

**SAN FRANCISCO PUBLIC UTILITIES COMMISSION  
REVOCABLE LICENSE**

(Replacing and Superseding Four (4) SFPUC Real Estate Agreements identified in  
Section 2 of this License)  
**(License #P4550)**

**THIS REVOCABLE LICENSE** (this “**License**”) dated for reference purposes only as of \_\_\_\_\_, 2022 (“**Effective Date**”), is made by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“**City**”), acting by and through its Public Utilities Commission (“**SFPUC**”), and CITY OF LOS ALTOS, a California municipal corporation (“**Licensee**”). City and Licensee are sometimes collectively referred to in this License as the “**Parties**” or singularly as a “**Party**.” This License is entered into with reference to the following facts and understandings of the Parties.

**RECITALS**

A. City owns certain real property under the SFPUC’s jurisdiction in the City of Los Altos commonly referred to as the Bay Division Pipeline No. 3 and 4 right of way (“**Right of Way**”).

B. Pursuant to that certain Revocable Permit entered into by and between City and Licensee, dated April 4, 1961 (“**GEN-0215**”), City granted Licensee permission to use a portion of the Right of Way designated as SFPUC Parcel No. 236 for a street extension and a six-foot (6’) sewer line, as shown on drawings prepared by George S. Nolte, Consulting Civil Engineer’s, Inc., Sheet 1 of Job No. 246-60 entitled “Improvement Plan Tract No. 2930 Preliminary Los Altos, California” and dated March of 1961, and attached hereto as **Exhibit B-1**.

C. Pursuant to that certain Revocable Permit entered into by and between the City and Licensee, dated May 21, 1963 (“**GEN-0687**”), City granted Licensee permission to use a portion of the Right of Way designated as SFPUC Parcel Nos. 232A, 233B and 234A for Licensee’s use as a cul-de-sac, storm drain and a ten-foot (10’) fire department access roadway, as depicted in the attached San Francisco Water Department Drawing B-2518, attached hereto as **Exhibit B-2**.

D. Pursuant to that certain Land Use Permit entered into by and between City and Licensee, dated May 9, 1972 (“**GEN -1339**”), City granted Licensee permission to use a portion of the Right of Way, designated as SFPUC Parcels Nos. 234A and 236 for the purpose of street widening and landscaping, as reflected in the drawing attached hereto as **Exhibit B-3**. GEN-0215 together with GEN-0687 and GEN-1339 are collectively referred to as the “**Engineering Permits**”.

E. Pursuant to that certain Land Use Permit entered into by and between the City and Licensee, dated June 12, 1974 (“**Permit No. 3137**”), City granted Licensee permission to use a portion of the Right of Way, designated as SFPUC Parcel Nos. 234-A, 236, and 237 for the construction of landscaping and a bicycle path, including a pedestrian bridge, in accordance with the drawing entitled “Preliminary Landscape Plan,” dated July 11, 1973 (revised March 21, 1974)

prepared by Royston, Hanamoto, Beck & Abey, Landscape Architects ( “**Landscaping Plans**”), and that set of Plans prepared by George Nolte and Associates, drawing Numbers 6070-73, sheets, 2,3,4 and 5, dated May 1974 and attached hereto as **Exhibit B-4** ( “**Bridge Plans**”). The pedestrian bridge shall hereinafter be referred to as the “**Bridge**”.

F. Pursuant to that certain Land Use Permit entered into by and between the City and Licensee, dated February 4, 1987, and effective retroactively as of December 1, 1985 (“**Permit No. 3137B**”), which superseded and revoked Permit No. 3137, City granted Licensee permission to use portions of the Right of Way, being the entirety of SFPUC Parcel No. 233-A, and portions of SFPUC Parcel Nos. 232-A, 234-A, 236 and 237, as depicted on San Francisco Water Department drawing C-1061-1, attached hereto as **Exhibit B-5** for a bicycle path, including the Bridge, and landscaping purposes in accordance with the Landscaping Plans, the Bridge Plans attached hereto as **Exhibit B-4**, and the drawings from the Licensee, dated November 19, 1985, showing added permit area for Licensee, attached hereto as **Exhibit B-6**.

G. Permit No. P3137B was amended by that certain letter from City to Licensee, dated April 22, 2005 ( “**Letter Amendment**”), wherein City, in response to Licensee’s request set forth in that certain letter from Licensee to City dated March 22, 2005 (“**Amendment Request**”), agreed to remove the entirety of Parcel 233-A and portions of Parcels 232-A and 234-A from the permit area governed by Permit No. 3137B, thereby leaving Parcels 236 and 237 as areas permitted for Licensee’s use.

H. City and Permittee now desire to enter into this License to, among other things: (a) add back to the areas permitted for Licensee’s use portions of the Right of Way, designated as the entirety of SFPUC Parcel Nos. 233-A and 233-B, and portions of SFPUC Parcel Nos. 232-A and 234-A, that were removed under the Letter Amendment; and (b) revoke, supersede and replace the Engineering Permits and Permit No. 3137B with the terms contained in this License.

**AGREEMENT**

NOW, THEREFORE, for and in consideration of the foregoing Recitals, which are incorporated into this License by this reference, the mutual covenants and obligations of the Parties contained in this License, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agrees as follows.

