at the time such claim is tendered to Tenant by the Indemnified Parties and shall continue at all times thereafter.

The Indemnification obligations of Tenant set forth in this Lease shall include without limitation, Indemnification from all Claims. This Indemnification by Tenant shall begin from the first notice that any claim or demand is or may be made. The provisions of Section 19 shall survive the expiration or earlier termination of this Lease.

19.4. Exculpation. Tenant, as a material part of the consideration to be rendered to Port, hereby waives any and all Claims against the Indemnified Parties, and agrees to Indemnify the Indemnified Parties from any Claims for damages to goods, wares, goodwill, merchandise, equipment or business opportunities and by persons in, upon or about the Premises, the Facility or any other Port property for any cause arising at any time, including without limitation all Claims arising from the joint or concurrent, active or passive, negligence of the Indemnified Parties, but excluding any intentionally harmful acts committed solely by the Indemnified Parties.

The Indemnified Parties shall not be responsible for or liable to Tenant, and Tenant hereby assumes the risk of, and waives and releases the Indemnified Parties from all Claims for, any injury, loss or damage to any person or property in or about the Premises by or from any cause whatsoever including, without limitation, (i) any act or omission of persons occupying adjoining premises or any part of the Facility adjacent to or connected with the Premises, (ii) theft, (iii) explosion, fire, steam, oil, electricity, water, gas or rain, pollution or contamination, (iv) stopped, leaking or defective Facility Systems, (v) Facility defects, and (vi) any other acts, omissions or causes. Nothing in this Section 19.4 shall relieve the Indemnified Parties from liability caused solely and directly by the gross negligence or willful misconduct of the Indemnified Parties, but the Indemnified Parties shall not be liable under any circumstances for any consequential, incidental or punitive damages.

19.5. Effect of Waivers. Tenant, on behalf of itself and its Agents, hereby fully and irrevocably releases, discharges, and covenants not to sue or to pay the attorneys' fees and other litigation costs of any party to sue, Port, or any and all of Port's Agents with respect to any and all Claims arising directly or indirectly from the actual or alleged facts or circumstances of the process leading to this Lease prior to the Effective Date.

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

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

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

Initials:

Tenant

20. ASSIGNMENT AND SUBLETTING.

20.1. *Transfer* .

(a) Tenant must obtain Port's prior written consent to any Transfer, which Port will provide or deny in its sole and absolute discretion. Tenant also agrees that Port will have the right to impose reasonable conditions to a requested consent to a Transfer, which may include: (1) requiring the Transferee to assume all of Tenant's obligations under this Lease; and (2) giving Port the right to terminate without notice all of Tenant's then-existing Subleases if this Lease is terminated before the existing Subleases expire.

(b) At least 60 days before any Transfer, Tenant must give Port a Transfer Notice and the following: (i) financial statements for the 3 years before the Transfer Date (or each year of the proposed Transferee's existence, if shorter) for the Transferee and for any other Person who will be liable for Tenant's obligations under this Lease; (ii) Tenant's current financial statements; (iii) a copy of the proposed Transfer Agreement; and (iii) the Transferee's completed pre-screening and leasing application. In addition, Tenant must provide: (1) any other information, documentation, or evidence that Port requests to enable Port to evaluate the Transfer and the Transferee; and (2) if any of the Transfer Terms are modified before the Transfer Date, a new Transfer Notice and all relevant documentation for any modified Transfer Terms. Tenant's Transfer Notice will not be complete until Tenant has provided Port with all information required under this Subsection.

(i) For up to 30 days after receipt of the complete Transfer Notice, Port will have the right to: (1) terminate this Lease as of the proposed Transfer Date; (2) sublease or take an assignment from Tenant of the interest that Tenant proposes to Transfer, on the same terms and conditions as stated in the Transfer Agreement; and (3) negotiate and contract directly with the Transferee on terms acceptable to Port in its sole and absolute discretion.

(c) If Port consents to the Transfer, Tenant must close the Transfer on the Transfer Terms stated in the Transfer Notice within 90 days after Port notifies Tenant of Port's consent. If the Transfer Agreement does not close within the 90-day period, then Port's consent will expire, unless Tenant gives Port a new Transfer Notice, in which case Port again will be entitled to exercise any of the options under this Section.

(d) Any Transfer that does not comply with this Section fully will constitute an incurable Event of Default and will be void as to Port and this Lease. Port's consent to one Transfer will have no effect with respect to any other Transfer.

(e) Tenant agrees to reimburse Port for all costs, including attorneys' fees, that Port incurs to review, investigate, process, document, disapprove, or approve any Transfer request.

20.2. *Transfer Agreement Requirements.* Any Transfer Agreement must include the provisions set forth below.

(a) The Transferee's express assumption of, and acknowledgement and agreement that the Transferee will be jointly and severally liable for, all of Tenant's obligations under this Lease;

(b) The Indemnification clause and waiver of claims provisions in Section 19;

(c) Insurance provisions requiring that all of the Transferee's liability and other insurance policies name "*The City and County of San Francisco, the San Francisco Port Commission, and their officers, agents, employees, and representatives*" as additional insureds and acknowledging Port's right to demand increased coverage to amounts customarily required by other San Francisco landlords for premises where business activities similar to the Transferee's are conducted;

(d) A provision stating that if this Lease is terminated for any reason, the Transferee's right to possession under the Transfer Agreement will terminate; and

(e) A provision under which the Transferee expressly waives any and all relocation assistance and benefits in connection with this Lease to the extent permitted by applicable Laws.

20.3. Transfer Audit. Tenant agrees to make its Books and Records available to, and cooperate with, any Port representative for the purpose of conducting an audit of the accuracy of Tenant's financial reporting on the Transfer for a period of no less than one year after the Expiration Date. If an audit reveals that Tenant has overstated Subletting Expenses or any other costs in connection with a Transfer, Tenant must pay Port promptly upon demand the difference between the amount Tenant deducted and the amount it should have deducted, plus interest at the Interest Rate from the Transfer Date until paid.

20.4. Transfer Definitions. For the purpose of this Section, references to this Lease and the Premises mean this Lease and the Premises to the extent Tenant's leasehold interest is affected by a Transfer. Other applicable definitions are in Section 2.

21. DEFAULT BY TENANT.

Any of the following shall constitute an event of default (the "**Event of Default**") by Tenant hereunder:

(a) failure to pay to Port any Rent or other sum payable hereunder when due, and such default continues for a period of three (3) days following written notice from Port. Notwithstanding the foregoing, Port shall not be required to provide such notice more than twice during any 12-month period, and any such failure by Tenant after Tenant has received two (2) such notices in such 12-month period shall constitute an Event of Default by Tenant hereunder without any further action by Port or opportunity of Tenant to cure except as may be required by Section 1161 of the California Code of Civil Procedure; or

(b) abandonment or vacation of the Premises by Tenant; or

(c) failure to use the Premises solely for the Permitted Use, as determined by Port in its sole and absolute discretion and such failure continues for a period of twenty-four (24) hours following written notice from Port; provided, however, that notwithstanding the foregoing, failure to use the Premises solely for the Permitted Use shall, at Port's sole and absolute discretion, be deemed an incurable breach of this Lease, allowing Port to immediately terminate this Lease without notice or demand to Tenant; or

(d) failure by Tenant to execute and deliver to Port the estoppel certificate within the time period and in the manner required by Section 32 below, and Tenant's failure to cure the foregoing default within five (5) days following written notice from Port; or

(e) a Transfer, or attempted Transfer, of this Lease or the Premises by Tenant contrary to the provision of Section 20 above; or

(f) failure by Tenant or Tenant's broker as applicable to provide evidence of insurance coverage complying with the provisions of Section 16 above, failure to maintain any insurance required to be maintained by Tenant pursuant to this Lease, or if any such insurance shall be canceled or terminated or shall expire or be reduced or materially changed, except as permitted in this Lease and Tenant's or Tenant's broker as applicable failure to deliver evidence of such coverage or failure to reinstate such coverage, all within three (3) business days following written notice from Port; or

(g) failure by Tenant to comply with the provisions of Section 15 above and Tenant's failure to cure the foregoing default within twenty-four (24) hours following written notice from Port. If such default cannot reasonably be cured within such twenty-four (24) hour period, Tenant shall not be in default of this Lease if Tenant commences to cure the default

within such twenty-four (24) hour period and diligently and in good faith continues to cure the default, provided, however, in no event shall Tenant have more than thirty (30) days to cure such default; or

(h) without limiting the provisions of Sections 21(c) or 21(g) above, failure by Tenant to comply with Laws and Tenant's failure to cure the foregoing default within forty-eight (48) hours following written notice from Port; or

(i) failure by Tenant to discharge any lien or encumbrance placed on the Facility or any part thereof in violation of this Lease within ten (10) days after the date such lien or encumbrance is filed or recorded against the Facility or any part thereof, or if Tenant has no knowledge of such lien, then Tenant shall discharge such lien or encumbrance within fifteen (15) days following Tenant's knowledge of such lien or encumbrance; or

(j) delivery to Tenant of three (3) or more notices of default, irrespective of whether Tenant actually cures such default within the specified time period, may, at the sole and absolute discretion of Port, be deemed an incurable breach of this Lease allowing Port to immediately terminate this Lease without further notice or demand to Tenant; or

(k) failure by Tenant to observe, keep or perform any of the other terms, covenants, agreements or conditions contained in this Lease and required to be observed or performed by Tenant, and such failure continues for a period of fifteen (15) days after written notice by Port, provided that if such default is not capable of cure within such fifteen (15) day period, Tenant shall have a reasonable period to complete such cure if Tenant promptly undertakes action to cure such default within such fifteen (15) day period and thereafter diligently prosecutes the same to completion within sixty (60) days after the receipt of notice of default from Port. Port shall not be required to provide such notice more than twice in any twelve (12) month period with respect to any material non-monetary defaults and after the second notice in any calendar year, any subsequent failure by Tenant during such twelve (12) month period shall automatically constitute an Event of Default hereunder; or

(l) Tenant shall become bankrupt or insolvent or make a transfer in fraud of creditors, or make an assignment for the benefit of creditors, or bring or have brought against Tenant any action or proceedings of any kind under any provision of the U.S. Bankruptcy Code or under any other insolvency, bankruptcy or reorganization act and, in the event such proceedings are involuntary, Tenant is not discharged from the same within sixty (60) days thereafter; or

(m) a receiver is appointed for a substantial part of the assets of Tenant and such receiver is not discharged within sixty (60) days; or

(n) this Lease or any estate of Tenant under this Lease shall be levied upon by any attachment or execution and such attachment is not stayed or lifted within sixty (60) days.

22. PORT'S REMEDIES.

Upon default by Tenant, Port shall, without further notice or demand of any kind to Tenant or to any other person, have the following remedies:

22.1. Termination of Tenant's Right to Possession. Port may terminate Tenant's right to possession of the Premises at any time. No act by Port other than giving notice of termination to Tenant shall terminate this Lease. Acts of maintenance, efforts to relet the Premises, or the appointment of a receiver on Port's initiative to protect Port's interest under this Lease shall not constitute a termination of Tenant's right to possession. If Port elects to terminate this Lease, Port has the rights and remedies provided by California Civil Code Section 1951.2, including the right to recover from Tenant the following.

(a) The worth at the time of award of the unpaid Rent which had been earned at the time of termination; plus

(b) The worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(c) 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 the loss of Rent that Tenant proves could be reasonably avoided; plus

(d) Any other amounts necessary to compensate Port for the detriment proximately caused by Tenant's default, or which, in the ordinary course of events, would likely result, including, but not limited to, attorneys' fees and court costs, the costs of carrying the Premises such as repairs, maintenance, taxes and insurance premiums, utilities, security precautions and the reasonable costs and expenses incurred by Port in (i) retaking possession of the Premises; (ii) cleaning and making repairs and alterations necessary to return the Premises to good condition and preparing the Premises for reletting; (iii) removing, transporting and storing any of Tenant's Property left at the Premises (although Port shall have no obligation so to do); and (iv) reletting the Premises, including, without limitation, brokerage commissions, advertising costs and attorneys' fees. Efforts by Port to mitigate the damages caused by Tenant's breach of the Lease do not waive Port's rights to recover damages upon termination.

The "worth at the time of award" of the amounts referred to in Sections 22.1(a) and 22.1(b) above shall be computed by allowing interest at an annual rate equal to the lesser of the Interest Rate or the maximum non-usurious rate Port is permitted by Law to charge. The "worth at the time of award" of the amount referred to in Section 22.1(c) above shall be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award, plus one percent (1%).

22.2. Appointment of Receiver. If Tenant is in default of this Lease, Port shall have the right to have a receiver appointed to collect Rent and conduct Tenant's business. Neither the filing of a petition for the appointment of a receiver nor the appointment itself shall constitute an election by Port to terminate this Lease.

22.3. Port's Right to Cure Tenant's Default. Port, at any time after Tenant commits a default, may, at Port's sole option, cure the default at Tenant's cost. If Port at any time, by reason of Tenant's default, undertakes any act to cure or attempt to cure such default that requires the payment of any sums, or otherwise incurs any costs, damages, or liabilities, (including without limitation, attorneys' fees), all such sums, costs, damages or liabilities paid by Port shall be due immediately from Tenant to Port at the time the sum is paid, and if paid by Tenant at a later date shall bear interest at the lesser of the Interest Rate or the maximum non-usurious rate Port is permitted by Law to charge from the date such sum is paid by Port until Port is reimbursed by Tenant.

22.4. No Accord and Satisfaction. No payment by Tenant or receipt by Port of an amount less than the Rent due under this Lease shall be deemed to be other than "on account" of the earliest Rent due; nor shall any endorsement or statement on any check or payment, or letter accompanying such check or payment, be deemed an accord and satisfaction. Port may accept any such partial payment or tender without prejudice to its right to recover the balance of any amount due and to pursue any other remedy herein provided at Law or in equity.

22.5. Waiver of Redemption. Tenant hereby waives, for itself and all persons claiming by and under Tenant, redemption or relief from forfeiture under California Code of Civil Procedure Sections 1174 and 1179, or under any other pertinent present or future Law, in the event Tenant is evicted or Port takes possession of the Premises by reason of any default of Tenant hereunder.

22.6. Remedies Not Exclusive. The remedies set forth in Section 22 are not exclusive; they are cumulative and in addition to any and all other rights or remedies of Port now or later allowed by Law. Tenant's obligations hereunder shall survive any termination of this Lease.

23. LITIGATION EXPENSES; ATTORNEYS' FEES.

23.1. *Litigation Expenses.* The prevailing party in any action or proceeding (including any cross-complaint, counterclaim, or bankruptcy proceeding) against the other party by reason of a claimed default, or otherwise arising out of a party's performance or alleged non-performance under this Lease, shall be entitled to recover from the other party its costs and expenses of suit, including but not limited to reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment. "**Prevailing party**" within the meaning of this Section shall include, without limitation, a party who substantially obtains or defeats, as the case may be, the relief sought in the action, whether by compromise, settlement, judgment or the abandonment by the other party of its claim or defense.

23.2. *Appeals.* Attorneys' fees under this Section shall include attorneys' fees and all other reasonable costs and expenses incurred in connection with any appeal.

23.3. *City Attorney.* For purposes of this Lease, reasonable fees of attorneys of the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience (calculated by reference to earliest year of admission to the Bar of any State) who practice in San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

24. PORT'S ENTRY ON PREMISES.

24.1. *Entry for Inspection.* Port and its authorized Agents shall have the right to enter the Premises without notice at any time during normal business hours of generally recognized business days, provided that Tenant or Tenant's Agents are present on the Premises (except in the event of an emergency), for the purpose of inspecting the Premises to determine whether the Premises are in good condition and whether Tenant is complying with its obligations under this Lease.

24.2. *General Entry.* In addition to its rights pursuant to Section 24.1 above, Port and its authorized Agents shall have the right to enter the Premises at all reasonable times and upon reasonable notice for any of the following purposes:

(a) To perform any necessary maintenance, repairs or restoration to the Premises, or to perform any services which Port has the right or obligation to perform;

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

(c) To post "**For Sale**" signs at any time during the Term; to post "**For Lease**" signs during the last six (6) months of the Term or during any period in which Tenant is in default;

(d) On an occasional basis, at all reasonable times after giving Tenant reasonable advance written or oral notice, to show the Premises to prospective tenants or other interested parties;

(e) If any excavation or other construction is undertaken or is about to be undertaken on any property or street adjacent to the Premises, to shore the foundations, footings or walls of the Premises and to erect scaffolding and protective barricades around and about the Premises as reasonably necessary in connection with such activities (but not so as to prevent or unreasonably restrict entry to the Premises), and to do any other act or thing necessary for the safety or preservation of the Premises during such excavation or other construction; or

(f) To obtain environmental samples and perform equipment and facility testing.