**BASIC LICENSE INFORMATION**

The following is a summary of basic license information (“**Basic License Information**”). Each item below shall be deemed to incorporate all of the terms set forth in this License pertaining to such item. In the event of any conflict between the information in this Section and any more specific provision of this License, the more specific provision shall control.

<b>City:</b>	CITY AND COUNTY OF SAN FRANCISCO, acting by and through its Public Utilities Commission
<b>Licensee:</b>	CITY OF LOS ALTOS, a California municipal corporation

<p><b>Combined License Area (Section 1 and Section 5(b)):</b></p>	<p>The Combined License Area shall consist of the Pathway Area and the Maintenance Area.</p>
<p><b>Pathway Area:</b></p>	<p>Approximately 80,000 square feet, consisting of SFPUC Parcel Nos. 236 and 237 in Los Altos, California, as more particularly described in the legal description attached as <b>Exhibit A</b> and as shown in the attached <b>Exhibit B</b>, together with any appurtenances.</p>
<p><b>Maintenance Area (Section 5(b)):</b></p>	<p>Approximately 50,000 square feet, consisting of portions of SFPUC Parcel Nos. 232-A and 234-A and the entirety of SFPUC Parcel Nos. 233-A and 233-B in Los Altos, California, as shown in the attached <b>Exhibit C</b>.</p>
<p><b>Term (Section 2):</b></p>	<p>Month-to-month commencing on the Commencement Date. Actual Commencement Date: _____</p>
<p><b>Pathway Area Permitted Acts (Section 6(a)):</b></p>	<p>The “<b>Permitted Acts</b>” within the Pathway Area include the following:</p> <ul style="list-style-type: none"> <li>(i) Maintaining in compliance with all applicable Laws and Disability and Safety Regulations (as defined in <b>Section 11</b>) four (4) disabled-access curb ramps (“<b>ADA Ramps</b>”);</li> <li>(ii) operating, maintaining, and repairing an existing concrete-paved recreational pathway on the Pathway Area, as shown on <b>Exhibit B</b>;</li> <li>(iii) maintaining vegetation consisting of low-growing shrubs, grass and other plants in accordance with the SFPUC Vegetation Management Policy (<b>Exhibit E</b>);</li> <li>(iv) removing all non-compliant vegetation (“<b>Vegetative Encroachments</b>”) that do not comport with the SFPUC Vegetation Management Policy (<b>Exhibit E</b>) and one (1) light pole, in strict accordance with <b>Section 3</b> (“<b>Encroachment Removal</b>”);</li> <li>(v) maintaining the Bridge;</li> <li>(vi) installing and maintaining signage on the Pathway Area in accordance with <b>Section 5(a)</b>;</li> <li>(vii) the use, maintenance, and repair of the street crossing at Estrellita Way, as shown on <b>Exhibit B-1</b>;</li> </ul>

	<p>(viii) the use, operation, maintenance, and repair of one (1) six- inch (6”) sewer line at Estrellita Way, as shown on <b><u>Exhibit B-1</u></b>;</p> <p>(ix) the use, maintenance, and repair of the street widening at Los Altos Avenue that extends into the Combined License Area, as shown on <b><u>Exhibit B-3</u></b>; and</p> <p>(x) the use, maintenance, and repair of the street crossing and storm drain at Via Del Pozo, as shown on <b><u>Exhibit B-2</u></b>.</p> <p>The improvements to be installed or maintained by Licensee listed as items (i) and (ii) and (v) through (x) above are collectively referred to as the “<b>Permitted Improvements</b>”.</p>
<p><b>Maintenance Area Permitted Acts (Section 5(b)):</b></p>	<p>The “<b>Permitted Acts</b>” within the Maintenance Area include the maintenance of the surface of the parcels owned by City and identified on the attached <b><u>Exhibit C</u></b> (the “<b>Maintenance Area</b>”):</p> <p>(i) the mowing of grass, removal of weeds, and trimming or removal of trees when necessary in accordance with the SFPUC Vegetation Management Policy or at the discretion of the SFPUC Right of Way Manager and, in any event, at least twice each calendar year, and</p> <p>(ii) the regular (at least once every calendar month) removal of trash, debris, and graffiti as reasonably required or necessary to keep the Maintenance Area in a safe, sanitary, and sightly condition and to prevent the existence of a nuisance on the Maintenance Area.</p>
<p><b>Licensee’s Share of Property Taxes:</b></p>	<p>See <b>Section 32</b> [Taxes, Assessments, Licenses, License Fees, and Liens].</p>
<p><b>Notices:</b></p>	<p>See <b>Section 33</b> [Notices].</p>
<p><b>Key Contact for City:</b></p>	<p>SFPUC Real Estate Director</p>
<p><b>Telephone No. and Email:</b></p>	<p>(415) 487-5210  <a href="mailto:RES@sfwater.org">RES@sfwater.org</a></p>
<p><b>Day-to-Day Contact for City:</b></p>	<p>Emily Read, SFPUC Right of Way Manager</p>
<p><b>Telephone No. and Email:</b></p>	<p>(650) 652-3204</p>

	<a href="mailto:Eread@sflower.org">Eread@sflower.org</a>
<b>Key Contact for Licensee:</b>	_____
<b>Telephone No. and Email:</b>	(____) ____-____ _____
<b>Alternate Contact for Licensee:</b>	_____
<b>Telephone No. and Email:</b>	(____) ____-____ _____

City and Licensee agree as follows:

**1. License; Supersession and Revocation.**

(a) **License.** City confers to Licensee a revocable, personal, non-exclusive, and non-possessory privilege to enter upon and use that certain real property owned by City situated in the County of Santa Clara, State of California, as more particularly described in the attached **Exhibit A** and more particularly depicted on **Exhibit B** and **Exhibit C** (together, the “**Combined License Area**”), for the limited purpose and subject to the terms, conditions, and restrictions set forth below. This License gives Licensee a license only and notwithstanding anything to the contrary in this License, it does not constitute a grant by City of any ownership, leasehold, easement, or other property interest or estate whatsoever in any portion of the Combined License Area. Nothing in this License shall be construed as granting or creating any franchise rights pursuant to any federal, state, or local laws.

THE PRIVILEGE GIVEN TO LICENSEE UNDER THIS LICENSE IS EFFECTIVE ONLY INsofar AS THE RIGHTS OF CITY IN THE COMBINED LICENSE AREA ARE CONCERNED, AND LICENSEE SHALL OBTAIN ANY FURTHER PERMISSION NECESSARY BECAUSE OF ANY OTHER EXISTING RIGHTS AFFECTING THE COMBINED LICENSE AREA. WITHOUT LIMITING THE FOREGOING, THIS LICENSE IS BEING ISSUED SUBJECT AND SUBORDINATE TO ALL OF THE TERMS AND CONDITIONS OF THAT CERTAIN DEED (A) DATED AUGUST 4, 1949, AND RECORDED IN BOOK 1921, AT PAGE 268, OF OFFICIAL RECORDS OF SANTA CLARA COUNTY, AND (B) DATED JANUARY 3, 1950 AND RECORDED SEPTEMBER 5, 1950 IN BOOK 2047, AT PAGE 466 OF OFFICIAL RECORDS OF SANTA CLARA COUNTY, AND (C) DATED SEPTEMBER 21, 1950, AND RECORDED NOVEMBER 20, 1950 IN BOOK 2099, AT PAGE 9, OF OFFICIAL RECORDS OF SANTA CLARA COUNTY, AND (D) DATED MAY 16, 1950, AND RECORDED IN BOOK 1994 AT PAGE 182 OF THE OFFICIAL RECORDS OF SANTA CLARA COUNTY, AND (E) DATED MARCH 1, 1950, AND RECORDED MARCH 2, 1950 IN BOOK 1937 AT PAGE 565 IN THE OFFICIAL RECORDS OF SANTA CLARA COUNTY, PURSUANT TO WHICH CITY ACQUIRED ITS INTEREST IN THE COMBINED LICENSE AREA, COPIES OF WHICH ARE ATTACHED TO THIS LICENSE AS **EXHIBIT D** (THE “**DEEDS**”), AND ALL OTHER EXISTING AND FUTURE DOCUMENTS AND

INSTRUMENTS OF RECORD AFFECTING THE COMBINED LICENSE AREA (COLLECTIVELY, WITH THE DEEDS, THE “**RECORDED DOCUMENTS**”). LICENSEE MUST SECURE ALL ADDITIONAL NECESSARY APPROVALS, PERMITS, LICENSES, AND CONSENTS, AND DELIVER ALL NECESSARY NOTICES, BEFORE COMMENCING WORK IN THE COMBINED LICENSE AREA, INCLUDING ANY APPROVALS, PERMITS, LICENSES, CONSENTS, OR NOTICES REQUIRED FROM OR TO THE GRANTORS UNDER THE RECORDED DOCUMENTS. FOR CITY’S BENEFIT, LICENSEE COVENANTS AND AGREES THAT LICENSEE SHALL FULLY COMPLY WITH THE TERMS AND CONDITIONS OF THE RECORDED DOCUMENTS AND ANY OTHER RULES AND REGULATIONS PROMULGATED BY CITY AS THEY APPLY TO ANY WORK TO BE PERFORMED OR FACILITIES TO BE INSTALLED BY LICENSEE ON THE COMBINED LICENSE AREA PURSUANT TO THIS LICENSE, AND CITY SHALL HAVE NO RESPONSIBILITY OR LIABILITY OF ANY KIND WITH RESPECT THERETO. LICENSEE ACKNOWLEDGES AND AGREES THAT NEITHER CITY NOR ANY OF ITS DEPARTMENTS, COMMISSIONS, OFFICERS, DIRECTORS, AND EMPLOYEES, AND ALL PERSONS ACTING BY, THROUGH, OR UNDER EACH OF THEM HAVE MADE, AND CITY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE PRESENT OR FUTURE SUITABILITY OF THE COMBINED LICENSE AREA FOR LICENSEE’S INTENDED WORK OR FACILITIES, THE IMPACT OF ANY TERM OR CONDITION OF THE RECORDED DOCUMENTS ON LICENSEE’S RIGHTS UNDER THIS LICENSE, OR THE ABILITY TO OBTAIN OR DELIVER, OR THE PROCEDURE FOR OBTAINING OR DELIVERING, ANY NECESSARY APPROVALS, LICENSES, PERMITS, CONSENTS OR NOTICES FROM OR TO THE GRANTOR UNDER THE RECORDED DOCUMENTS OR ANY OTHER PARTY WITH RESPECT TO ANY MATTERS CONTAINED IN THIS LICENSE.