24.3. *Emergency Entry.* Port may enter the Premises at any time, without notice, in the event of an emergency. Port shall have the right to use any and all means which Port may deem proper in such an emergency in order to obtain entry to the Premises. Entry to the Premises by any of these means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of the Premises, or an eviction of Tenant from the Premises or any portion of them.

24.4. *No Liability.* Port shall not be liable in any manner, and Tenant hereby waives any Claim for damages, for any inconvenience, disturbance, loss of business, nuisance, or other damage, including without limitation any abatement or reduction in Rent, arising out of Port's entry onto the Premises as provided in Section 24 or performance of any necessary or required work on the Premises, or on account of bringing necessary materials, supplies and equipment into or through the Premises during the course thereof, except damage resulting solely from the willful misconduct of Port or its authorized representatives.

24.5. *Nondisturbance.* Port shall use its commercially reasonable efforts to conduct its activities on the Premises as allowed in Section 24 in a manner which, to the extent reasonably practicable, will minimize annoyance or disturbance to Tenant.

25. SURRENDER AND QUITCLAIM.

25.1. *Surrender.* Upon expiration or earlier termination of this Lease, Tenant shall surrender to Port the Premises in good order, condition, and repair (except for ordinary wear and tear occurring after the last necessary maintenance made by Tenant and except for destruction or condemnation as described in Sections 17 and 18 hereof). Ordinary wear and tear shall not include any damage or deterioration that would have been prevented by proper maintenance by Tenant, or Tenant otherwise performing all of its obligations under this Lease. The Premises shall be surrendered clean, free of debris, waste, and Hazardous Materials, and free and clear of all liens and encumbrances other than liens and encumbrances existing as of the date of this Lease and any other encumbrances created by Port. On or before the expiration or earlier termination of this Lease, Tenant at its sole cost shall remove from the Premises, and repair any damage caused by removal of, Tenant's Property, including any signage and Alterations and Improvements specified in Port's Notice of Removal. Except for those designated in Port's Notice of Removal, Alterations and Improvements shall remain in the Premises as Port property.

If the Premises are not surrendered at the end of the Term or sooner termination of this Lease, and in accordance with the provisions of this Section 25 and Section 13.4, Tenant shall continue to be responsible for the payment of Rent until the Premises are surrendered in accordance with these Sections, and Tenant shall Indemnify Port from and against any and all loss or liability resulting from delay by Tenant in so surrendering the Premises including, without limitation, any costs of Port to obtain possession of the Premises; any loss or liability resulting from any Claim against Port made by any succeeding tenant or prospective tenant founded on or resulting from such delay and losses to Port due to lost opportunities to lease any portion of the Premises to any such succeeding tenant or prospective tenant, together with, in each instance, reasonable attorneys' fees and costs.

No act or conduct of Port, including, but not limited to, the acceptance of the keys to the Premises, shall constitute an acceptance of the surrender of the Premises by Tenant before the expiration of the Term. Only a written notice from Port to Tenant confirming termination of this Lease and surrender of the Premises by Tenant shall constitute acceptance of the surrender of the Premises and accomplish a termination of this Lease.

25.2. *Quitclaim.* Upon the expiration or earlier termination of this Lease, the Premises shall automatically, and without further act or conveyance on the part of Tenant or Port, become the property of Port, free and clear of all liens and without payment therefore by Port and shall be surrendered to Port upon such date. Upon or at any time after the expiration or earlier termination of this Lease, if requested by Port, Tenant shall promptly deliver to Port, without

charge, a quitclaim deed to the Premises and any other instrument reasonably requested by Port 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 that Port agrees are to remain part of the Premises.

25.3. *Abandoned Property.* Any items, including Tenant's Property, not removed by Tenant as required herein shall be deemed abandoned. Port may retain, store, remove, and sell or otherwise dispose of abandoned Tenant's Property, and Tenant waives all Claims against Port for any damages resulting from Port's retention, removal and disposition of such property; provided, however, that Tenant shall be liable to Port for all costs incurred in storing, removing and disposing of abandoned Tenant's Property and repairing any damage to the Premises or the Facility resulting from such removal. Tenant agrees that Port may elect to sell abandoned Tenant's Property and offset against the sales proceeds Port's storage, removal, and disposition costs without notice to Tenant or otherwise according to the procedures set forth in California Civil Code Section 1993, the benefits of which Tenant waives.

25.4. *Survival.* Tenant's obligation under this Section 25 shall survive the expiration or earlier termination of this Lease.

26. NO HOLDING OVER.

There shall be no holding over after the expiration of the Term and Tenant shall Indemnify Port from and against any and all loss or liability resulting from Tenant's delay in surrendering the Premises on the Expiration Date including, without limitation, any loss or liability resulting from any claim against Port made by any succeeding tenant or prospective tenant founded on or resulting from such delay and losses to Port due to lost opportunities to lease any portion of the Premises to any such succeeding tenant or prospective tenant, together with, in each case, actual attorneys' fees and costs.

27. MINERAL RESERVATION.

The State of California, pursuant to Section 2 of Chapter 1333 of the Statutes of 1968, as amended, has reserved all subsurface mineral deposits, including oil and gas deposits, on or underlying the Premises. In accordance with the provisions of these Statutes, Port and Tenant shall and hereby do grant to the State of California the right to explore, drill for and extract subsurface minerals, including oil and gas deposits, from such area.

In no event shall Port be liable to Tenant for any Claims arising from such exploration or drilling, nor shall such exploration or drilling constitute an actual or constructive eviction of Tenant, or entitle Tenant to any abatement or diminution of Rent or otherwise relieve Tenant from any of its obligations under this Lease.

28. CITY AND PORT REQUIREMENTS.

The San Francisco Municipal Codes (available at www.sfgov.org) and City and Port policies described or referenced in this Lease are incorporated by reference as though fully set forth in this Lease. The descriptions below are not comprehensive but are provided for notice purposes only; Tenant is charged with full knowledge of each such ordinance and policy and any related implementing regulations as they may be amended from time to time. Tenant understands and agrees that its failure to comply with any provision of this Lease relating to any such code provision shall be deemed a material breach of this Lease and may give rise to penalties under the applicable ordinance. Capitalized or highlighted terms used in this Section and not defined in this Lease shall have the meanings ascribed to them in the cited ordinance.

28.1. *Nondiscrimination.*

(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, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), weight, height, association with members of classes protected under this Chapter 12B or 12C of the San Francisco Administrative Code or in retaliation for opposition to any practices forbidden under Chapter 12B or 12C of the Administrative Code against any employee of Tenant, any City and County employee working with Tenant, any applicant for employment with Tenant, or any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Tenant in the City and County of San Francisco.

(b) Subleases and Other Contracts. Tenant shall include in all subleases and other contracts relating to the Premises a non-discrimination clause applicable to such subtenant or other contractor in substantially the form of Section (a) above. In addition, Tenant shall incorporate by reference in all subleases and other contracts the provisions of Sections 12B.2 (a), 12B.2 (c)-(k) and 12C.3 of the Administrative Code and shall require all subtenants and other contractors to comply such provisions.

(c) Nondiscrimination 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, 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 (collectively "**Core Benefits**") as well as any benefits other than the Core Benefits 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 of the Administrative Code.

(d) HRC Form. On or prior to the Lease Commencement Date, Tenant shall execute and deliver to Port the "Nondiscrimination in Contracts and Benefits" form approved by the San Francisco Human Rights Commission.

(e) Penalties. Tenant understands that pursuant to Section 12B.2(h) of the Administrative Code, a penalty of \$50.00 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.

28.2. Requiring Health Benefits for Covered Employees. Unless exempt, Tenant agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in Administrative Code Chapter 12Q (Chapter 12Q).

(a) For each Covered Employee Tenant shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO.

(b) Notwithstanding the above, if Tenant meets the requirements of a "small business" by the City pursuant to Section 12Q.3 of the HCAO, it shall have no obligation to comply with Section 28.2(a) above.

(c) If, within 30 days after receiving written notice of a breach of this Lease for violating the HCAO, Tenant fails to cure such breach or, if such breach cannot reasonably be cured within such 30-day period, Tenant fails to commence efforts to cure within such period, or thereafter fails to diligently pursue such cure to completion, the City shall have the remedies set forth in Section 12Q.5(f). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

(d) Any Sublease or Contract regarding services to be performed on the Premises entered into by Tenant shall require the Subtenant or Contractor and Subcontractors, as applicable, to comply with the requirements of the HCAO and shall contain contractual

obligations substantially the same as those set forth in Chapter 12Q of the Administrative Code. Tenant shall notify the Purchasing Department when it enters into such a Sublease or Contract and shall certify to the Purchasing Department that it has notified the Subtenant or Contractor of the obligations under the HCAO and has imposed the requirements of the HCAO on the Subtenant or Contractor through written agreement with such Subtenant or Contractor. Tenant shall be responsible for ensuring compliance with the HCAO for each Subtenant, Contractor and Subcontractor performing services on the Premises. If any Subtenant, Contractor or Subcontractor fails to comply, the City may pursue the remedies set forth in Section 12Q.5 of the Administrative Code against Tenant based on the Subtenant's, Contractor's, or Subcontractor's failure to comply, provided that the Contracting Department has first provided Tenant with notice and an opportunity to cure the violation.

(e) Tenant shall not discharge, reprimand, penalize, reduce the compensation of, or otherwise discriminate against, any employee for notifying the City of any issue relating to the HCAO, for opposing any practice proscribed by the HCAO, for participating in any proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) Tenant represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the requirements of the HCAO.

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

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

(i) Within ten (10) business days of any request, Tenant shall provide the City with access to pertinent records relating to any Tenant's compliance with the HCAO. In addition, the City and its agents may conduct random audits of Tenant at any time during the Term. Tenant agrees to cooperate with City in connection with any such audit.

(j) If a Contractor or Subcontractor is exempt from the HCAO because the amount payable to such Contractor or Subcontractor under all of its contracts with the City or relating to City-owned property is less than \$25,000.00 (or \$50,000.00 for nonprofits) in that fiscal year, but such Contractor or Subcontractor later enters into one or more agreements with the City or relating to City-owned property that cause the payments to such Contractor or Subcontractor to equal or exceed \$75,000.00 in that fiscal year, then all of the Contractor's or Subcontractor's contracts with the City and relating to City-owned property shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements to equal or exceed \$75,000.00 in the fiscal year.

28.3. First Source Hiring. The City has adopted a First Source Hiring Program (San Francisco Administrative Code Sections 83.1 et seq.) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry-level positions as those terms are defined by the ordinance. Tenant acknowledges receiving and reviewing the First Source Hiring Program materials and requirements.

Tenant agrees to comply with the ordinance through compliance with the following:

(a) No later than thirty (30) days after full execution of this Lease, Tenant shall notify the City and County of San Francisco's Workforce Development System, Department of Human Services of all projected Entry Level Positions and the approximate date such positions will be available, by using the Job Survey Form provided by the Port of San Francisco.

(b) Tenant shall follow all requirements of the San Francisco Workforce Development System, including without limitation, notification of vacancies throughout the Term and entering into a First Source Hiring Agreement, if applicable.

(c) Tenant shall interview qualified applicants and use good faith in hiring applicants. Tenant shall maintain good records of recruitment and hiring process, and shall permit Port or City to audit such records upon request.

Pursuant to the ordinance, Tenant may be subject to monetary penalties for failure to comply with the ordinance.

28.4. Local Business Enterprises. The Port Commission encourages the participation of local business enterprises ("LBEs") in Tenant's operations. Tenant agrees to consult with HRC to determine appropriate methods for promoting participation by LBEs in the Scope of Work. Architecture, Engineering, Laboratory Services (Materials Testing), Trucking and Hauling, and Security Guard Services are categories of services that may provide opportunities for certified LBE participation. City maintains a list of certified LBEs at: http://sfgov.org/site/uploadedfiles/sfhumanrights/directory/vlist_1.htm.

28.5. Resource-Efficient Facilities and Green Building Requirements. Tenant agrees to comply with all applicable provisions of Environment Code Chapters 7 and 13C relating to resource-efficiency and green building design requirements.

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

28.7. Prohibition of Alcoholic Beverages Advertising. Tenant acknowledges and agrees that no advertising of alcoholic beverages is allowed on the Premises. For purposes of this section, "alcoholic beverage" shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing, selling or distributing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of alcoholic beverages, (ii) encourage people not to drink alcohol or to stop drinking alcohol, or (iii) provide or publicize drug or alcohol treatment or rehabilitation services.

28.8. 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 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 its residents, and to prevent the further spread of graffiti.

Tenant agrees to remove all graffiti from any real property owned or leased by Tenant in the City 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.

This section is not intended to require a tenant to breach any lease or other agreement that it may have concerning its use of the real property. 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 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 that is visible from the public right-of-way, but does not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the Public Works Code, the Planning Code, or the 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 (Calif. Civil Code §§ 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.).

28.9. Pesticide Prohibition. Tenant shall comply with the provisions of Section 308 of Chapter 3 of the Environment Code (the "**Pesticide Ordinance**") which (a) prohibit the use of certain pesticides on City property, (b) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (c) require Tenant to submit to Port an integrated pest management (IPM) plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the Term, (ii) describes the steps Tenant will take to meet the City's IPM Policy described in Section 300 of the Pesticide Ordinance and (iii) 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 303(a) and 303(b) of the Pesticide Ordinance.

Through Port, Tenant may seek a determination from the City's Commission on the Environment that Tenant is exempt from complying with certain portions of the Pesticide Ordinance with respect to this Lease, as provided in Section 307 of the Pesticide Ordinance. Port shall reasonably cooperate with Tenant, at Tenant's sole cost and expense, if Tenant seeks in good faith an exemption under the Pesticide Ordinance.

28.10. MacBride Principles Northern Ireland. Port and the City urge companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. Port and the City urge San Francisco companies to do business with corporations that abide by the MacBride Principles.

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

28.12. 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.

28.13. 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, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Tenant acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Tenant further acknowledges that the prohibition on contributions applies to each Tenant; each member of Tenant's board of directors, and Tenant's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent 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 each person, entity or committee described above.

28.14. Sunshine Ordinance. In accordance with Section 67.24(e) of the Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between Port 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.

28.15. 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 Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the California Government Code, and certifies that it does not know of any facts which would constitute a violation of these provisions, and agrees that if Tenant becomes aware of any such fact during the Term, Tenant shall immediately notify the Port.

28.16. Drug-Free Workplace. Tenant acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 701 et seq.), the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City or Port premises.

28.17. Wages and Working Conditions. Tenant agrees that any person performing labor in the construction of any Alterations or Improvements to the Premises, which Tenant provides under this Lease, shall be paid not less than the highest prevailing rate of wages as required by Section 6.22(E) of the Administrative Code, 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 San Francisco, California. Tenant shall include in any contract for construction of such Alterations or Improvements a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Tenant shall require any contractor to provide, and shall deliver to City upon request,

certified payroll reports with respect to all persons performing labor in the construction of such Alterations or Improvements to the Premises.

28.18. 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 Facility and encouraging use of such facilities, all at Tenant's sole expense.

28.19. Food Service Waste Reduction Ordinance. 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 Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. 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 one hundred dollars (\$100.00) liquidated damages for the first breach, two hundred dollars (\$200.00) liquidated damages for the second breach in the same year, and five hundred dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Lease was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Tenant's failure to comply with this provision.

28.20. Southern Waterfront Community Benefits and Beautification Policy. The Port's "Policy for Southern Waterfront Community Benefits and Beautification" identifies beautification and related projects in the Southern Waterfront (from Mariposa Street in the north to India Basin) that require funding. Under this policy, Tenant shall provide community benefits and beautification measures in consideration for the use of the Premises. Examples of desired benefits include: (i) beautification, greening and maintenance of any outer edges of and entrances to the Premises; (ii) creation and implementation of a Community Outreach and Good Neighbor Policy to guide Tenant's interaction with Port, neighbors, visitors and users; (iii) use or support of job training and placement organizations serving southeast San Francisco; (iv) commitment to engage in operational practices that are sensitive to the environment and the neighboring community by reducing engine emissions consistent with the City's Clean Air Program, and use of machines at the Premises that are low-emission diesel equipment and utilize biodiesel or other reduced particulate emission fuels; (v) commitment to use low impact design and other "green" strategies when installing or replacing stormwater infrastructure; (vi) employment at the Premises of a large percentage of managers and other staff who live in the local neighborhood or community; (vii) use of truckers that are certified by the San Francisco Human Rights Commission as "Local Business Enterprises" under the City's Local Business Enterprise and Non-Discrimination Ordinance (SF Administrative Code Chapter 14B, as amended); and (viii) use of businesses that are located within the Potrero Hill and Bayview Hunters Point neighborhoods. Tenant agrees to provide Port with documents and records regarding these activities upon Port's request.