(b) **Supersession and Revocation.** Effective as of the Commencement Date (defined in **Section 2** [Term of License] below), this License shall immediately supersede, replace, and revoke the following permits and agreements previously issued to Licensee by City, and each of such instruments shall be deemed to have terminated as of the Commencement Date and have no further force or effect thereafter; provided, however, that any provisions expressly stated to survive under any such permit shall continue; provided, further that such termination shall not nullify or release Licensee of any obligations accruing under any such instrument with respect to periods prior to the Commencement Date:

- (i) the Engineering Permits; and
- (ii) Permit P3137B.

**2. Term of License; Suspension During Emergency or SFPUC Project; Early Termination.**

(a) **Term.** The privilege conferred to Licensee pursuant to this License shall commence on the Actual Commencement Date, as shown in the Basic License Information and shall immediately expire upon written notice from City revoking this License. The Actual Commencement Date is the date on which this License is executed and delivered by City following the SFPUC authorization and approval and the receipt of all fees and insurance certificates required to be provided by this License ( “**Commencement Date**”). City may revoke this License at any time for Good Cause (as defined in **Section 2(c)**) without penalty, liability or expense of any kind

to City, including, any obligation to reimburse Licensee for any improvements installed by Licensee; provided, however that in the event City revokes this License for any reason other than for Good Cause, City will, at the request of Licensee, reimburse Licensee for the cost of any improvements that have been installed by Licensee on the Pathway Area after the Commencement Date with the City's prior written consent, less straight line depreciation for such improvements, assuming a ten (10) year useful life. Notwithstanding the foregoing, City and Licensee hereby acknowledge and agree that City will not and shall have no obligation to reimburse Licensee for any improvements that have been installed: (1) by Licensee without Licensee's prior written consent; (2) by another party; or (3) by Licensee below the surface of the City's parcels or within any public right of way on the City's parcels. Upon termination of this License, Licensee will immediately surrender the Combined License Area in the condition required by this License.

**(b) Suspension during Emergency or SFPUC Project.** In the event that an emergency requires City repairs or construction on or about the License Area ("**Emergency Work**") or City determines to undertake a capital improvement, upgrade, replacement, or repair project ("**SFPUC Project**") within the License Area, City, at its sole option in lieu of revocation of this License, may declare that the Parties' respective rights and obligations pursuant to this License with respect to all or any portion of the License Area will be suspended during the course of any such Emergency Work or SFPUC Project, as the case may be. Accordingly, upon no less than sixty (60) days' prior written notice from City to Licensee, except in the case of an emergency, where City may suspend this License by giving such notice as reasonably practicable under the circumstances, this License will be suspended for the duration of the SFPUC Project or Emergency Work with respect to the License Area, or the portion of the License Area designated by City, until City notifies Licensee that such SFPUC Project or Emergency Work is complete. Upon any receipt of any such City suspension notice, Licensee shall surrender all or the portion of the License Area subject to suspension when and as required by City and promptly coordinate with City to accomplish the removal of any of Licensee's personal property from the License Area subject to such suspension in accordance with Section 14 [Removal or Alteration of facilities or Improvements]. At its discretion, City may fence the portion of the License Area required for the SFPUC Project or Emergency Work. Upon completion of the SFPUC Project or Emergency Work, City will remove any such fencing and restore the surface of the License Area level with adjacent ground, with grass or gravel at the surface, and not to its previous condition, and this License will apply again to the entire License Area. City's rights under this Section are in addition to and cumulative with those described in Section 6(b) [Subject to City Uses] below.

**(c) Early Termination.** If Licensee fails to comply with the terms and conditions of this License and such failure is not cured by Licensee within five (5) business days of City's notice to Licensee specifying such failure, or in the case of a non-compliance that cannot be cured within five (5) business days, Licensee both fails to cure such non-compliance within such five (5)- day period and fails to diligently pursue such cure to completion on or before the date that is thirty (30) days after the City's initial notice of Licensee's failure to comply, such non-compliance shall constitute "**Good Cause**" for City to revoke this License, and this License shall terminate thirty (30) days after City's notice of termination to Licensee, and if City directs Licensee (at City's sole discretion) to remove all equipment and installations from the License Area, then Licensee shall forthwith remove such equipment and installations at Licensee's cost and shall restore the License Area to its former condition as of the Effective Date of this License.

3. **Encroachment Removal.** Licensee's compliance with this Section is partial consideration for City's issuance of this License.

(a) **Initial Removal of Vegetative Encroachments; Communications.**

(i) Within two hundred seventy (270) days of the Commencement Date (“**Initial Removal Period**”), Licensee shall remove, at its sole cost, Vegetative Encroachments as follows: (A) on the northern portion of the Pathway Area, Licensee shall remove all Vegetative Encroachments from the ground and airspace within fifteen feet (15') from the edge of SFPUC Bay Division Pipeline No. 3 and (B) on the southern portion of the Pathway Area, Licensee shall remove all Vegetative Encroachments from the ground and airspace within fifteen feet (15') from the edge of the SFPUC Bay Division Pipeline No. 4 (“**Initial Removal**”). Within the first thirty (30) days of the Initial Removal Period, City and Licensee will meet to review the trees on the License Area and designate any trees that do not constitute Vegetative Encroachments to ensure these trees are not removed from the License Area; provided, however, that City reserves the right to make the final determination regarding which trees pose unacceptable risks to the SFPUC facilities and must be removed.