28.21. Supervision of Minors. Tenant and any of its contractors providing programming to minors at the EcoCenter shall comply with California Penal Code section 11105.3 and request from the Department of Justice records of all convictions or any arrest pending adjudication involving the offenses specified in Welfare and Institution Code section 15660(a) of any person who applies for employment or volunteer position with Tenant, or any contractor, in which he or she would have supervisory or disciplinary power over a minor under his or her care. Tenant shall not hire, and shall prevent its subcontractors from hiring, any person for employment or volunteer position to provide programming services to minors at the EcoCenter if that person has been convicted of any offense that was listed in former Penal Code section 11105.3 (h)(1) or 11105.3(h)(3). Tenant shall expressly require any of its contractors with supervisory or disciplinary power over a minor to comply with this section as a condition of its contract with Tenant. Tenant acknowledges and agrees that failure by Tenant or any of its

contractors to comply with any provision of this section shall constitute an Event of Default. Tenant further acknowledges and agrees that such Event of Default shall be grounds for Port to terminate this Lease, partially or in its entirety. The remedies provided in this Section shall not limited any other remedy available to Port 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.

29. NOTICES.

Except as otherwise expressly provided in this Lease or by Law, all notices (including notice of consent or non-consent) required or permitted by this Lease or by Law must be in writing and be delivered by: (a) hand delivery; (b) first class United States mail, postage prepaid; or (c) overnight delivery by a nationally recognized courier or the United State Postal Service, delivery charges prepaid. Notices to a party must be delivered to that party's mailing address in the Basic Lease Information, unless superseded by a notice of a change in that party's mailing address for notices, given to the other party in the manner provided above, or by information provided by Tenant in Tenant's written response to Port's written request for such information.

All notices under this Lease shall be deemed to be duly delivered: (a) on the date personal delivery actually occurs; (b) if mailed, on the business day following the business day deposited in the United States mail or, if mailed return receipt requested, on the date of delivery or on which delivery is refused as shown on the return receipt; or (c) the business day after the business day deposited for overnight delivery.

Notices may not be given by facsimile or electronic mail, but either party may deliver a courtesy copy of a notice by facsimile or electronic mail.

30. MISCELLANEOUS PROVISIONS.

30.1. *California Law.* This Lease is governed by, and shall be construed and interpreted in accordance with, the Laws of the State of California and City's Charter. Port and Tenant hereby irrevocably consent to the jurisdiction of and proper venue in the Superior Court for the City and County of San Francisco.

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

30.3. *Amendments.* No amendment of this Lease or any part thereof shall be valid unless it is in writing and signed by all of the parties hereto.

30.4. *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 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.

30.5. *Interpretation of Lease.*

(a) References in this Lease to Tenant's acts or omissions will mean acts or omissions by Tenant and its Agents and Invitees unless the context requires or specifically stated otherwise.

(b) Whenever an exhibit or schedule is referenced, it means an attachment to this Lease unless otherwise specifically identified. All exhibits and schedules are incorporated in this Lease by reference.

(c) Whenever a section, article or paragraph is referenced, it refers to this Lease unless otherwise specifically provided. 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 must be disregarded in the construction and interpretation of this Lease. Wherever reference is made to any provision, term, or matter "in this Lease," "herein" or "hereof" or words of similar import, the reference will be deemed to refer to any reasonably related provisions of this Lease in the context of the reference, unless the reference refers solely to a specific numbered or lettered article, section, subdivision, or paragraph of this Lease.

(d) References to all Laws, including specific statutes, relating to the rights and obligations of either party mean the Laws in effect on the effective date of this Lease and as they are amended, replaced, supplemented, clarified, corrected, or superseded at any time during the Term or while any obligations under this Lease are outstanding, whether or not foreseen or contemplated by the parties. References to specific code sections mean San Francisco ordinances unless otherwise specified.

(e) The terms "include," "included," "including" and "such as" or words of similar import when following any general term, statement, or matter may not be construed to limit the term, statement, or matter to the specific items or matters, whether or not language of non-limitation is used, but will be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of the term, statement, or matter, and will be deemed to be followed by the phrase "without limitation" or "but not limited to."

(f) This Lease has been negotiated at arm's length between persons sophisticated and knowledgeable in the matters addressed. In addition, each party has been represented by experienced and knowledgeable legal counsel, or has had the opportunity to consult with counsel. Accordingly, the provisions of this Lease must be construed as a whole according to their common meaning in order to achieve the intents and purposes of the parties, without any presumption (including a presumption under California Civil Code § 1654) against the party responsible for drafting any part of this Lease.

(g) The party on which any obligation is imposed in this Lease will be solely responsible for paying all costs and costs incurred in performing the obligation, unless the provision imposing the obligation specifically provides otherwise.

(h) Whenever required by the context, the singular includes the plural and vice versa, the masculine gender includes the feminine or neuter genders and vice versa, and defined terms encompass all correlating forms of the terms (e.g., the definition of "waive" applies to "waiver," "waivers," "waived," "waiving," etc.).

(i) References to days mean calendar days unless otherwise specified, provided that if the last day on which a party must give notice, respond to a notice, or take any other action under this Lease occurs on a day that is not a business day, the date by which the act must be performed will be extended to the next business day.

30.6. *Successors.* The terms, covenants, agreements and conditions set forth in this Lease shall bind and inure to the benefit of Port and Tenant and, except as otherwise provided herein, their personal representatives and successors and assigns.

30.7. *Real Estate Broker's Fees.* Port will not pay, nor will Port be liable or responsible for, any finder's or broker's fee in connection with this Lease. Tenant agrees to indemnify and hold Port harmless from any Claims, including attorneys' fees, incurred by Port in connection with any such Claim or Claims of any person(s), finder(s), or broker(s) to a commission in connection with this Lease.

30.8. Counterparts. For convenience, the signatures of the parties to this Lease may be executed and acknowledged on separate pages which, when attached to this Lease, shall constitute as one complete Lease. This Lease may be executed in any number of counterparts each of which shall be deemed to be an original and all of which shall constitute one and the same Lease.

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

30.10. No Implied Waiver. No failure by Port 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, and no acceptance of full or partial Rent during the continuance of any such breach shall constitute a waiver of such breach or of Port's rights to demand strict compliance with such term, covenant or condition. Port's consent to or approval of any act by Tenant requiring Port's consent or approval shall not be deemed to waive or render unnecessary Port's consent to or approval of any subsequent act by Tenant. Any waiver by Port of any default must be in writing and shall not be a waiver of any other default (including any future default) concerning the same or any other provision of this Lease.

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

30.12. 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.

30.13. Survival of Indemnities. Termination or expiration of this Lease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Lease, the ability to collect any sums due, nor shall it affect any provision of this Lease that expressly states it shall survive termination or expiration hereof.

30.14. Relationship of the Parties. Port is not, and none of the provisions in this Lease shall be deemed to render Port, a partner in Tenant's business, or joint venturer or member in any joint enterprise with Tenant. Neither party shall act as the agent of the other party in any respect hereunder. 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.

30.15. No Recording. Tenant shall not record this Lease or any memorandum hereof in the Official Records.

30.16. Additional Written Agreement Required. Tenant expressly agrees and acknowledges that no officer, director, or employee of Port or City is authorized to offer or promise, nor is Port or the City required to honor, any offered or promised rent credit, concession, abatement, or any other form of monetary consideration (individually and collectively, "Concession") without a written agreement executed by either the Executive Director of Port or the Deputy Director of Real Estate authorizing such Concession and, if applicable, certification of the Concession from the City's Controller.

31. LIMITATION ON DAMAGES.

31.1. No Recourse Beyond Value of Facility. Tenant agrees that Tenant will have no recourse with respect to, and Port shall not be liable for, any obligation of Port under this Lease, or for any claim based upon this Lease, except to the extent of the fair market value of Port's fee

interest in the Facility (as encumbered by this Lease). Tenant's execution and delivery hereof and as part of the consideration for Port's obligations hereunder Tenant expressly waives all such liability.

31.2. *Non-Liability of City Officials, Employees and Agents.* No elective or appointive board, commission, member, officer, employee or other Agent of City and/or Port shall be personally liable to Tenant, its successors and assigns, in the event of any default or breach by City and/or Port or for any amount which may become due to Tenant, its successors and assigns, or for any obligation of City and/or Port under this Lease. Under no circumstances shall Port, City, or their respective Agents be liable under any circumstances for any consequential, incidental or punitive damages.

31.3. *Limitation on Port's Liability Upon Transfer.* In the event of any transfer of Port's interest in and to the Facility, Port (and in case of any subsequent transfers, the then transferor), subject to the provisions hereof, will be automatically relieved from and after the date of such transfer of all liability with regard to the performance of any covenants or obligations contained in this Lease thereafter to be performed on the part of Port, but not from liability incurred by Port (or such transferor, as the case may be) on account of covenants or obligations to be performed by Port (or such transferor, as the case may be) hereunder before the date of such transfer.

32. TENANT ESTOPPEL CERTIFICATES.

Tenant, at any time and from time to time upon not less than ten (10) days' prior notice from Port, shall execute and deliver to Port or to any party designated by Port a certificate in substantially the same form as that attached to this Lease as *Exhibit C*. If Tenant shall fail to provide such certificate within ten (10) days of receipt by Tenant of a written request by Port as herein provided, such failure shall, at Port's election, constitute a default under this Lease, and Tenant shall be deemed to have admitted the accuracy of any information supplied by Port to a prospective purchaser or mortgagee.

33. EXTENSION OPTION.

No later than one-hundred eighty (180) days prior to the Expiration Date (or at some later date by prior written agreement of the parties) Port may, in its sole discretion, offer Tenant an Extension Option to extend this Lease as to the entire Premises and License Area only for twenty-four (24) additional months commencing upon the first day after the Expiration Date. Tenant must accept the offer for an Extension Term in writing within one-hundred twenty (120) days of Port's notice. Any such acceptance by Tenant shall be irrevocable by Tenant. If Tenant elects to exercise an Extension Option(s), then this Lease shall continue for the Extension Term, shall cover the entire Premises and License Area and shall be upon all of the terms, covenants and conditions of this Lease, except that the Expiration Date shall mean the last day of that Extension Term. The Port may subsequently offer one (1) additional Extension Option for twenty-four (24) months under the conditions specified in this section. For any Extension Term, Tenant must pay to Port Rent in the amount of one dollar (\$1.00) per year for each year of the Extension Term prior to the commencement date of the Extension Term. If Tenant fails to exercise an option within the 120-day period, that Extension Option and all subsequent Extension Options shall be null and void and this Lease shall expire. Port has no obligation to offer an Extension Term. If any Event of Default by Tenant has occurred or is outstanding hereunder either at the time of Tenant's acceptance of Port's Extension Option or at any time prior to the first day of the Extension Term (or if any event shall have occurred which with the giving of notice or the passage of time or both would constitute such a default), then Port may elect by written notice to Tenant to reject Tenant's exercise of the Extension Option, whereupon the Extension Option shall be null and void and the Term shall expire on the day the Term would have expired had Tenant never exercised the Extension Option.

IN WITNESS WHEREOF, PORT and TENANT execute this Lease as of the last date set forth below.

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

By: _____
Susan Reynolds
Deputy Director, Real Estate

Date Signed: _____

TENANT: **[INSERT NAME OF TENANT]**

By: _____
Name: _____
Title: _____

Date Signed: _____

By: _____
Name: _____
Title: _____

Date Signed: _____

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
Name:
Deputy City Attorney

Lease Prepared By: _____, Commercial Property Manager _____
(initial)

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EXHIBIT A

DESCRIPTION OF PREMISES

[Attachment on following page]

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AppendixA. Site Plan

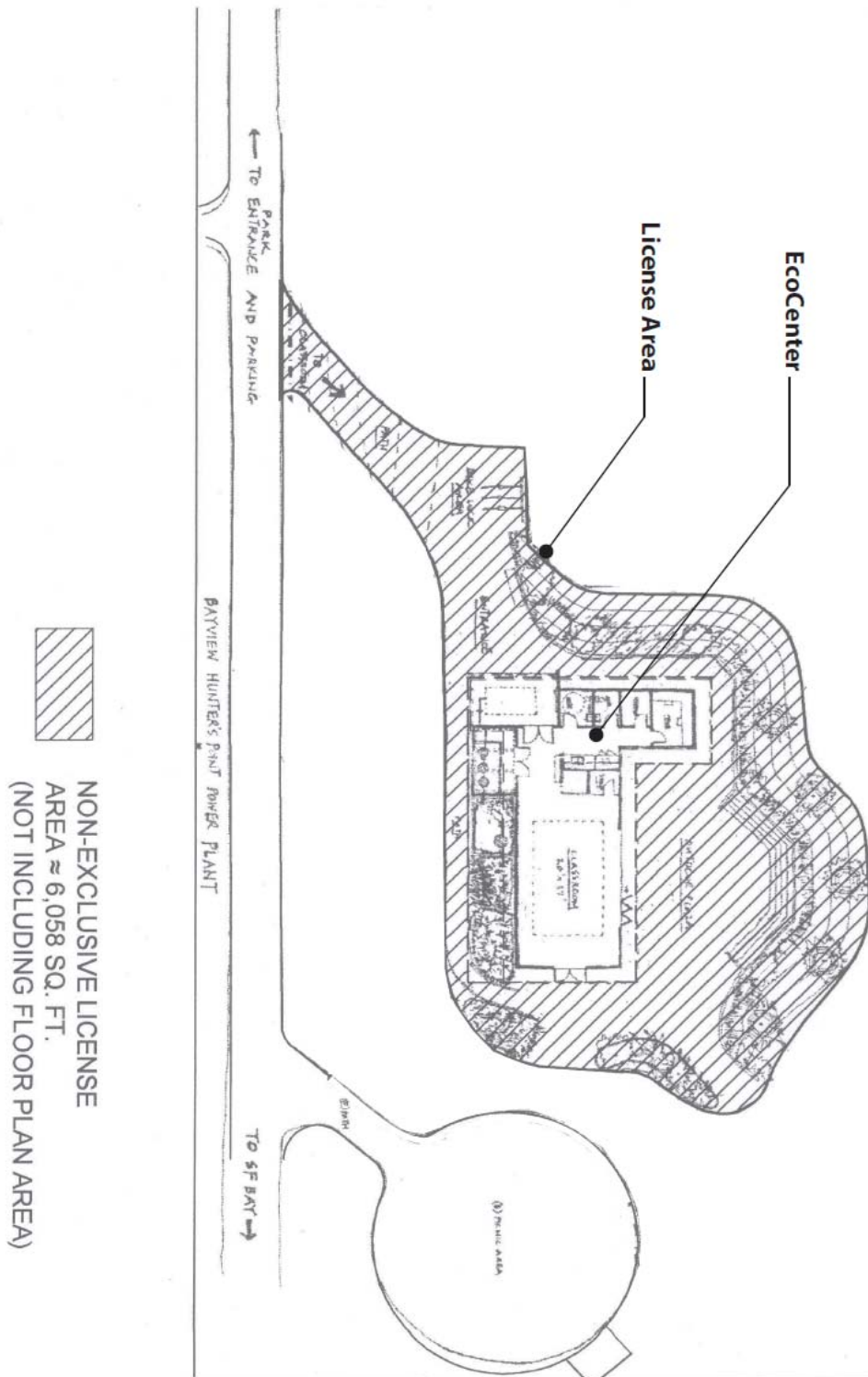


EXHIBIT B

COMMENCEMENT DATE AND EXPIRATION DATE MEMORANDUM

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

Tenant:

Lease Number:

Lease Date:

Premises: [_____, Suite ____]
San Francisco, California

The Commencement Date of the Lease is hereby established as _____, 20__ and
the Expiration Date as _____, 20__.

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

By: _____
Susan Reynolds
Deputy Director, Real Estate

Date Signed: _____

Tenant:

By: _____
Name: _____
Title: _____

Date Signed: _____

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EXHIBIT C

TENANT ESTOPPEL CERTIFICATE

The undersigned, _____, is the tenant of a portion of the real property commonly known as [Insert Premises Address] located in San Francisco, California (the "**Property**"), and hereby certifies to **THE CITY AND COUNTY OF SAN FRANCISCO THROUGH THE SAN FRANCISCO PORT COMMISSION ("Port")** [and to _____ ("**Developer/Lender**")] the following:

1. That there is presently in full force and effect a lease (as modified, assigned, supplemented and/or amended as set forth in paragraph 2 below, the "Lease") dated as of _____, 20__, between the undersigned and Port, covering approximately ____ square feet of the Property (the "**Premises**").
2. That the Lease has not been modified, assigned, supplemented or amended except by:
3. That the Lease represents the entire agreement between Port and the undersigned with respect to the Premises.
4. That the commencement date under the Lease was _____, 20__, the expiration date of the Lease is _____, 20__.
5. That the present minimum monthly Rent which the undersigned is paying under the Lease is \$_____.
6. The security deposit held by Port under the terms of the Lease is \$_____ and Port holds no other deposit from Tenant for security or otherwise.
7. That the undersigned has accepted possession of the Premises and that, to the best of the undersigned's knowledge, any improvements required to be made by Port to the Premises by the terms of the Lease and all other conditions of the Lease to be satisfied by Port have been completed or satisfied to the satisfaction of the undersigned.
8. That, to the best of the undersigned's knowledge, the undersigned, as of the date set forth below, has no right or claim of deduction, charge, lien or offset against Port under the Lease or otherwise against the rents or other charges due or to become due pursuant to the terms of the Lease.
9. That, to the best of the undersigned's knowledge, Port is not in default or breach of the Lease, nor has Port committed an act or failed to act in such a manner, which, with the passage of time or notice or both, would result in a default or breach of the Lease by Port.
10. That, to the best of the undersigned's knowledge, the undersigned is not in default or in breach of the Lease, nor has the undersigned committed an act or failed to act in such a manner which, with the passage of time or notice or both, would result in a default or breach of the Lease by the undersigned.
11. The undersigned is not the subject of any pending bankruptcy, insolvency, debtor's relief, reorganization, receivership, or similar proceedings, nor the subject of a ruling with respect to any of the foregoing.

This Certificate shall be binding upon and inure to the benefit of the undersigned, Port, [Developer/Lender] and [its/their respective] successors and assigns.

Dated: _____, 20__.

[Name of Tenant]

By:

Name:

Title:

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EXHIBIT D

OPERATIONS AND PROGRAM PLAN

[TO BE DETERMINED DURING LEASE NEGOTIATIONS]

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EXHIBIT E

PORT AND TENANT MAINTENANCE AND REPAIR RESPONSIBILITIES

[TO BE DETERMINED DURING LEASE NEGOTIATIONS]

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SCHEDULE 1

FEMA Disclosure Notice

The Federal Emergency Management Agency ("**FEMA**") is revising Flood Insurance Rate Maps ("**FIRMs**") for San Francisco Bay Area communities. As part of this effort, FEMA plans to prepare a FIRM for the City and County of San Francisco for the first time. That process may have significant impacts for developing new structures and reconstructing or repairing existing structures on San Francisco's waterfront.

FIRMs identify areas that are subject to inundation during a flood having a 1% chance of occurrence in a given year (also known as a "base flood" or "100-year flood"). FEMA refers to an area that is at risk from a flood of this magnitude as a special flood hazard area ("**SFHA**").

On September 21, 2007, FEMA issued a preliminary FIRM of San Francisco tentatively identifying SFHAs along City's shoreline in and along the San Francisco Bay consisting of "A zones" (areas subject to inundation by tidal surge) and "V zones" (areas subject to the additional hazards that accompany wave action). These zones generally affect City property under the jurisdiction of the Port of San Francisco and other areas of the San Francisco waterfront, including parts of Mission Bay, Hunters Point Shipyard, Candlestick Point, Treasure and Yerba Buena Islands, and an area adjacent to Islais Creek.

FEMA prepares the FIRMs to support the National Flood Insurance Program ("**NFIP**"), a federal program that enables property owners, businesses, and residents in participating communities to purchase flood insurance backed by the federal government. The San Francisco Board of Supervisors has adopted a floodplain management ordinance governing new construction and substantial improvements in flood prone areas of San Francisco and authorizing the City's participation in NFIP (as amended, the "Floodplain Ordinance"). The Floodplain Ordinance imposes requirements on any new construction or substantial improvement of structures in city-designated flood zones that are intended to minimize or eliminate flood hazard risks. NFIP regulations allow a local jurisdiction to issue variances to its floodplain management ordinance under certain narrow circumstances, without jeopardizing the local jurisdiction's eligibility in the NFIP. However, the particular projects that are granted variances by the local jurisdiction may be deemed ineligible for federally-backed flood insurance by FEMA.

The federal legislation and regulations implementing the NFIP are located at 42 U.S.C. §§ 4001 et seq.; 44 C.F.R. Parts 59-78, §§ 59.1-78.14. FEMA also publishes "Answers to Questions About the NFIP" and FEMA Publication 186 entitled "Mandatory Purchase of Flood Insurance Guidelines." Additional information on this matter can be found on FEMA's website at the following links:

<http://www.fema.gov/plan/prevent/fhm/index.shtm>

<http://www.fema.gov/business/nfip/index.shtm>

Additional information about the San Francisco legislation can be found on the city's website (<http://www.sfgov.org>).

APPENDIX C

Facility Operation and Maintenance

Appendix C. Facility Operation and Maintenance

This list of Operation and Maintenance (O&M) tasks is provided to identify and generally describe the O&M needs of the various building systems in the EcoCenter and inform potential Proposers specifically of the tenant's responsibilities under the terms of the lease. This list is not intended to represent an exhaustive recital of all O&M task that the EcoCenter building may require, nor does it provide all detail required to perform the listed tasks. This document may be revised during lease negotiations to make technical corrections or other changes warranted based on final lease terms. The tenant's obligations will be included in the lease.

PROCEDURES FOR TENANT TO PERFORM

Port Staff will meet with Tenant to determine specific inspection plan and schedule.

Waste Water Treatment System (WWTS)

- Note each day that the EcoCenter facility is staffed, but no less than 4 days/week, any leaks, alarms or overflows in any of the tanks, sumps, piping or constructed wetland, or other evidence of malfunctions. If any of the above are observed, contact the Port Property Manager¹.

Solar Energy

- Check energy system monitoring software² for percent state of charge on batteries, energy production, and energy consumption of the electrical system in the solar room. Keep an eye on these measures to avoid dropping to low. If charge drops below 50%, turn off WWTS, lights, and other electricity users until batteries can recharge.

Rainwater Harvesting

- Check the rainwater harvesting tanks for leaks weekly. If an issue is found, contact the Port Property Manager.

PORT MAINTENANCE OBLIGATIONS³

Waste Water Treatment System

- Record daily wastewater flow through the treatment system (from software provided by treatment system manufacturer).

¹ See [Operations + Maintenance Guidelines for the On-Site Wastewater Treatment System](#), [Guidelines for Biological Monitoring of the Wetland Area](#), and [Notes on the Drip Tank Well](#)

² Port will own the software ("[WattPlot Pro User's Guide](#)") that monitors and displays energy system status. Port will have to purchase small computer for this purpose.

³ Items marked with an asterisk indicate activities that the Port may hire a specialty contractor to perform; staffing and contracting will be determined by the Port.

- Use the pipe brush to clean tubes and soft cloths for removal or algal growth on the inside of the acrylic tanks. Clean Plexiglas barrier and outside of acrylic tanks. Don't use anything abrasive.
- Test the methane monitor in the WWTS room to ensure it is working.⁴
- Measure turbidity, temperature, dissolved oxygen and pH of water in Pre-UV, post-UV and acrylic tanks of the constructed wetland.⁵ If pH is too low (<6), add a cup of baking soda to the recirculating tank. Experience to date suggests that one cup of baking soda needs to be added weekly.
- Contract with certified environmental laboratory to collect wastewater samples weekly. Samples are collected at pre- and post-UV treatment process. All samples are analyzed for turbidity; post-UV treatment samples are also analyzed for E. coli and enterococcus.
- In the wastewater treatment system wetland, remove weeds, check health of native plants, and prune as needed.⁶
- Compile data from weekly environmental laboratory testing with activities (# of events and/or # of people) and water usage (measured by software on the wastewater treatment system). Prepare and submit monthly and year-end reports to the San Francisco Department of Public Health describing and interpreting these findings. Reports must be prepared and submitted by a Department of Public Health-certified wastewater treatment system operator⁷.
- Inspect and maintain the Drip Irrigation-Disposal Field quarterly.* This includes all of the following:⁸
 - Clean the filter cartridge
 - Open the field flush valve and flush the field for 3-5 minutes by activating the pump in “manual” position
 - Check the pressure in the drip field by using a pressure gauge on the Schrader valve located on the air vents and by reading the pressure gauge located in the Wasteflow Headworks box. MUST be done with pump in “manual” position.
 - Remove the lids on the vacuum breaker and check for proper operation
 - Turn off the pump and reset the controller for auto mode
 - Periodically remove and clean the air vents, field flush and filter flush valves
 - Inspect treatment and distribution tanks routinely in accordance with approvals
 - Record the elapsed time meter, pump counter, override counter, high-level alarm and power failures. This information can be obtained from the controller.

⁴ See the [Operations, Maintenance and Monitoring Manual for the Methane Mitigation System](#) and the [Methane Monitoring Field Template](#)

⁵ See the [Water Quality Field Log](#). All of these analyses could be done using hand-held meter or included in sampling and analysis by off-site lab. The Port owns a turbidity meter which is used at the EcoCenter for this purpose. If we wanted to measure on-site in real time, Port would have to purchase meter for measuring temperature, dissolved oxygen and pH.

⁶ See the [Constructed Wetland Field Log](#) and [Guidelines for Biological Monitoring of Wetland Area](#)

⁷ See [Department of Public Health Monthly Monitoring Report for July 2013](#)

⁸ See Appendix C of [Operation and Maintenance Guidelines for the On-Site Wastewater Treatment System](#)

- Service the WWTS quarterly. This includes all of the following, which must be performed by a Department of Public Health-approved wastewater treatment professional:
 - Open all access lids and visually inspect gas tight seals
 - Inspect lift pump station for solids buildup and proper function.
 - Visually inspect all tanks and piping for leaks or perforations.
 - Check scum and sludge layers in primary tank.
 - Clean effluent filter in outlet of primary tank.
 - Open Advantex textile filter (in the Recirculation Tank) and inspect for proper bacteria growth. Jet washes if necessary.
 - Flush filter piping and inspect perforations for proper dispersal over filter media.
 - Flush recirculating flow inducer filter.
 - Test all pumps for proper performance.
 - Test all water level sensing float switches for proper performance.
 - Check ultraviolet light for proper function.
 - Inspect discharge tank for proper water levels.
 - Clean discharge flow inducer filter.
 - Visually inspect engineered wetlands for leaks or backups.
 - Disassemble disk filter and clean.
 - Visually inspect drip disposal field for uneven moisture, surfacing water, plant growth, excavations, and erosion.
 - Check PSI of disposal field at air relief valves to ensure proper function of emitters.
 - Visually inspect monitoring wells for signs of high water table.
 - Run test mode in control panel to ensure proper function of panel
 - Test manual toggle switches to turn on pumps
 - Test audible and visual alarm
- Inspect and clean UV disinfection system annually^{9*}
- Remove sludge and scum from settling tank every three to five years*

Solar Energy

- Check energy system monitoring software¹⁰ daily for percent state of charge on batteries, energy production, and energy consumption of the electrical system in the solar room. Keep an eye on these measures to avoid dropping to low.
- Check water levels monthly in each cell of the 16 batteries and add distilled water as needed¹¹
- Perform monthly equalization on the battery storage system¹². Measure specific gravity and voltage in each cell of the 16 batteries. Redo as needed until specific gravity values are 1.260 or above.

⁹ See [Operation and Maintenance Guidelines for the On-Site Wastewater Treatment System](#)

¹⁰ Port will own the software ("[WattPlot Pro User's Guide](#)") that monitors and displays energy system status. Port will have to purchase small computer for this purpose.

¹¹ See [Battery Water Levels Maintenance Log](#)

¹² See [Battery Equalization Standard Operating Procedure](#)

- Inspect and wash the solar PV panels quarterly or as-needed¹³.
- Inspect the Solar PV system annually, or in the case of energy production or other panel problems*

Rainwater Harvesting

- Measure turbidity, temperature, dissolved oxygen and pH of water in rainwater harvesting tanks 1 and 2 on a monthly basis (measure tank 3 on a quarterly basis)
- Remove and rinse the sediment saver bags in the rainwater harvesting tanks annually¹⁴.
- Empty the rainwater harvesting tanks and rinse annually.

Living Roof

- Check irrigation valves on the days that irrigation pumps will be on (generally 3 days/week during dry season) to make sure they are in the necessary positions.¹⁵
- Check the Drain Field and surrounding landscaping weekly for any indication of breaks in the irrigation lines. If an issue is found, contact the Port Property Manager as soon as possible.
- Monitor and maintain the living roof monthly: make sure plants are adequately watered, prune, weed, deadhead; check irrigation lines for clogs, fertilize as needed.¹⁶

TENANT MAY PERFORM PORT OBLIGATIONS

By mutual written agreement of the parties, Tenant may perform Port Maintenance Obligations at Port's cost. Tenant shall pay Prevailing Wage for all such work. Port and Tenant will agree on the maximum budget and deadline for each Port Maintenance Obligation that Tenant will perform, and Port must approve Tenant's staff or contractor in writing in advance. Tenant shall be reimbursed for such work after final completion based on an itemized statement of the actual costs expended by Tenant accompanied by documentation reasonably satisfactory to Port evidencing all said expenditures. Such appropriate proofs of expenditure shall include, without limitation, (i) copies of canceled checks, (ii) copies of executed contracts, (iii) invoices for labor services and/or materials marked "Paid"; or otherwise evidenced as having been paid; bills of lading marked "Paid"; other bills, contracts and receipts for goods, materials and/or services marked "Paid", (iv) and such other proofs of expenditure as may be reasonably approved by Port, and (v) unconditional lien waivers from all the general contractors and all subcontractors and suppliers for the particular items of the work. All such proofs of expenditure must be attributable directly to work or materials performed, constructed or installed in connection

¹³ See [PV Cleaning Instructions](#)

¹⁴ See [Rainwater Catchment Operation Manual and Construction Documents](#)

¹⁵ See [Rainwater Tank Valves: Steps for Use of Rainwater from Tank 1 for Irrigation](#) and [On-Site Wastewater Treatment and Dispersal Construction Documents](#) and [Attachment C of the Operations and Maintenance Guidelines for the On-Site Wastewater Treatment System \(Drip Irrigation-Disposal System Manual\)](#)

¹⁶ See [Living Roof Operation and Maintenance Manual](#)

with the Port-approved work. Costs for items related to Tenant's trade fixtures, office equipment and supplies, furniture, communications facilities (whether voice or data) or any other items not intended to be affixed to or become a part of the Facility or Facility Systems, nor any fees, exactions, impositions, or similar charges imposed as a condition to permit approval will not be reimbursed. To the extent Tenant (through its employees, contractors, or any party in which Tenant has a direct financial interest) performs any of the labor, the costs for such labor shall be no more than the commercially reasonable, market-rate labor charges typically charged for such work by parties in an arms-length transaction. In no event shall the cost of any volunteers, donated materials, construction management fees, or general administrative costs be reimbursed. Notwithstanding anything to the contrary contained herein, in no event shall Tenant receive reimbursement in the event Tenant is in default, or an event has occurred which, with the passage of time or the giving of notice, or both, would constitute a default.

APPENDIX D

Leasing Application Package



TEL: 415.274.0400
FAX: 415.274.0578

TTY: 415.274.0587
WEB: SFPORT.COM

ADDRESS: PIER 1
SAN FRANCISCO, CA 94111

LEASING APPLICATION PACKAGE

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PART I

Leasing Application.....Page 1 to 15

PART II

Employer's Projection of Entry Level Positions.....Page 1 of 1

PART III

Human Rights Commission.....Page 1 to 24



PART I

LEASING APPLICATION

Please print legibly or type. Use attachments to provide complete and detailed information to facilitate Port review and approval process.

I. Proposed Tenant Legal Name /Business Type **Date:** _____

A. Name/Address of Proposed Tenant

Full Legal Name of Proposed Tenant: _____

Residence Address: _____

E-mail address _____

Existing Business Name: _____

Business Address: _____

Telephone: _____

Fax: _____

How long at the Premises: _____

Contact Person: _____

Name

Title

Telephone

II. Legal Status

A. Fictitious Business Name Statement (If applicable):

Operating Name: _____

When/Where Filed? _____

Not applicable _____

B. Type of Business Entity:

____ Corporation ____ Mutual Benefit ____ Sub ____ Not-for-Profit

____ Partnership: ____ General ____ Limited

____ Limited Liability Company (LLC)

____ Limited Liability Partnership (LLP)

____ Sole Proprietor(s)

____ Franchise

____ Other _____

(explain)

C. If tenant is a corporation or LLC, please complete the following:

State of Incorporation: _____

Date of Incorporation: _____

Local Agent for Service of Process:

Name: _____

Address: _____

Phone Number: _____

List all officers and directors of the corporation or members of the LLC:

Name: _____

Title: _____

Name: _____

Title: _____

Name: _____

Title: _____

Attach a copy of the statement by domestic stock corporation.

D. If proposed tenant is a general or limited partnership, please list all general partners:

Name: _____

Address: _____

Date of Birth: _____

Social Security Number: _____

Name: _____

Address: _____

Date of Birth: _____

Social Security _____

Attach a copy of the Articles of Organization.