(ii) In accordance with Section 3(g) below, Licensee is responsible for all communications with third parties, including members of the public, regarding the removal of the Vegetative Encroachments, including, without limitation, any pruning and tree removal.

(iii) Licensee shall remove other Vegetative Encroachments to conform to the requirements of **Section 3 (h)**.

(b) **Phase Two Removal of Vegetative Encroachments.** Within three hundred sixty-five (365) days of the Commencement Date (“**Phase Two Removal Period**”), Licensee shall remove, at its sole cost, Vegetative Encroachments on the southern portion of the Pathway Area from the ground and airspace within twenty feet (20') from the edge of the SFPUC Day Division Pipeline No. 4. In accordance with Section 3(g) below, Licensee is responsible for all communications with third parties, including members of the public, regarding the removal of the Vegetative Encroachments, including, without limitation, any pruning and tree removal.

(c) **Continuing Vegetative Encroachments Removal Obligations.** Following the Phase Two Removal Period, Licensee shall remove Vegetative Encroachments every other year, or annually at the SFPUC Right of Way Manager's direction, as follows: (i) on the northern portion of the Combined License Area, as depicted on **Exhibit B**, Licensee shall remove all Vegetative Encroachments from the ground and airspace within fifteen feet (15') from the edge of SFPUC Bay Division Pipeline No. 3 and (ii) on the southern portion of the Combined License Area, as depicted on **Exhibit B**, Licensee shall remove all Vegetative Encroachments from the ground and airspace within twenty feet (20') from the edge of the SFPUC Bay Division Pipeline No. 4. Licensee shall keep the Combined License Area clear of regrowth of foliage as is necessary to retain vertical clearance above SFPUC



facilities. Licensee shall remove all young seedlings, regrowth, and shrubs as the SFPUC's Right of Way directs as necessary to prevent future Vegetative Encroachments.

- (d) **Annual Meetings**. Licensee shall meet with the SFPUC Right of Way Manager annually, promptly upon the SFPUC's request, to inspect the Combined License Area and expeditiously resolve any issues regarding Licensee's compliance with this Section.
- (e) **Light Pole Removal**. Licensee shall remove the light pole located at the west side of Estrellita Way within the Pathway Area within sixty (60) days of the Commencement Date.
- (f) **Other Encroachment Removal**. Licensee shall cause all Encroachments (as defined below) to be removed in accordance with the SFPUC's Encroachment Policy (attached as **Exhibit F**). This obligation applies to Encroachments discovered by, or reported to, Licensee and City. Licensee shall enforce Laws (as defined below) related to Encroachments within the Combined License Area. "**Encroachments**" are improvements (as defined in Section 8 [Restrictions on Use]) or vegetation within the Combined License Area not approved by City.
- (g) **Communications**. During the term of this License, Licensee shall inform property owners adjoining the Combined License Area, and respond to third party inquiries, if any, of Licensee's efforts to remove the Vegetative Encroachments and/or Encroachments from the Combined License Area. The SFPUC will inform Licensee by written notice of any known third-party violations of the SFPUC's Encroachment Policy, Vegetation Management Policy, or related guidelines (and risks resulting from such violations) occurring in and on the Combined License Area. Licensee to sign reasonable requests from City for Licensee to co-sign SFPUC correspondence to applicable third parties regarding any such violations.
- (h) **Vegetative Encroachment Removal Standards**. Licensee shall retain, at its cost, an International Society of Arboriculture Certified Arborist to oversee removal of Vegetative Encroachments. Licensee shall conduct all Vegetative Encroachment removal in accordance with applicable Laws (as defined below), including restrictions regarding nesting birds. Consistent with the Migratory Birds Treaty Act, 16 U.S.C. §§ 703–712, trees will be removed and, or pruned outside of nesting bird season which extends from February 15th through August 15th; or, if removal and or trimming is proposed during the nesting season, Licensee will, at its cost, retain a biologist to inspect the trees in advance of work and, if active nests are present, work will be delayed until nestlings have fledged.

4. **Permitted Encroachments**. City will allow Licensee to maintain the following existing encroachments (together, "**Permitted Encroachments**") installed by Licensee within the Pathway Area in their current locations on the Pathway Area:

- (a) three (3) wooden trail signs;
- (b) five (5) wooden benches;
- (c) three (3) garbage cans;

- (d) two (2) bicycle safety signs;
- (e) one (1) water fountain;
- (f) one (1) backflow preventor; and
- (g) one (1) concrete bench.

Licensee acknowledges that City may require Licensee to remove any or all Permitted Encroachments at the SFPUC's sole and absolute discretion. If City requires the removal of any or all Permitted Encroachments from the Pathway Area, Licensee shall remove any or all such Permitted Encroachments within thirty (30) days of City's notice to remove, except in an emergency when Licensee shall remove all such Permitted Encroachments as soon as possible. At its sole discretion, City may elect to remove any or all of the Permitted Encroachments itself, at Licensee's sole cost, by notifying Licensee of such fact, in which event Licensee shall pay City the cost of such removal within thirty (30) days after receipt of City's invoice. Licensee may use the Permitted Encroachments until they reach the end of their useful lives, as determined by City in its sole discretion, at which point, the SFPUC may require removal or relocation to a location approved by the City.

## 5. **Consideration.**

(a) **Educational Signage.** As partial consideration for City entering into this License, Licensee shall install and maintain, at its sole cost, at least one (1) educational sign on the Pathway Area in accordance with this Section. Licensee shall work with SFPUC staff to install one (1) sign within the Pathway Area within one-hundred eighty (180) days of the Commencement Date at a location to be approved by the SFPUC Land Engineering Division and the SFPUC Right of Way Manager. The size and content of any such sign shall be subject to the SFPUC's approval, in its sole discretion.

(b) **Maintenance Area Obligations.** As additional partial consideration for City entering into this License, Licensee will maintain the surface of the parcels comprising the Maintenance Area, located adjacent to the Pathway Area. As used in this **Section 5(b)**, the terms "maintain," "maintenance," and "maintenance obligations," mean that, with respect to the Maintenance Area, Licensee shall be solely responsible to (i) mow grass, remove weeds, and trim or remove trees when necessary in accordance with the SFPUC Vegetation Management Policy or at the discretion of the SFPUC Right of Way Manager and, in any event, at least twice each calendar year, and (ii) regularly (at least once every calendar month) remove trash, debris, and graffiti as reasonably required or necessary to keep the Maintenance Area in a safe, sanitary, and slightly condition and to prevent the existence of a nuisance on the Maintenance Area.

In the course of maintaining the Maintenance Area, Licensee shall not do anything in, on, under, or about the Maintenance Area that could cause damage to or interference with any pipelines or other property located in, on, under, or about the Maintenance Area. Licensee shall use, and shall cause its employees, contractors, and agents to use, due care at all times to avoid any damage or harm to City's water pipelines or other property and natural attributes of the Maintenance Area and to minimize slope erosion. Licensee shall not perform any excavation work without City's prior written approval, which City may withhold at its sole discretion. Under no

circumstances shall Licensee damage, harm, or remove any rare, threatened, or endangered species that are present on or about the Maintenance Area.

Licensee's obligations to maintain the Maintenance Area shall continue until the earlier of the following dates: (1) the date Licensee receives City's notice terminating all of Licensee's then remaining maintenance obligations pursuant to this Section 5 (b) or (2) the date that this License is terminated. Licensee shall notify City in writing not less than five (5) days before performing any maintenance work on the Maintenance Area, except in the case of an emergency wherein Licensee shall notify City telephonically and in writing as soon as reasonably possible. For the purposes of the foregoing notice obligation, "maintenance work" shall not be deemed to include the mowing, or the weed, trash, debris, and graffiti removal regularly performed by Licensee pursuant to this Section. Notwithstanding the foregoing, at all times, City shall retain all of its property rights with respect to the Maintenance Area, including, without limitation, the right at all relevant times to enter upon, or over the Maintenance Area. If, at any time prior to the termination of Licensee's maintenance obligations pursuant to this **Section 5(b)**, City notifies Licensee of deficiencies or failures in Licensee's performance of such obligations, Licensee shall promptly remedy or cure such deficiencies or failures.

## **6. Use of Combined License Area.**

(a) **Permitted Acts.** Licensee may enter and use the Combined License Area for the sole purpose of performing the Permitted Acts (as defined in the Basic License Information) and in strict accordance with **Section 7(a)** [Approval of Plans and Specifications] below, and for no other purpose whatsoever. Except as specifically permitted by this License or otherwise approved by City pursuant to the terms of this License, Licensee shall not permit, construct, maintain, or allow any other improvements, structures, or paved areas on, across, within, over, or under the Combined License Area other than the Permitted Improvements and the Permitted Encroachments allowed on the Pathway Area.

(b) **Subject to City Uses.** Licensee is aware that the Combined License Area constitutes a portion of City's regional water pipeline delivery system. Notwithstanding anything to the contrary in this License, any and all of Licensee's activities pursuant to this License shall be subject and subordinate at all times to City's existing and future use of the Combined License Area for municipal and other purposes. City shall in no way be liable for any damage or destruction to Licensee's property and/or improvements resulting from the condition of the Combined License Area or the SFPUC facilities, from any pipeline break or from any pipeline repair or maintenance activities. At City's request, Licensee shall immediately remove any of Licensee's property or improvements from the Combined License Area to allow City access to the SFPUC facilities. If City deems it necessary, at City's sole discretion, City may remove any such property or improvements and City shall not be responsible for restoring or returning the same to its prior condition.

**7. Installation and Maintenance of Facilities.** Licensee may perform the Permitted Acts described in **Section 6(a)** [Permitted Acts] above and shall install certain facilities on the Pathway Area consisting of the signage required under **Section 5 (a)** [Educational Signage]. Licensee shall also maintain the ADA Ramps authorized by City under the consent letter issued by City prior to the Commencement Date (the "**Consent Letter**"). The ADA Ramps and signage to be installed on the Pathway Area shall hereinafter collectively be referred to as the "**Facilities**" and shall be installed only upon satisfaction of the following conditions, which are for City's sole benefit:

(a) **Approval of Plans and Specifications.** Licensee shall install and maintain the permitted Facilities in accordance with plans and specifications (including drawings) approved in advance and in writing by the SFPUC (“**Approved Plans**”). The Approved Plans may be revised or amended only with the SFPUC’s prior written approval after the SFPUC’s Bureau of Environmental Management has determined that no further environmental review is required by CEQA as a result of any such revision or amendment.