E. Who will sign the lease?

Print Name _____

Print Title _____

(If tenant is a corporation, two signatories are required. Both must be corporate officers or persons who are authorized by the corporation to enter into contracts).

F. Has the proposed tenant ever had a lease, license or other tenancy with the Port? Identify the dates of this tenancy, location of tenancy, and facts concerning the termination or expiration of the tenancy.

G. For Property Manager Use Only:

Name & Date of Lease/License _____

Lease/License No. _____

Status of Account: _____

III. Description of Proposed Term, Use, Area, Location, Activities and Required Licenses or Permits.

A. Proposed Uses (including ancillary or support uses). Describe the operations and activities that will occur on the Premises, including both indoor and outdoor uses, on a separate attachment, if necessary. Provide a complete and detailed explanation to facilitate the Port's lease review and approval process. Explain if any of the proposed uses are water-dependent or bay-related.

B. Requested amount of space (delineate by type of space—i.e. shed storage space, improved land, office space, and by amount of square footage):

C. Desired Location, if known (be specific-- i.e. pier building number, outdoor area, including nearest cross street). Include site map if available.

D. Term sought (months/years):

E. How many employees will be working on site in the course of normal daily operations?

F. Will proposed use require interior or exterior alterations, improvements, repairs or demolition on the Premises? Describe in detail all alterations, improvement or repairs proposed, including estimated square footage of interior and exterior areas to be constructed or renovated in an attachment, if necessary.

G. Will any of the types of work listed below be required for site preparation/ construction of tenant improvements, or on-going operations? Please provide explanation for any of the items checked below which will apply and list any permits required, if known:

Activity	Site Preparation	Ongoing Operations
Excavation (quantity in cubic yards)		
Fill (indicate if any pier repairs or new construction in or over the Bay is proposed)		
Utility installation or modification, including systems to handle sewage and storm water runoff		
Demolition		
Work on shoreline or over water		
Soil borings or groundwater wells		
Vehicle maintenance (including washing/oil change)		
Dredging		
Industrial manufacturing, production or processing		

H. If improvements are proposed, including the construction or placement of new structures, will they block views to the Bay?

Yes No Unknown

I. Will tenant bring soil or construction materials to the Premises, either for site preparation or as part of ongoing operations? List the type and volumes of material to be transported into and out of the facility.

J. Many activities may require approvals from other agencies, which may include those listed below. Please indicate if your proposed operation may require any of these or other permits, along with further details/explanation on a separate attachment:

- City of San Francisco Health Department
- Water Quality for groundwater wells/soil borings
- Hazardous Materials for use and/or storage of hazardous materials or waste
- Hazardous waste for soil excavation/management
- Solid waste management
- City of San Francisco Police Department
- Entertainment /Amplified Sound
- SF Bay Conservation Development Commission
- State of California Solid Waste Board
- Alcohol Beverage Control
- Bay Area Air Quality Management District
- Regional Water Quality Control Board (construction in or over water, storm water runoff from construction activities or on-going industrial operations)
- Army Corps of Engineers (construction in water or shoreline)
- Planning Commission Master Plan Referral
- Conditional Use Permit
- CEQA Environmental Review
- Other (List) _____

K. Will tenant use or store any hazardous material, or generate any hazardous waste (e.g. used oil, solvent, cleaning solutions) during site preparation or regular operations? If so, identify all such substances and operations and the quantities to be stored or used on the Premises. Please list any regulatory approvals required for these hazardous materials and waste operations on the Premises, as well as other environmental reviews, if known. Please provide this information on a separate attachment, accompanied by a detailed and complete explanation to facilitate the Port’s lease review and approval process.

L. Please list any permits or authorizations from environmental regulatory agencies currently or formerly held by applicant. If so, please provide details.

M. Has the applicant ever been cited for a violation of environmental or health and safety laws, regulations, or permit requirements? If so, please provide details.

N. List all materials and approximate quantities to be stored on premises. Attach additional sheets if necessary:

O. Will the proposed use involve truck traffic to/from the Premises on a daily basis? If so, please describe the average number of daily truck trips

P. What are the proposed days and hours of operation at the Premises?

Q. Will the operations create significant levels of noise that can be heard from locations adjacent to Port property? If so, please indicate during what times this noise will occur and provide an estimate of the level in decibels from the closest non-Port site.

IV. FINANCIAL INFORMATION ABOUT PROPOSED TENANT

A. Financials/tax returns

The proposed tenant shall provide the Port with financial statements or income tax returns for the past three (3) years.

B. Bank References

(1) NAME OF BANK OR S&L: _____

Branch: _____

Address: _____

City State Zip

Telephone: _____ Contact Name: _____

Account # _____

Type of Account _____

(2) NAME OF BANK OR S&L:

Branch: _____

Address: _____

City State Zip

Telephone: _____ Contact Name: _____

Account # _____

Type of Account _____

C. Assets of proposed tenant

(1) List all real property in which you have an interest:

_____ Value: \$ _____
Describe

_____ Value: \$ _____
Describe

(2) List all automobiles in which you have an interest:

_____	Value: \$ _____
Year/Make/Model/License No.	
_____	Value: \$ _____
Year/Make/Model/License No.	

(3) List all other assets in which you have an interest:

_____	Value: \$ _____
Describe	
_____	Value: \$ _____
Describe	

(4) List any interest the proposed tenant has in any other business(es), and give addresses and phone numbers of each:

D. Liabilities of proposed tenant

List all liabilities of the proposed tenant (loans, mortgages, credit card accounts, etc.):

_____	Amount: \$ _____
Describe	
_____	Amount: \$ _____
Describe	
_____	Amount: \$ _____
Describe	
_____	Amount: \$ _____
Describe	

E. Bankruptcy

Has the proposed tenant ever filed for bankruptcy protection? (YES) _____ (NO) _____

When _____

Where? _____

If Yes, Explain Details: (e.g. Chapter 7, 11, 13) _____

Current Status of Bankruptcy:

Explain: _____

F. Previous business landlord:

Name of Prior Landlord: _____

Address: _____

Phone Number: _____

Dates of previous tenancy: _____
Address of previous tenancy: _____

Monthly Rent: _____
Reason for Leaving: _____

THIS APPLICATION MUST BE SIGNED, DATED AND ACCOMPANIED BY CASH OR CASHIER'S CHECK FOR THE SECURITY DEPOSIT IN AN AMOUNT EQUAL TO TWO (2) MONTHS' RENT. THE SECURITY DEPOSIT IS FULLY REFUNDABLE IF THE PARTIES DO NOT ENTER INTO A LEASE. THE APPLICANT HEREIN UNDERSTANDS AND AGREES THAT PAYMENT OF A SECURITY DEPOSIT SHALL IN NO WAY BE CONSTRUED AS AN AGREEMENT, OBLIGATION OR ACCEPTANCE TO LEASE BY THE SAN FRANCISCO PORT COMMISSION.

THE UNDERSIGNED APPLICANT, BEING THE PROPOSED TENANT HEREIN, HEREBY DECLARES UNDER PENALTY OF PERJURY THAT THE INFORMATION SET FORTH IN THIS APPLICATION FOR LEASE IS TRUE AND CORRECT.

PLEASE NOTE: (1) NO ALTERATIONS OR IMPROVEMENTS MAY BE INSTALLED IN THE PREMISES WITHOUT FIRST OBTAINING A BUILDING PERMIT FROM THE PORT ENGINEERING DEPARTMENT, and (2) NO CHANGE IN USE SHALL BE PERMITTED IN THE PREMISES WITHOUT AN APPROVED LEASE AMENDMENT.

IF INDIVIDUAL(S):

(Signature) Dated: _____
Print Name _____

(Signature) Dated: _____
Print Name _____

IF CORPORATION, PARTNERSHIP, LLC OR LLP,

Print Name of Entity

By: _____ Dated: _____
(Signature)
Name: _____
Title: _____

By: _____ Dated: _____
(Signature)
Name: _____
Title: _____

DID YOU REMEMBER TO INCLUDE:

Articles Of Organization

Statement of Domestic Stock Corporation

Financial Statements of Company or tax returns (three years)

Security Deposit (cash or cashiers check)

YOUR APPLICATION FOR LEASE WILL NOT BE CONSIDERED UNTIL ALL OF THE ABOVE REQUIRED ITEMS HAVE BEEN SUBMITTED TO THE PORT.

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**PERSONAL DATA QUESTIONNAIRE FOR
INDIVIDUALS AND MEMBERS OF PARTNERSHIPS**

Each person who is required to complete a Personal Data Questionnaire must submit a separate form.

NAME _____

NAME OF PROPOSED TENANT IF DIFFERENT FROM ABOVE: _____

OTHER NAMES USED: _____

Address: _____

Phone Number: _____

DATE OF BIRTH: _____ SS#: _____

DRIVER'S LICENSE NUMBER: _____ STATE: _____ EXPIRES: _____

HOME ADDRESS: _____

Telephone: _____
City State Zip

EMPLOYER:

Address: _____

Phone Number: _____

How Long: _____

NAME OF BUSINESS: _____

IF LESS THAN FIVE YEARS, PREVIOUS EMPLOYER _____

Address _____

Telephone: _____
City State Zip How long? _____

Name of Spouse/Partner: _____

Address, if different from above: _____

Phone Number: _____
Spouse/Partners Employer: _____
Address: _____
Phone Number: _____

BANK REFERENCES

(1) NAME OF BANK OR S&L: _____

Branch: _____

Address: _____

_____ City State Zip

Telephone: _____ Contact Name: _____

Account # _____

Type of Account _____

(2) NAME OF BANK OR S&L:

Branch: _____

Address: _____

_____ City State Zip

Telephone: _____ Contact Name: _____

Account # _____

Type of Account _____

LIST ALL REAL PROPERTY IN WHICH YOU HAVE AN INTEREST:

_____ Value: \$ _____
Describe

_____ Value: \$ _____
Describe

LIST ALL AUTOMOBILES IN WHICH YOU HAVE AN INTEREST:

Year/Make/Model/License No. Value: \$ _____

Year/Make/Model/License No. Value: \$ _____

LIST ALL OTHER ASSETS IN WHICH YOU HAVE AN INTEREST:

Describe Value: \$ _____

Describe Value: \$ _____

LIST ANY BUSINESS(ES) IN WHICH YOU HAVE AN INTEREST:

Name of Business: _____
Address: _____
Phone Number: _____
Nature of Interest: _____

Name of Business: _____
Address: _____
Phone Number: _____
Nature of Interest: _____

LIST ALL OUTSTANDING DEBTS (loans, mortgages, credit card accounts, etc.):

Describe Amount: \$ _____

Describe Amount: \$ _____

Describe Amount: \$ _____

Describe Amount: \$ _____

HAVE YOU EVER FILED FOR BANKRUPTCY PROTECTION? (YES) _____ (NO) _____

When? _____
Where? _____

If Yes, Explain Details: (e.g. Chapter 7, 11, 13)

Current Status of Bankruptcy:

Explain: _____

I declare under penalty of perjury that the information contained in this Personal Data Questionnaire is true and correct.

(Signature)

Dated: _____

Print Name _____

PERSONAL DATA QUESTIONNAIRE FOR LEASE GUARANTORS

Name of Guarantor: _____

Address: _____

Phone Number: _____

Relationship to proposed tenant: _____

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AUTHORIZATION FOR RELEASE OF CREDIT INFORMATION

The undersigned hereby authorizes the companies and/or individuals listed below and on the reverse side to release to the SAN FRANCISCO PORT COMMISSION (Pier 1, Accounting Department, San Francisco, CA 94111) all pertinent and confidential information concerning the credit standing or account status of:

Name of Proposed Tenant

Authorized Signature

Date: _____

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PART II & PART III

The following pages include information regarding the various City and County of San Francisco Ordinances and requirements for compliance of all Port Tenants.

Attached are:

PART II

- 1. First Source Hiring Ordinance: Employer's Projection of Entry Level Positions**

PART III

- 2. Human Rights Commission: Nondiscrimination Requirements under Chapter 12B and 12C Ordinances**
- 3. Human Rights Commission: Form 3, DBE Ordinance Compliance Declaration**

Please review the attached information, as it is the tenant's responsibility to understand, adhere to, and submit the required information listed hereinafter.

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Edwin M. Lee, Mayor

Office of Economic and Workforce Development
Workforce Development Division

PART II

NON-CONSTRUCTION FIRST SOURCE EMPLOYER’S PROJECTION OF ENTRY LEVEL POSITIONS

By signing this form, employers agree to participate in the San Francisco Workforce Development System established by the City and County of San Francisco, and comply with the provisions of the First Source Hiring Program pursuant to Chapter 83 of the San Francisco Administrative Code. As an indication of good faith efforts to comply with First Source, the Employer must fill out this form at commencement of contract/tax year to indicate:

- For a Tenant/Sub-tenant, the number of **Entry Level Positions** in the company that are currently filled and those that are currently available on premises leased by the City of San Francisco.
- For the successful Developer, Contractor, or Subcontractor, **Entry Level Positions** that are currently filled and those that will be available during construction work.
- For a tenant of a private commercial project that falls under Chapter 83 provisions of the City Administrative Code, the number of **Entry Level Positions** that are currently filled and those that will be available within the lease holding business at project address.
- For companies applying for the Biotech Payroll Tax Exclusion and Central Market Street and Tenderloin Area Payroll Expense Tax Exclusion, the number of **Entry Level Positions** that are currently filled and those that will be available in the current tax year.
- For a successful organization awarded a City contract in excess of \$50,000, the number of **Entry Level Positions** that are currently filled and those that will be available within the business or non-profit organization.
- If positions listed are subject to collective bargaining agreements.

Note: If an Entry Level Position becomes available during the term of the lease and/or contract, Employer must notify the First Source Hiring Administration.

Entry Level Position means a non-managerial position that requires either no education above a high school diploma or certified equivalency, or less than two (2) years of training or specific preparation. Apprenticeship positions should be included.

Type of Employer (check one):

- Tenant
- Developer
- Contractor
- Subcontractor
- Central Market Street and Tenderloin Area Payroll Expense Tax Exclusion applicant
- Subtenant
- Biotech Payroll Tax Exclusion applicant
- "Scene in San Francisco" Rebate applicant

Identify Project or Construction Project (if applicable):

City Department (if Contract or Lease):

Name of Employer:

Contact Person:

Street Address:

City:

State:

Zip:

Telephone:

Fax:

Email:

Signature of authorized employer representative

Date

Entry-Level Position Title	Number Currently Filled	Number Currently Available	Number Projected to Become Available in the next 12 Months	Estimated Date of Next Available Position	Subject to Collective Bargaining? (Yes/No)

Please fax, email, or mail this form SIGNED to:

Attn: Business Services

Tel: 415-701-4848

Fax: 415-701-4897





City and County of San Francisco Human Rights Commission

PART III

San Francisco Nondiscrimination Ordinance - SF Administrative Code Chapter 12B

Sec. 12B.1. All Contracts and Property Contracts to Include Nondiscrimination Provisions; Definitions.

Sec. 12B.2. Nondiscrimination Provisions.

Sec. 12B.3. Human Rights Commission Empowered.

Sec. 12B.4. Nondiscrimination Guidelines.

Sec. 12B.5. Chapter Applies Only to Discriminatory Employment Practices.

Sec. 12B.5-1. Nonapplicability, Exceptions and Waivers.

Sec. 12B.6. Severability.

SEC. 12B.1. ALL CONTRACTS AND PROPERTY CONTRACTS TO INCLUDE NONDISCRIMINATION PROVISIONS; DEFINITIONS.

(a) All contracting agencies of the City, or any department thereof, acting for or on behalf of the City and County, shall include in all contracts and property contracts hereinafter executed or amended in any manner or as to any portion thereof, a provision obligating the contractor 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, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), weight, height, association with members of classes protected under this chapter or in retaliation for opposition to any practices forbidden under this chapter against any employee of, any City employee working with, or applicant for employment with such contractor and shall require such contractor to include a similar provision in all subcontracts executed or amended thereunder.

(b) No contracting agency of the City, or any department thereof, acting for or on behalf of the City and County, shall execute or amend any contract or property contract with any contractor that discriminates 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 bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits 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 following conditions. In the event that the contractor's actual cost of providing a certain benefit for the domestic partner of an employee exceeds that of providing it for the spouse of an employee, or the contractor's actual cost of providing a certain benefit for the spouse of an employee exceeds that of providing it for the domestic partner of an employee, the contractor shall

not be deemed to discriminate in the provision of benefits if the contractor conditions providing such benefit upon the employee agreeing to pay the excess costs. In addition, in the event a contractor is unable to provide a certain benefit, despite taking reasonable measures to do so, the contractor shall not be deemed to discriminate in the provision of benefits if the contractor provides the employee with a cash equivalent.

(c) Definitions. As used in this Chapter the following words and phrases shall have the meanings indicated herein:

"Age" shall mean the age of any employee or applicant for employment who has attained the age of 40 years and has not attained the age of 65 years. For the purposes of this Chapter, discrimination because of age shall mean dismissal from employment of, or refusal to employ or rehire any person because of his or her age, if such person has attained the age of 40 years and has not attained the age of 65 years, if the person is physically able and mentally competent to perform the services required. Age limitations of apprenticeship programs in which the State or its political subdivisions participate shall not be considered discriminatory within the meaning of this Chapter.

"Amend" shall mean to substantively change the terms of a pre-existing contract, and shall not include amendments to decrease the scope of work or the amount to be paid under a contract. Construction change orders shall not be construed as contract amendments for the purposes of this Chapter.

"City" shall mean the City and County of San Francisco.

"Commission" shall mean the Human Rights Commission of the City and County of San Francisco.

"Contract" shall mean an agreement for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided, at the expense of the City and County or to be paid out of moneys deposited in the treasury or out of trust moneys under the control or collected by the City and County, and does not include property contracts, agreements entered into after June 1, 1997 pursuant to settlement of legal proceedings, contracts for urgent litigation expenses, or contracts for a cumulative amount of \$5,000 or less per vendor in each fiscal year.

"Contractor" means any person or persons, firm, partnership, corporation, or combination thereof, who enters into a contract or property contract with a department head or officer empowered by law to enter into contracts or property contracts on the part of the City and County.

"Director" shall mean the Director of the Human Rights Commission.

"Disability" shall mean a physical or mental impairment which substantially limits one or more major life activities, or a record of such an impairment.

"Domestic partner" shall mean any person who has a currently registered domestic partnership with a governmental body pursuant to state or local law authorizing such registration.

"Gender identity" shall mean a person's various individual attributes as they are understood to be

masculine and/or feminine.

"Property contract" shall mean a written agreement for the exclusive use or occupancy of real property for a term exceeding 29 days in any calendar year, whether by singular or cumulative instrument, (i) for the operation or use by others of real property owned or controlled by the City for the operation of a business, social, or other establishment or organization, including leases, concessions, franchises and easements, or (ii) for the City's use or occupancy of real property owned by others, including leases, concessions, franchises and easements. For the purposes of this Chapter, "exclusive use" means the right to use or occupy real property to the exclusion of others, other than the rights reserved by the fee owner. "Property contract" shall not include a revocable at-will use or encroachment permit for the use of or encroachment on City property regardless of the ultimate duration of such permit, except that "property contract" shall include such permits granted to a private entity for the use of City property for the purpose of a for-profit activity. "Property contract" shall also not include street excavation, street construction or street use permits, agreements for the use of City right-of-way where a contracting utility has the power of eminent domain, or agreements governing the use of City property which constitutes a public forum for activities that are primarily for the purpose of espousing or advocating causes or ideas and that are generally recognized as protected by the First Amendment to the U.S. Constitution, or which are primarily recreational in nature.

"Qualified disabled employee" shall mean a person able to perform the essential functions of a job with reasonable accommodation.

"Sex" shall mean the character of being male or female.

"Sexual orientation" shall mean the status of being lesbian, gay, bisexual or heterosexual.

"Subcontract" shall mean an agreement to (i) provide goods and/or services, including construction labor, materials or equipment, to a contractor, if such goods or services are procured or used in the fulfillment of the contractor's obligations arising from a contract with the City, or (ii) to transfer the right to occupy or use all or a portion of a real property interest subject to a property contract to a subcontractor and pursuant to which the contractor remains obligated under the property contract.

"Subcontractor" means any person or persons, firm, partnership, corporation or any combination thereof, who enters into a subcontract with a contractor. Such term shall include any person or entity who enters into an agreement with any subcontractor for the performance of 10 percent or more of any subcontract.

(d) The requirements of this Chapter shall apply to (i) any of a contractor's operations within San Francisco; (ii) a contractor's operations on real property outside of San Francisco owned by the City or which the City has a right to occupy if the contractor's presence at that location is connected to a contract or property contract with the City; (iii) where the work is being performed by a contractor for the City within the United States; and (iv) any of a contractor's operations elsewhere within the United States.

SEC. 12B.2. NONDISCRIMINATION PROVISIONS.

Every contract and property contract for or on behalf of the City shall incorporate by reference and require the contractor to comply with the provisions of Section 12B.2. In addition, all contractors must incorporate by reference in all subcontracts and require subcontractors to comply with the requirements set forth in Sections 12B.2(a) and 12B.2(c) through 12B.2(k), and failure to do so shall constitute a material breach of contract.

In the performance of a contract the contractor agrees as follows:

(a) The contractor or subcontractor will not discriminate against any employee, City and County employee working with such contractor or subcontractor, or applicant for employment with such contractor or subcontractor on the basis of the fact or perception of that person's race, color, religion, ancestry, national origin, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or AIDS/HIV status, weight, height, or association with members of classes protected under this chapter or in retaliation for opposition to any practices forbidden under this chapter. Discrimination on the basis of sex includes sexual harassment as defined in Section 16.9-25(b) of this Code. The contractor or subcontractor will take action to ensure that applicants are employed, and that employees are treated equally during employment, without regard to the fact or perception of their race, color, creed, religion, ancestry, national origin, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height, or AIDS/HIV status. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship. Nothing in this Chapter shall require or prohibit the establishment of new classifications of employees in any given craft. The provisions of this Section with respect to age shall not apply to (1) termination of employment because of the terms or conditions of any bona fide retirement or pension plan, (2) operations of the terms or conditions of any bona fide retirement or pension plan which has the effect of a minimum service requirement, and (3) operation of the terms or conditions of any bona fide group or insurance plan. The contractor or subcontractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in such form and content as shall be furnished or approved by the awarding authority setting forth the provisions of this Section.

(b) The prime contractor shall state that the prime contractor does not, and will not during the term of the contract 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 bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits 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 following conditions. In the event that the contractor's actual cost of providing a certain benefit for the domestic partner of an employee exceeds that of providing it for the spouse of an employee, or the contractor's actual cost of providing a certain benefit for the spouse of an employee exceeds that of providing it for the domestic partner of an employee, the contractor shall not be deemed to discriminate in the provision of benefits if the contractor conditions providing such benefit upon the employee agreeing to pay the excess costs. In addition, in

the event a contractor is unable to provide a certain benefit, despite taking reasonable measures to do so, the contractor shall not be deemed to discriminate in the provision of benefits if the contractor provides the employee with a cash equivalent. The Director shall be the final arbiter of a contractor's or property contractor's compliance or substantial compliance with this Chapter and the Director's determination shall not be appealable to the Commission. Contractors shall treat as confidential to the maximum extent allowed by law or the requirements of contractor's insurance provider any request by an employee or applicant for employment for domestic partner or spousal benefits or any documentation of eligibility for domestic partner or spousal benefits submitted by an employee or applicant for employment.

In adopting this Section 12B.2(b), the intent of the Board of Supervisors is to equalize to the maximum extent legally permitted the total compensation between similarly situated employees with spouses and employees with domestic partners.

In particular, consistent with the severability clause set forth in Section 12B.6 below, the Board of Supervisors intends that if a court or agency of competent jurisdiction finds that a State or federal law, rule or regulation invalidates (1) the application of this Section to any business, person, type of compensation or benefit, or location; or (2) any other requirement of this Section, then the court or agency should sever the invalid clause and leave in effect the remainder of this Section.

(c) The contractor or subcontractor shall provide reasonable accommodation for qualified disabled applicants for employment and for qualified disabled employees. Said contractor or subcontractor need not provide reasonable accommodation if such would present an undue hardship. An undue hardship may include but not be limited to more than a de minimus cost, violation of the seniority rights of other co-workers as established by a bona fide seniority system, or a health or safety risk to the employee or co-employees. The burden of establishing an undue hardship rests on the employer.

(d) The contractor or subcontractor will in all solicitations or advertisements for employees placed by or on his or her behalf, state that qualified applicants will receive consideration for employment without regard to the fact or perception of their race, creed, religion, color, ancestry, national origin, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height or AIDS/HIV status.

(e) The contractor or subcontractor will send to each labor union or representative of workers with which he or she has a collective bargaining agreement or other agreement or understanding, a notice, in such form and content as shall be furnished or approved by the awarding authority, advising the said labor union or workers' representative of the contractor's or subcontractor's commitments under this Section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(f) The contractor or subcontractor will permit access to its records of employment, employment advertisements, application forms, and other pertinent data and records by the Commission, the City's awarding authority or the Fair Employment and Housing Commission, for the purposes of investigation to ascertain compliance with the nondiscrimination provisions of this Chapter, and upon request shall provide evidence that the contractor has complied or will comply with the nondiscrimination provisions of this Chapter.

(g) A contractor or subcontractor shall be deemed to have breached the nondiscrimination provisions of this Chapter upon:

(1) A finding by the Director or such other official who may be designated by the Commission, that the contractor or subcontractor has willfully violated such nondiscrimination provisions; or

(2) A finding by the California Fair Employment and Housing Commission that a contractor or subcontractor has violated any provision of the California Fair Employment and Housing Act or the nondiscrimination provisions of this Chapter, provided that the California Fair Employment and Housing Commission has issued a final order pursuant to Section 12970 of the Government Code, or has obtained a judgment and order enforcing the final order pursuant to Section 12973 of the Government Code; provided further, that for the purposes of these provisions, an order or injunction shall not be considered final during the period within which (1) appeal may be taken, or (2) the same has been stayed by order of court, or (3) further proceedings for vacation, reversal or modification are in progress before a competent administrative or judicial tribunal.

(3) Upon such finding by the Director or other official designated by the Commission, or the California Fair Employment and Housing Commission, the awarding authority shall notify the contractor or subcontractor that unless the contractor or subcontractor demonstrates to the satisfaction of the Director or other official designated by the Commission, within such reasonable period as the Commission shall determine, that the violation has been corrected, action will be taken as set forth in Subparagraphs (h) and (i) hereof.

(4) The Commission shall, within 10 days of the date of issuance of any finding by the Director or other official designated by the Commission for the enforcement of this Chapter, mail to any person or persons affected by said finding, a copy of said finding, together with written notice of the right to appeal such finding. Notice of appeal must be filed in writing with the Chairperson of the Commission within 20 days of the date of mailing said copy and notice.

(5) For purpose of appeal proceedings under this Section, a quorum shall consist of eight members of the Commission. The vote of the majority of the full Commission shall be necessary to affirm, reverse or modify such decisions, order or other action rendered hereunder. Should a member of the Commission be designated under Section 12B.2(g)(1) of this Chapter, that Commissioner may not participate in an appeal under this Section except as a witness.

(6) The presiding officer of the Commission shall have the power to administer oaths to witnesses in appeals before the Commission under this Section. In the event that any person shall fail or refuse to appear as a witness in any such proceeding after being requested to do so, and if it shall appear to the Commission that his or her testimony, or books, records, documents or other things under his or her control are material and relevant as evidence in the matter under consideration by the Commission in the proceeding, the presiding officer of the Commission may subpoena such person, requiring his or her presence at the proceeding, and requiring him or her to bring such books, records, documents or other things under his or her control.

(7) All appeals to the Commission shall be open to the public. Records and minutes shall be kept of

such proceedings and shall be open to public inspection. Upon reaching a decision in any appeal, the Commission shall give written notice thereof to the Director or other official designated by the Commission, and the appellant or appellants. The decision of the Commission shall be final unless within 15 days of the filing and service of written notice thereof appropriate legal proceedings are filed in a court of competent jurisdiction by any party to the contract, property contract or subcontract.

(8) If any contractor or subcontractor shall fail to appear at an appeal proceeding of the Commission after having been given written notice to appear, such failure to appear shall be grounds for termination of the contract, property contract or subcontract and such contractor or subcontractor shall be deemed to have forfeited all rights, benefits and privileges thereunder.

(9) The Commission shall promulgate rules and regulations for the implementation of the nondiscrimination provisions of this Chapter.

(h) The awarding authority may deduct from the amount payable to the contractor or subcontractor by the City under any contract or property contract subject to this Chapter, or may impose upon the contractor or subcontractor, 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 Chapter. In addition to any other penalties provided for the violation of the nondiscrimination provisions of this Chapter or for the failure of any contractor or subcontractor to abide by the rules and regulations of the Commission, the contract, property contract or subcontract may be terminated or suspended, in whole or in part, by the awarding authority upon the basis of a finding as set forth in Section 12B.2(g) that the contractor has discriminated contrary to the provisions of this Chapter, and all moneys due or to become due hereunder may be forfeited to, and retained by, the City.

(i) A breach of the nondiscrimination provisions in the performance of a contract, property contract or subcontract shall be deemed by the City to be material breach of contract and the basis for determination by the awarding authority that the contractor or subcontractor is an irresponsible bidder as to all future contracts or property contracts for which such contractor or subcontractor may submit bids. Such contractor or subcontractor shall not for a period of up to two years thereafter, or until it shall establish and carry out a program in conformity with the nondiscrimination provisions of this Chapter, be allowed to act as a contractor or subcontractor under any contract or property contract.

(j) Nothing contained in this Chapter shall be construed in any manner so as to prevent the City from pursuing any other remedies that may be available at law, equity or under any contract or property contract.

(k) The contractor or subcontractor will meet the following standards for compliance:

(1) If the contractor or subcontractor has been held to be an irresponsible bidder under Section 12B.2(i) hereof, the contractor or subcontractor shall furnish evidence that it has established and is carrying out a program in conformity with the nondiscrimination provisions of this Chapter.

(2) The contractor or subcontractor may be required to file with the Commission a basic compliance

report, which may be a copy of the federal EEO-1, or a more detailed report as determined by the Commission. Willful false statements made in such reports shall be punishable as provided by law. No contractor or subcontractor shall be held in noncompliance for not filing such a report with the Commission unless it has been specifically required to do so in writing by the Commission.

(3) Personally, or through its representatives, the contractor or subcontractor shall, through negotiations with the unions with whom it has collective bargaining or other agreements requiring the contractor or subcontractor to obtain or clear its employees through the union, or when the contractor or subcontractor otherwise uses a union as an employment resource, attempt to develop an agreement which will:

(A) Define and outline responsibilities for nondiscrimination in hiring, referral, upgrading and training;

(B) Otherwise implement a nondiscrimination program in terms of the unions' specific areas of skill and geography, such as an apprenticeship program, to the end that minority workers will be available and given an equal opportunity for employment.

(4) The contractor or subcontractor shall notify the awarding authority of opposition to the nondiscrimination provisions of a contract by individuals, firms or organizations during the term of the contract.

SEC. 12B.3. HUMAN RIGHTS COMMISSION EMPOWERED.

The San Francisco Human Rights Commission, its presiding officer and its director are hereby granted the power to do all acts and exercise all powers referred to in Section 12B.2 here of.

SEC. 12B.4. NONDISCRIMINATION GUIDELINES.

The following nondiscrimination guidelines shall apply to all contracts and property contracts subject to this Chapter.

In order to be eligible to submit a bid or proposal or to have a bid or proposal considered by the awarding authority, the prospective contractor shall agree to abide by a nondiscrimination program which conforms to the requirements of the Commission.

The Commission may also require contractors and subcontractors to take part in a pre-bid or pre-award conference in order to develop, improve or implement a qualifying nondiscrimination program.

(a) Nondiscrimination programs developed pursuant to this Section shall be effective for a period of 12 months from the date of approval by the Commission. Contractors or subcontractors who are members in good standing of a trade association which has negotiated a nondiscrimination program with the Commission may make this association program their commitment for the specific contract or property contract upon approval of the Commission without the process of a separate pre-bid or

pre-award conference. Such an association agreement shall be effective for a period of 12 months from the date of approval by the Commission. Trade associations shall provide the Commission with a list of members in good standing in such association. The Commission shall annually supply contracting agencies of the City and County with a list of contractors and subcontractors who have developed approved nondiscrimination programs.

(b) The awarding authority shall be responsible for notifying all prospective bidders or proposers of the requirements of this Section and, when requested by the Commission, for notifying the Commission of each contract or property contract which is being proposed to be put to public bid.

(c) The proposed nondiscrimination program described by this Section, and the pre-bid or pre-award conference which may be required by the Commission, shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:

(1) Apprenticeship where approved programs are functioning and other on-the-job training for nonapprenticeable occupations;

(2) Classroom preparation for the job when not apprenticeable;

(3) Pre-apprenticeship education and preparation;

(4) Upgrading training and opportunities;

(5) Encouraging the use of contractors and subcontractors of all ethnic groups, provided, however, that any contract or property contract subject to this Chapter shall require the contractor or subcontractor to provide not less than the prevailing wage, working conditions, and practices generally observed in private industries in the City for such work; and

(6) The entry of qualified minority journeypersons into the industry.