(b) **Energy Service and Related Facilities.** If Licensee seeks electrical service for use in the Combined License Area, or for any licensed Facilities, Licensee shall contact the Interconnection Services Department in the Power Enterprise of the SFPUC to arrange for service. Licensee shall purchase all electricity necessary for its operations at the Combined License Area from the SFPUC, at the SFPUC’s standard rates charged to third parties, unless the SFPUC determines, in its sole judgment, that it is not feasible to provide such service to the Combined License Area. The SFPUC is the provider of electric services to City property, and the SFPUC’s Interconnection Services Department coordinates with Pacific Gas and Electric Company and others to implement this Section. Except as provided above with respect to any electricity services provided by the SFPUC, Licensee shall make arrangements and pay for all utilities and services furnished to the Combined License Area, including gas, electricity, water, sewage, telephone, and trash collection services, and for all deposits, connection, and installation charges.

Except as otherwise provided in this License, the SFPUC has no responsibility or liability of any kind with respect to any utilities that may be on or about the Combined License Area. Licensee has the sole responsibility to locate any utility facilities within the Combined License Area and protect them from damage resulting from Licensee’s use of the Combined License Area.

(c) **Permits, Licenses, and Approvals.** Before beginning any permitted improvement or alteration work in the Combined License Area, Licensee shall obtain any and all permits, licenses, and approvals (collectively, “**Approvals**”) of all regulatory agencies and other third parties that are required for Licensee to commence, complete, and maintain the permitted work. Promptly upon receipt of such Approvals, Licensee shall deliver copies of them to the SFPUC. No approval by the SFPUC for purposes of Licensee’s work under this License shall be deemed to constitute the approval of any federal, state, or local regulatory authority with jurisdiction, and nothing in this License shall limit Licensee’s obligation to obtain all such regulatory Approvals, at Licensee’s sole cost.

(d) **Limits of City’s or SFPUC’s Consent.** City’s or the SFPUC’s consent to or approval of any improvements, equipment, or fixtures shall not relieve Licensee or its engineers, architects, or contractors from any liability for negligence, errors, or omissions associated with the design and construction of any such improvements, equipment, or fixtures. In no event shall the SFPUC’s approval of plans or specifications be deemed to constitute a representation or warranty by City concerning the suitability of the improvements, equipment, or fixtures for Licensee’s purposes or that the work called for in the plans and specifications complies with applicable building codes or other applicable Laws (defined in **Section 11** [Compliance with Laws] below), or industry standards, nor shall such approval release Licensee from its obligation to supply plans and specifications that conform to applicable building codes, other applicable Laws, and industry standards.

(e) **Exercise of Due Care.** Licensee shall use, and shall cause its Agents (defined in **Section 21** [Indemnity] below) to use, due care at all times to avoid any damage or harm to City’s

water pipelines, facilities, or other property and to native vegetation and natural attributes of the Combined License Area and to minimize slope erosion. Licensee shall not disturb the surface of the Combined License Area or perform any excavation work without City's prior written approval, which City may withhold at its sole discretion. City may condition and/or oversee any permitted excavation work. At its own expense, Licensee shall mark the location of City's water pipelines or other facilities within the Combined License Area and shall not use any pick, plow, or other sharp tool to remove the two feet of soil around the pipelines or other facilities, provided that Licensee may use hand shovels or pneumatic shovels in compliance with all other terms and conditions of this License. Licensee shall immediately inform City of any actual or potential damage to the coating of the pipeline, and any such damage shall be promptly repaired by Licensee, at its own expense, to City's satisfaction prior to backfilling; provided, at its sole discretion, City may elect to make any necessary repairs itself, at Licensee's sole cost, by notifying Licensee of such fact. Upon completion of the repairs, City shall send to Licensee a bill therefor, which Licensee shall pay within thirty (30) days following receipt. Under no circumstances shall Licensee damage, harm, or take any rare, threatened, or endangered species present on or about the Combined License Area.

**(f) Cooperation with Public Utilities Commission.** Licensee and its Agents shall work closely with City personnel to minimize any potential disturbance (even if temporary) of the natural features of the Combined License Area and to avoid disruption (even if temporary) of City facilities, in, under, on, or about the Combined License Area and City uses of such facilities.

**(g) Heavy Equipment.** Licensee shall not use any heavy construction equipment over or about City's pipelines, except as otherwise expressly allowed in **Section 8(i)** [Heavy Equipment and Vehicles] below.

**(h) Work Schedule.** Licensee must begin installation work, if at all, within ninety (90) days after the commencement of the term of this License. At least ten (10) business days prior to the commencement of any improvement or alteration work on the Combined License Area, Licensee shall notify City's Construction Inspector ("**Construction Inspector**"), at (650) 871-3015, of the date such work shall commence and the intended construction schedule. Notification must also be given to Underground Service Alert at least two (2) days prior to start of work. Notwithstanding the approval of such schedule by the SFPUC, the Construction Inspector shall have the right to require Licensee to adjust such schedule from time to time. All work must be performed during regular working hours (Monday through Friday) between 8:00 a.m. and 4:30 p.m., exclusive of City holidays. Any work performed during any other time or day must be preapproved by the SFPUC at least ten (10) business days prior to commencing such work. In connection with such approval, City may charge Licensee additional inspection fees payable prior to the SFPUC's approval of the request. Notwithstanding the work hours set forth above, Licensee shall comply with any applicable local ordinance that imposes later start times and/or earlier cessation times for construction activities. Licensee shall complete all work and restoration no later than (365) days after the commencement of the term of this License.