(d) Nondiscrimination agreements resulting from the proposed nondiscrimination programs or the pre-bid or pre-award conferences shall not be confidential and may be publicized by the Commission at its discretion. In addition, the Commission may report to the Board of Supervisors, either on request of the Board or on its own initiative, on the progress or the problems which attend the implementation of these agreements or any other aspect of enforcement of this Chapter.

(e) Any job training or education program using the funds, facilities, or staff of the City which, in the judgment of the Board of Supervisors or the Commission, can make a contribution to the implementation of this Chapter shall submit reports to the Commission as requested and shall be required to cooperate with the contractors, subcontractors and unions and with the Commission for the effectuation of the nondiscrimination programs developed under this Chapter.

SEC. 12B.5. CHAPTER APPLIES ONLY TO DISCRIMINATORY EMPLOYMENT PRACTICES.

(a) This Chapter shall not confer upon the City and County of San Francisco or any agency, board or

commission thereof any power not otherwise provided by law to determine the legality of any existing collective bargaining agreement and shall have application only to discriminatory employment practices by contractors or subcontractors engaged in the performance of City and County contracts or property contracts.

(b) The Board of Supervisors shall appropriate such funds from the General Fund of the City, subject to budgetary and fiscal provisions of the Charter, as it may deem necessary for the enforcement of this Chapter.

SEC. 12B.5-1. NONAPPLICABILITY, EXCEPTIONS AND WAIVERS.

(a) The Director shall waive the requirements of this Chapter under the following circumstances:

(1) Whenever the Director finds, upon the advice of the awarding authority, that there is only one prospective contractor willing to enter into a property contract with the City for use of City property on the terms and conditions established by the City, or that the needed goods, services, construction services for a public work or improvement, or interest in or right to use real property are available only from a sole source and the prospective contractor is not currently disqualified from doing business with the City, or from doing business with any governmental agency based on any contract compliance requirements;

(2) If the contracting department, board or commission certifies in writing to the Director that pursuant to Administrative Code Sections 6.30 or 21.25 the contract or property contract is necessary to respond to an emergency which endangers the public health or safety and no entity which complies with the requirements of this Chapter capable of responding to the emergency is immediately available; provided that such certification must be made prior to the Controller's contract certification;

(3) Where the City Attorney certifies in writing to the Director that the contract involves specialized litigation requirements such that it would be in the best interests of the City to waive the requirements of this Chapter.

(b) This Chapter shall not apply where the prospective contractor is a public entity and the Director finds that goods, services, construction services for a public work or improvement or interest in or right to use real property of comparable quality or accessibility as are available under the proposed contract or property contract are not available from another source, or that the proposed contract or property contract is necessary to serve a substantial public interest.

(c) This Chapter shall not apply where the contracting officer finds that the requirements of this Chapter will violate or are inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or agreement, provided that the contracting officer has made a good faith attempt to change the terms or conditions of any such grant, subvention or agreement to authorize application of this Chapter.

(d) Upon the request of a potential contractor or upon the contracting officer's own initiative, after

taking all reasonable measures to find an entity that complies with the law, the contracting officer may waive any or all of the requirements of this Chapter for any contract, property contract or bid package advertised and made available to the public, or any competitive or sealed bids received by the City as of the date of the enactment of this ordinance under the following circumstances:

(1) Where the contracting officer determines that there are no qualified responsive bidders or prospective contractors who could be certified by the Commission as being in compliance with the requirements of this Chapter and that the contract or property contract is for goods, a service or a project that is essential to the City or City residents; or

(2) Where the contracting officer determines that transactions entered into pursuant to bulk purchasing arrangements through federal, State or regional entities which actually reduce the City's purchasing costs would be in the best interests of the City; or

(3) Where the contracting officer determines that the requirements of this Chapter would result in the City's entering into a contract with an entity that was set up, or is being used, for the purpose of evading the intent of this Chapter, which is to prohibit the City from entering into contracts with entities that discriminate based on the criteria set forth in this Chapter;

(4) The waiver authority granted to contracting officers in this Section 12B.5-1(d) shall be subject to the requirements that:

(i) All proposed waivers must be submitted to the Director and the Clerk of the Board of Supervisors. All proposed waivers must set forth the reasons the contracting officer is requesting the waiver, what steps were taken to find an entity that complies with this Chapter and why the waiver does not defeat the intent of this Chapter, which is to prohibit the City from entering into contracts with entities that discriminate based on the criteria set forth in this Chapter. Such waivers shall be subject to the prior approval of the Director, who shall take action approving or denying a proposed waiver within 30 days of receiving a notification of a proposed waiver from a contracting officer. If after 30 days the Director has taken no action on the proposed waiver, the waiver shall be deemed approved. The Clerk of the Board of Supervisors shall list the notice of the proposed waiver at the rear of the next available Board agenda, and

(ii) Contracting officers report to the Director whenever such a waiver is granted within 5 days of granting the waiver, and

(iii) For any contract subject to approval by the Board, the contracting officer shall state in the approving resolution whether any waiver under this Section 12B.5-1(d) has been or is proposed to be granted for that contract, and

(iv) The Director shall conduct quarterly comprehensive reviews of the use of the waiver authority by departments and shall make a report to the Board of Supervisors. Contracting officers who have exercised waiver authority under this Section 12B.5-1(d) in the previous quarter must appear before a Board of Supervisors committee and report on their use of such waiver authority. If the Board finds abuse of waiver authority by a department under this Section 12B.5-1(d), either as a result of a report of the Director or upon its own initiative, the Board may by resolution transfer that waiver

authority for that department to the Director, to be exercised by the Director upon recommendation of the contracting officer under any or all of the circumstances enumerated in this Section 12B.5-1(d);

(5) Nothing in this Section 12B.5-1(d) shall limit the right of the Board of Supervisors to waive the provisions of this Chapter.

(e) This Chapter shall not apply to (i) the investment of trust moneys or agreements relating to the management of trust assets, (ii) City moneys invested in U.S. government securities or under pre-existing investment agreements, or (iii) the investment of City moneys where the Treasurer finds that:

(1) No person, entity or financial institution doing business in the City and County which is in compliance with this Chapter is capable of performing the desired transaction(s); or

(2) The City will incur a financial loss which in the opinion of the Treasurer would violate his or her fiduciary duties.

This subparagraph (e) shall be subject to the requirement that City moneys shall be withdrawn or divested at the earliest possible maturity date if deposited or invested with a person, entity or financial institution other than the U.S. government which does not comply with this Chapter.

(f) The General Manager of the Public Utilities Commission may waive the requirements of this Chapter where the contractor is providing wholesale or bulk water, power or natural gas, the conveyance or transmission of same, or ancillary services such as spinning reserve, voltage control, or loading scheduling, as required for assuring reliable services in accordance with good utility practice, to or on behalf of the San Francisco Public Utilities Commission; provided that the purchase of same may not practically be accomplished through the City's standard competitive bidding procedures; and further provided that this exemption shall not apply to contractors or franchisees providing direct, retail services to end users within the City and County of San Francisco.

(g) Sections 12B.1(b) and 12B.2(b) shall not apply to any contracts or property contracts executed or amended prior to June 1, 1997, or to bid packages advertised and made available to the public, or any competitive or sealed bids received by the City, prior to June 1, 1997, unless and until such contracts or property contracts are amended after June 1, 1997, and would otherwise be subject to this Chapter.

SEC. 12B.6. SEVERABILITY.

This Chapter shall be construed so as not to conflict with applicable federal or State laws, rules or regulations. Nothing in this Chapter shall authorize any City agency to impose any duties or obligations in conflict with limitations on municipal authority established by federal law at the time such agency action is taken.

In the event that a court or agency of competent jurisdiction holds that State or federal law, rule or regulation invalidates any clause, sentence, paragraph or section of this Chapter or the application

thereof to any person or circumstances, it is the intent of the Board of Supervisors that the court or agency sever such clause, sentence, paragraph or section so that the remainder of this Chapter shall remain in effect.

SF Administrative Code Chapter 12C

Sec. 12C.1. All Contracts and Property Contracts to Include Nondiscrimination Provisions.

Sec. 12C.2. Definitions.

Sec. 12C.3. Nondiscrimination Provisions.

Sec. 12C.4. Human Rights Commission Empowered.

Sec. 12C.5. Funding.

Sec. 12C.5-1. Nonapplicability, Exceptions and Waivers.

Sec. 12C.6. Severability.

Sec. 12C.1. All Contracts and Property Contracts to Include Nondiscrimination Provisions.

(a) All contracting agencies of the City, or any department thereof, acting for or on behalf of the City and County, shall include in all contracts and property contracts a provision obligating the contractor not to discriminate on the basis of the fact or perception of that person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), weight, height, association with members of classes protected under this chapter or in retaliation for opposition to any practices forbidden under this chapter, against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, operated by that contractor, and shall require such contractor to include a similar provision in all subcontracts.

(b) The requirements of this Chapter shall apply to (i) any of a contractor's operations within San Francisco; (ii) a contractor's operations on real property outside of San Francisco owned by the City or which the City has a right to occupy if the contractor's presence at that location is connected to a contract or property contract with the City; (iii) where the work is being performed by a contractor for the City within the United States; and (iv) any of a contractor's operations elsewhere within the United States. (Amended by Ord. 489-86, App. 12/18/86; Ord. 433-94, App. 12/30/94; Ord. 440-96, App. 11/8/96; Ord. 481-96, App. 12/20/96; Ord. 201-97, App. 5/27/97; Ord. 286-97, App. 7/18/97)

Sec. 12C.2. Definitions.

As used in this Chapter the term:

"Age" for the purpose of membership refers to the age of any person who has attained the age of 18 years, except for bona fide senior citizen organizations.

"City" shall mean the City and County of San Francisco.

"Commission" shall mean the Human Rights Commission of the City and County of San Francisco.

"Contract" shall mean an agreement for public works or improvements to be performed, or grants to be provided, or for goods or services to be purchased, at the expense of the City and County or to be paid out of moneys deposited in the treasury or out of trust moneys under the control or collected by the City and County, and does not include property contracts, agreements entered into pursuant to settlement of legal proceedings, or contracts for a cumulative amount of \$5,000 or less per vendor in each fiscal year.

"Contractor" means any person or persons, firm, partnership, corporation, or combination thereof, who enters into a contract or property contract with a department head or officer empowered by law to enter into contracts or property contracts on the part of the City and County.

"Director" shall mean the Director of the Human Rights Commission.

"Disability" is a physical or mental impairment which substantially limits one or more major life activities, or a record of such an impairment.

"Domestic partner" shall mean any person who has a currently registered domestic partnership with a governmental body pursuant to State or local law authorizing such registration.

"Gender identity" shall mean a person's various individual attributes as they are understood to be masculine and/or feminine.

"Property contract" shall mean a written agreement for the exclusive use or occupancy of real property for a term exceeding 29 days in any calendar year, whether by singular or cumulative instrument, (i) for the operation or use by others of real property owned or controlled by the City for the operation of a business, social, or other establishment or organization, including leases, concessions, franchises and easements, or (ii) for the City's use or occupancy of real property owned by others, including leases, concessions, franchises and easements. For the purposes of this Chapter, "exclusive use" means the right to use or occupy real property to the exclusion of others, other than the rights reserved by the fee owner. "Property contract" shall not include a revocable at-will use or encroachment permit for the use of or encroachment on City property regardless of the ultimate duration of such permit, except that "property contract" shall include such permits granted to a private entity for the use of City property for the purpose of a for-profit activity. "Property contract" shall also not include street excavation, street construction or street use permits, agreements for the use of City right-of-way where a contracting utility has the power of eminent domain, or agreements governing the use of City property which constitutes a public forum for activities that are primarily for the purpose of espousing or advocating causes or ideas and that are generally recognized as protected by the First Amendment to the U.S. Constitution, or which are primarily recreational in nature.

"Qualified disabled employee" shall mean a person able to perform the essential functions of a job with reasonable accommodation.

"Sex" shall mean the character of being male or female.

"Sexual orientation" shall mean the status of being lesbian, gay, bisexual or heterosexual.

"Subcontract" shall mean an agreement to (i) provide goods and/or services, including construction labor, materials or equipment, to a contractor, if such goods or services are procured or used in the fulfillment of the contractor's obligations arising from a contract with the City, (ii) to transfer the right to occupy or use all or a portion of a real property interest subject to a property contract to a subcontractor and pursuant to which the contractor remains obligated under the property contract.

"Subcontractor" means any person or persons, firm, partnership, corporation or any combination thereof, who enters into a subcontract with a contractor. Such term shall include any person or entity who enters into an agreement with any subcontractor for the performance of 10 percent or more of any subcontract. (Amended by Ord. 489-86, App. 12/18/86; Ord. 433-94, App. 12/30/94; Ord. 440-96, App. 11/8/96; Ord. 481-96, App. 12/20/96; Ord. 201-97, App. 5/27/97)

Sec. 12C.3. Nondiscrimination Provisions.

Every contract and property contract entered into by any agency of the City shall incorporate by reference and require contractor to comply with the nondiscrimination provisions of Section 12C.3. In addition, all contractors must incorporate by reference in all subcontracts and require subcontractors to comply with the requirements of this Section 12C.3, and failure to do so shall constitute a material breach of contract.

In the performance of a contract, the contractor or subcontractor shall agree as follows:

(a) The contractor or subcontractor will not discriminate against any person seeking accommodations, advantages, facilities, privileges, services, or membership in the business, social or other establishment or organization operated by the contractor or subcontractor on the basis of the fact or perception of that person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or AIDS/HIV status, weight, height, association with members of classes protected under this chapter or in retaliation for opposition to any practices forbidden under this chapter. Services provided by contractor or subcontractor to the public shall be provided regardless of disability of persons otherwise entitled to or qualified for such services.

(b) Should the contractor or subcontractor operate as a membership organization, the contractor or subcontractor will permit access to its membership records, rules, regulations and other pertinent data, by the City's awarding authority, or the Commission, for the purpose of investigating to ascertain compliance with the nondiscrimination provisions of this Chapter, and on request provide evidence that the contractor or subcontractor has complied or will comply with the nondiscrimination provisions of this Chapter. The Director shall be the final arbiter of a contractor's or subcontractor's compliance or substantial compliance with this Chapter and the Director's determination shall not be appealable to the Commission.

(c) A contractor or subcontractor shall be deemed to have breached the nondiscrimination provisions of this Chapter upon:

(1) A finding by the Director or such other official who may be designated by the Commission, that

contractor or subcontractor has wilfully violated such nondiscrimination provisions.

(2) Upon such finding by the Director or other official designated by the Commission, the awarding authority shall notify the contractor or subcontractor that unless the contractor or subcontractor demonstrates to the satisfaction of the Director or other official designated by the Commission within such reasonable period as the Commission shall determine, that the violation has been corrected, action will be taken as set forth in Section 12C.3(d) and/or Section 12C.3(g).

(3) The Commission shall, within 10 days of the date of issuance of any findings by the Director or other official designated by the Commission for the enforcement of this Chapter, mail to any person or persons affected by said finding, a copy of said finding, together with written notice of the right to appeal such finding. Notice of appeal must be filed in writing with the Chairperson of the Commission within 20 days of the date of mailing said copy and notice.

(4) For purposes of appeal proceedings under this Section, a quorum shall consist of eight members of the Commission. The vote of the majority of the full Commission shall be necessary to affirm, reverse or modify such decisions, order or other action rendered hereunder. Should a member of the Commission be designated under Section 12C.3(c)(1) of this Chapter, that Commissioner may not participate in an appeal under this Section except as a witness.

(5) The presiding officer of the Commission shall have the power to administer oaths to witnesses in appeals before the Commission under this Section. In the event that any person shall fail or refuse to appear as a witness in any such proceeding after being requested to do so, and if it shall appear to the Commission that his or her testimony, or books, records, documents or other things under his or her control are material and relevant as evidence in the matter under consideration by the Commission in the proceeding, the presiding officer of the Commission may subpoena such person, requiring his or her presence at the proceeding and requiring him or her to bring such books, records, documents or other things under his or her control.

(6) All appeals to the Commission shall be open to the public. Records and minutes shall be kept of such proceedings and shall be open to public inspection. Upon reaching a decision in any appeal, the Commission shall give written notice thereof to the Director or other official designated by the Commission, and the appellant or appellants. The decision of the Commission shall be final unless within 15 days of the filing and service of written notice thereof appropriate legal proceedings are filed in a court of competent jurisdiction by any party to the contract, property contract or subcontract.

(7) If any contractor or subcontractor shall fail to appear at an appeal proceeding of the Commission after having been given written notice to appear, such failure to appear shall be grounds for termination of the contract, property contract or subcontract and such contractor or subcontractor shall be deemed to have forfeited all rights, benefits and privileges thereunder.

(8) The Commission shall promulgate rules and regulations for the implementation of the nondiscrimination provisions of this Chapter.

(d) A breach of the nondiscrimination provisions in the performance of a contract, property contract

or subcontract shall be deemed by the City to be a material breach of contract and the basis for determination by the awarding authority that the contractor or subcontractor is an irresponsible contractor or subcontractor as to all future contracts or property contracts for which such contractor or subcontractor may submit bids. Such contractor or subcontractor shall not, for a period of up to two years thereafter, or until it shall establish and carry out a program in conformity with the nondiscrimination provisions of this Chapter, be allowed to act as a contractor or subcontractor under any contract or property contract.

(e) Nothing contained in this Chapter shall be construed in any manner so as to prevent the City from pursuing any other remedies that may be available at law, equity or under any contract or property contract.

(f) The contractor or subcontractor will meet the following standards for compliance:

(1) If the contractor or subcontractor has been held to be irresponsible under Section 12C.3(d) hereof, the contractor or subcontractor shall furnish evidence that it has established and is carrying out a program in conformity with the nondiscrimination provisions of this Chapter.

(2) The contractor or subcontractor may be required to file with the Commission a basic compliance report. Wilful false statements made in such reports shall be punishable as provided by law. No contractor or subcontractor shall be held in noncompliance for not filing such a report with the Commission unless it has been specifically required to do so in writing by the Commission.

(g) The awarding authority may deduct from the amount payable to the contractor or subcontractor by the City under any contract or property contract subject to this Chapter, or may impose upon the contractor or subcontractor, 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 Chapter. In addition to any other penalties provided for the violation of the nondiscrimination provisions of this Chapter or for the failure of any contractor or subcontractor to abide by the rules and regulations of the Commission, the contract, property contract or subcontract may be terminated or suspended, in whole or in part, by the awarding authority upon the basis of a finding as set forth in Section 12C.3(d) that the contractor or subcontractor has discriminated contrary to the provisions of this Chapter, and all moneys due or to become due hereunder may be forfeited to, and retained by, the City. (Amended by Ord. 489-86, App. 12/18/86; Ord. 433-94, App. 12/30/94; Ord. 201-97, App. 5/27/97; Ord. 286-97, App. 7/18/97)

Sec. 12C.4. Human Rights Commission Empowered.

The San Francisco Human Rights Commission, its presiding officer and its director are hereby granted the power to do all acts and exercise all powers referred to in Section 12C.3 thereof. (Amended by Ord. 84-77, App. 3/11/77)

Sec. 12C.5. Funding.

The Board of Supervisors shall appropriate such funds from the General Fund of the City and County of San Francisco, subject to budgetary and fiscal provisions of the Charter, as it may deem

necessary for enforcement of this ordinance. (Amended by Ord. 84-77, App. 3/11/77)

Sec. 12C.5-1. Nonapplicability, Exceptions and Waivers.

(a) The Director shall waive the requirements of this Chapter under the following circumstances:

(1) Whenever the Director finds, upon the advice of the awarding authority, that there is only one prospective contractor willing to enter into a property contract with the City for use of City property on the terms and conditions established by the City, or that the needed goods, services, construction services for a public work or improvement, or interest in or right to use real property are available only from a sole source, and the prospective contractor is not currently disqualified from doing business with the City, or from doing business with any governmental agency based on any contract compliance requirements;

(2) If the contracting department or commission certifies in writing to the Director that pursuant to Administrative Code Section 6.30 or 21.25 the contract or property contract is necessary to respond to an emergency which endangers the public health or safety and no entity which complies with the requirements of this Chapter capable of responding to the emergency is immediately available; provided that such certification must be made prior to the Controller's contract certification;

(3) Where the City Attorney certifies in writing to the Director that the contract involves specialized litigation requirements such that it would be in the best interests of the City to waive the requirements of this Chapter.

(b) This Chapter shall not apply where the prospective contractor is a public entity and the Director finds that goods, services, construction services for a public work or improvement or interest in or right to use real property of comparable quality or accessibility as are available under the proposed contract or property contract are not available from another source, or that the proposed contract or property contract is necessary to serve a substantial public interest.

(c) This Chapter shall not apply where the contracting officer finds that the requirements of this Chapter will violate or are inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or agreement, provided that the contracting officer has made a good faith attempt to change the terms or conditions of any such grant, subvention or agreement to authorize application of this Chapter.

(d) Upon the request of a potential contractor or upon the contracting officer's own initiative, after taking all reasonable measures to find an entity that complies with the law, the contracting officer may waive any or all of the requirements of this Chapter for any contract, property contract or bid package advertised and made available to the public, or any competitive or sealed bids received by the City as of the date of the enactment of this ordinance under the following circumstances:

(1) Where the contracting officer determines that there are no qualified responsive bidders or prospective contractors who could be certified by the Commission as being in compliance with the requirements of this Chapter and that the contract or property contract is for goods, a service or a

project that is essential to the City or City residents; or

(2) Where the contracting officer determines that transactions entered into pursuant to bulk purchasing arrangements through federal, State or regional entities which actually reduce the City's purchasing costs would be in the best interests of the City; or

(3) Where the contracting officer determines that the requirements of this Chapter would result in the City's entering into a contract with an entity that was set up, or is being used, for the purpose of evading the intent of this Chapter, which is to prohibit the City from entering into contracts with entities that discriminate based on the criteria set forth in this Chapter;

(4) The waiver authority granted to contracting officers in this Section 12C.5-1(d) shall be subject to the requirements that:

(i) All proposed waivers must be submitted to the Director and the Clerk of the Board of Supervisors. All proposed waivers must set forth the reasons the contracting officer is requesting the waiver, what steps were taken to find an entity that complies with this Chapter and why the waiver does not defeat the intent of this Chapter, which is to prohibit the City from entering into contracts with entities that discriminate based on the criteria set forth in this Chapter. Such waivers shall be subject to the prior approval of the Director, who shall take action approving or denying a proposed waiver within 30 days of receiving a notification of a proposed waiver from a contracting officer. If after 30 days the Director has taken no action on the proposed waiver, the waiver shall be deemed approved. The Clerk of the Board of Supervisors shall list the notice of the proposed waiver at the rear of the next available Board agenda, and

(ii) Contracting officers report to the Director whenever such a waiver is granted within five days of granting the waiver, and

(iii) For any contract subject to approval by the Board, the contracting officer shall state in the approving resolution whether any waiver under this Section 12C.5-1(d) has been or is proposed to be granted for that contract, and

(iv) The Director shall conduct quarterly comprehensive reviews of the use of the waiver authority by departments and shall make a report to the Board of Supervisors. Contracting officers who have exercised waiver authority under this Section 12C.5-1(d) in the previous quarter must appear before a Board of Supervisors committee and report on their use of such waiver authority. If the Board finds abuse of waiver authority by a department under this Section 12C.5-1(d), either as a result of a report of the Director or upon its own initiative, the Board may by resolution transfer that waiver authority for that department to the Director, to be exercised by the Director upon recommendation of the contracting officer under any or all of the circumstances enumerated in this Section 12C.5-1(d);

(5) Nothing in this Section 12C.5-1(d) shall limit the right of the Board of Supervisors to waive the provisions of this Chapter.

(e) This Chapter shall not apply to (i) the investment of trust moneys or agreements relating to the

management of trust assets, (ii) City moneys invested in U.S. government securities or under pre-existing investment agreements, or (iii) the investment of City moneys where the Treasurer finds that:

- (1) No person, entity or financial institution doing business in the City and County which is in compliance with this Chapter is capable of performing the desired transaction(s); or
- (2) The City will incur a financial loss which in the opinion of the Treasurer would violate his or her fiduciary duties.

This subparagraph (e) shall be subject to the requirement that City moneys shall be withdrawn or divested at the earliest possible maturity date if deposited or invested with a person, entity or financial institution other than the U.S. government which does not comply with this Chapter.

(f) The General Manager of the Public Utilities Commission may waive the requirements of this Chapter where the contractor is providing wholesale or bulk water, power or natural gas, the conveyance or transmission of same, or ancillary services such as spinning reserve, voltage control, or loading scheduling, as required for assuring reliable services in accordance with good utility practice, to or on behalf of the San Francisco Public Utilities Commission; provided that the purchase of same may not practically be accomplished through the City's standard competitive bidding procedures; and further provided that this exemption shall not apply to contractors or franchisees providing direct, retail services to end users within the City and County of San Francisco. (Added by Ord. 481-96, App. 12/20/96; amended by Ord. 201-97, App. 5/27/97; Ord. 286-97, App. 7/18/97; Ord. 431-97, App. 11/21/97)

Sec. 12C.6. Severability.

This Chapter shall be construed so as not to conflict with applicable federal or State laws, rules or regulations. Nothing in this Chapter shall authorize any City agency to impose any duties or obligations in conflict with limitations on municipal authority established by federal law at the time such agency action is taken.

In the event that a court or agency of competent jurisdiction holds that the State or federal law, rule or regulation invalidates any clause, sentence, paragraph or section of this Chapter or the application thereof to any person or circumstances, it is the intent of the Board of Supervisors that the court or agency sever such clause, sentence, paragraph or section so that the remainder of this Chapter shall remain in effect. (Amended by Ord. 84-77, App. 3/11/77; Ord. 286-97, App. 7/18/97)

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FORM 3: HRC NON-DISCRIMINATION AFFIDAVIT

1. I will ensure that my firm complies fully with the provisions of Chapter 12B and 12C of the San Francisco Administrative Code and its implementing Rules and Regulations and attest to the truth and accuracy of all information provided regarding such compliance.
2. I acknowledge and agree that any monetary penalty assessed against my firm by the Director of the Human Rights Commission shall be payable to the City and County of San Francisco upon demand. I further acknowledge and agree that any monetary penalty assessed may be withheld from any monies due to my firm on any contract with the City and County of San Francisco.
3. I declare under penalty of perjury under the laws of the State of California that the foregoing statements are true and correct and accurately reflect my intentions.

**Signature of Owner/Authorized
Representative:** _____

Owner/Authorized Representative (Print) _____

Name of Firm (Print) _____

Title and Position _____

Address, City, ZIP _____

**Federal Employer Identification Number
(FEIN):** _____

Date: _____



CITY AND COUNTY OF SAN FRANCISCO
CONTRACT MONITORING DIVISION

S.F. ADMINISTRATIVE CODE CHAPTERS 12B & 12C
DECLARATION: NONDISCRIMINATION IN CONTRACTS AND BENEFITS
(CMD-12B-101)

Section 1. Vendor Information

Name of Company:
Name of Company Contact Person:
Phone: Ext.: Fax:
E-mail Address:
Vendor Number (if known):
Federal ID or Social Security Number:
Approximate Number of Employees in the U.S.:
Are any of your employees covered by a collective bargaining agreement or union trust fund?
Union name(s):

DATE & TIME RECEIVED BY CMD
(FOR CMD USE ONLY)

Yes No

Section 2. Compliance Questions

Question 1. Nondiscrimination – Protected Classes

A. Does your company agree it will not discriminate against its employees, applicants for employment, employees of the City, or members of the public on the basis of the fact or perception of a person’s membership in the categories listed below? Please note: a “YES” answer is required for compliance. Please answer yes or no to each category.

- Race, Color, Creed, Religion, National origin, Ancestry, Age, Height, Sex, Sexual orientation, Gender identity (transgender status), Domestic partner status, Marital status, Disability, AIDS/HIV status, Weight

B. Does your company agree to insert a similar nondiscrimination provision in any subcontract you enter into for the performance of a substantial portion of the contract you have with the City? Please note: you must answer this question even if you do not intend to enter into any subcontracts.

Yes No

Question 2. Nondiscrimination – Equal Benefits for Employees with Spouses and Employees with Domestic Partners

A. Does your company provide or offer access to any benefits to employees with spouses or to spouses of employees?

Yes No

B. Does your company provide or offer access to any benefits to employees with (same or opposite sex) domestic partners* or to domestic partners of employees?

Yes No

Questions 2A and 2B should be answered YES even if your employees pay some or all of the cost of spousal or domestic partner benefits.

*The term “Domestic Partner” includes both same-sex and opposite-sex couples who have registered with any state or local government domestic partnership registry. See S.F. Admin. Code Ch. 12B.1(c).

If you answered “NO” to both Questions 2A and 2B, go to Section 4, complete and sign the form, filling in all items requested. If you answered “YES” to either or both Questions 2A and 2B, please continue to Question 2C.

Question 2. (continued)

C. Please check all benefits that apply to your answers above and list in the "other" section any additional benefits not already specified. Note: some benefits are provided to employees because they have a spouse or domestic partner, such as bereavement leave; other benefits are provided directly to the spouse or domestic partner, such as medical insurance.

BENEFIT	Yes for Employees with Spouses	Yes for Employees with Domestic Partners	No, this Benefit is Not Offered	Documentation of this Benefit is Submitted with this Form
• Health Insurance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Dental Insurance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Vision Insurance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Retirement (Pension, 401(k), etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Bereavement Leave	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Family Leave	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Parental Leave	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Employee Assistance Program	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Relocation & Travel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Company Discount, Facilities Events	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Credit Union	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Child Care	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Dependent Life Insurance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Note: If you can't offer a benefit in a nondiscriminatory manner *because of reasons outside your control*, (e.g., there are no insurance providers in your area willing to offer domestic partner coverage) you may be eligible for Reasonable Measures compliance. To comply on this basis, you must agree to pay a cash equivalent, submit a completed Reasonable Measures Application Form (CMD-12B-102) with all necessary attachments, and have your application approved by the Contract Monitoring Division. For more information, see Rules of Procedure section II B or contact the CMD.

➤ **Section 3. Required Documentation**

YOU MUST SUBMIT SUPPORTING DOCUMENTATION

to verify each benefit marked in Question 2C. Without proper documentation, your company cannot be certified as complying with Chapters 12B & 12C. For example, to document medical insurance submit a letter from your insurance provider or a copy of the eligibility section of your plan document; to document leave programs, submit a copy of your company's employee handbook. If documentation of a particular benefit does not exist, attach an explanation. For more information see the Equal Benefits Documentation Guide at <http://sfgsa.org/modules/showdocument.aspx?documentid=9560> or contact the CMD.

Have you submitted supporting documentation for each benefit offered? Yes No

➤ **Section 4. Executing the Document**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Executed this _____ day of _____, in the year _____, at _____, _____ (City) _____ (State)

Signature

Mailing Address

Name of Signatory (please print)

City, State, Zip Code

Title

➔ **Submit this form and supporting documentation to:** Contract Monitoring Division, 30 Van Ness Ave., Suite 200, San Francisco, CA 94102-6020, or to CMD.EqualBenefits@sfgov.org or to the City department that sent it to you if the department so requests.

✓ **Resource Materials** and additional copies of this form may be found at: www.sfgov.org/CMD.

☎ **For assistance** please contact the Contract Monitoring Division at 415-581-2310.

CMD-12B-101 (03-13)

APPENDIX E

City Requirements

**SAN FRANCISCO PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

CITY AND PORT REQUIREMENTS

Statement of awareness and intention to comply with Sections 12B (Nondiscrimination in Contracts), 12C (Nondiscrimination in Property contracts), 12F (Implementing the MacBride Principles-Northern Ireland), 12I (Tropical hardwood and virgin Redwood Ban), 12J (City Business with Burma Prohibited), 12Q (Health Care Accountability), 4.20 (City Buildings, Equipment, and Vehicles), 39.1 (Purpose and Findings) and 83 (First Source Hiring Program) of the Administrative Code and all Port requirements, including but not limited to those described in Section XI of this Request For Bids (“RFB”).

I _____ by affixing my signature hereto, acknowledge that I have read Administrative Code Sections 12B and C, 12F, 12I, 12J, 12Q, 4.20, 39.1, and all Port requirements in this RFB and 83, and I will comply with the requirements. I am aware that non-compliance with such provisions may void said contract.

Name of Respondents Company

Street Address

_____ City _____ Zip Code

_____ San Francisco Phone Number _____ (or other)

Signature of Bidder or Authorized Representative

Dated: _____

APPENDIX F

**Statement of Ability to Comply
with City and Other Governmental Requirements
and Agreement to Conditions for
Development Opportunity at
295 Terry Francois Boulevard**

Name of Proposer: _____

- 1) The undersigned is a Proposer for this EcoCenter at Heron’s Head Park Lease Opportunity.
- 2) The undersigned has reviewed the applicable Port Commission and other governmental requirements described in the Request for Proposals and the form Lease attached thereto applicable to this EcoCenter at Heron’s Head Park Lease Opportunity (“Governmental Requirements”).
- 3) Proposer has reviewed the Terms and Conditions set forth in Section IX of the Request for Proposals.
- 4) The undersigned has reviewed, understands, and is ready, willing, and able to comply with all Governmental Requirements and agrees to be bound by the Terms and Conditions set forth in Section IX of the Request for Proposals.
- 5) The undersigned are authorized representatives of Respondent.

_____ Title _____

_____ Title _____

_____ Title _____

Date _____