**(i) Restoration of License Area.** Immediately following completion of any work permitted under this License, Licensee shall remove all debris and any excess dirt and shall restore the Combined License Area to its condition immediately prior to such work, to City's satisfaction. Licensee shall restore any damage caused to existing roads and restore excavated areas with new vegetation (including irrigation and maintenance until established) and erosion control netting, all

as requested by City, and shall comply with all applicable regulations of the regulatory agency with jurisdiction.

(j) **Pipeline Depth/Installation of Above-Ground Markers.** Before commencing any excavation work in the Combined License Area, Licensee shall measure the depth of City's pipelines, if any, located in the Combined License Area by potholing and forward such information to City. Any potholing authorized by this License shall be subject to the requirements of **Section 7(p)** [Potholing] below. Upon completion of work, Licensee shall promptly notify City in writing of the depth of City's pipeline and related facilities in the Combined License Area. Licensee shall install above-ground markers identifying the location of any underground facilities installed pursuant to this License. The location, type, and installation of markers and identifying information on the markers shall be subject to the SFPUC's prior written approval.

(k) **As-Built Drawings/Reports.** Promptly upon completion of the installation of the Facilities, Licensee shall furnish the SFPUC with two (2) complete copies of final as-built drawings for the Facilities, which drawings shall include sufficient detail so as to allow City to precisely locate the Facilities. If Licensee or any of its Agents or consultants prepares any environmental, seismic, geophysical, or other written report relating to the Combined License Area and/or any work performed on the Combined License Area, Licensee shall furnish to City a complete copy of such report, including any schedules, exhibits, and maps, promptly upon completion of the same.

(l) **Responsibility for Maintenance of Facilities.** Licensee shall be solely responsible for repairing and maintaining all Facilities placed in or on the Combined License Area pursuant to this License or the Consent Letter in good and safe condition, and City shall have no duty whatsoever for any repair or maintenance of the Combined License Area or any such Facilities. Licensee shall notify City in writing not less than five (5) days before performing any repair or maintenance work in the Combined License Area, except in the case of an emergency when Licensee shall notify City telephonically and in writing as soon as reasonably possible.

(m) **Revocability.** The installation of the Facilities to the Combined License Area, regardless of cost, shall not in any way whatsoever limit City's right to revoke this License pursuant to its terms or any of City's other rights under this License.

(n) **Contractors.** Licensee shall not accept and release its contractor for work authorized or required by this License before securing the SFPUC's written approval.

(o) **Cathodic and Other Protection.** City may adopt from time to time such rules and regulations with regard to Licensee's Facilities and operations under this License as City may determine are necessary or appropriate, at City's sole discretion, to safeguard against corrosion of, or other damage to, City's pipelines and related facilities. Licensee shall immediately comply with all such rules and regulations upon receipt of a copy of such rules and regulations.

(p) **Potholing.** Any potholing authorized by this License shall be subject to the direction of City's Construction Inspector. Potholing using the soft dig method (vacuum soil extraction system) is preferred. If Licensee wishes to use any other mechanical method such as digging with a backhoe, Licensee must submit a written request to the SFPUC at least five (5) business days prior to commencing such work and obtain the SFPUC's prior written consent.

Notwithstanding the foregoing, the last two feet (2') above the top of the pipe must be dug manually, without the use of any machines.

**8. Restrictions on Use.** The following uses (by way of example only) of the Combined License Area by Licensee, or any other person claiming by or through Licensee, are inconsistent with the limited purpose of this License and are strictly prohibited as provided below:

(a) **Improvements.** Except as otherwise expressly provided in this License, Licensee shall not construct or place any temporary or permanent structures or improvements in, on, under, or about the Combined License Area, nor shall Licensee make any alterations or additions to any existing structures or improvements on the Combined License Area, unless Licensee first obtains the SFPUC's prior written consent, which the SFPUC may give or withhold at its sole and absolute discretion. For purposes of this License, the term "**improvements**" includes asphalt, concrete, and cementitious driveways, sidewalks, and parking areas, shacks, storage facilities, and fences.

(b) **Trees and Other Plantings.** Licensee shall not plant any trees or other vegetation in or on the Combined License Area, except as otherwise expressly provided in this License and except in accordance with detailed plans consistent with the SFPUC's Vegetation Management Policy (attached as **Exhibit E**), which may be amended from time to time and as approved by the SFPUC in writing in advance.

(c) **Dumping.** Licensee shall not cause or permit the dumping or other disposal in, on, under, or about the Combined License Area of landfill, refuse, Hazardous Material (defined in **subsection (d)** [Hazardous Material] below), or any other materials, including materials that are unsightly or could pose a hazard to the human health or safety, native vegetation or wildlife, or the environment.

(d) **Hazardous Material.** Licensee shall not cause, nor shall Licensee allow any of its Agents or Invitees (defined in **Section 21** [Indemnity] below) to cause, any Hazardous Material to be brought upon, kept, used, stored, generated, released, or disposed of in, on, under, or about the Combined License Area, or transported to, from, or over the Combined License Area. Licensee shall immediately notify City when Licensee learns of, or has reason to believe that, a release of Hazardous Material has occurred in, on, under, or about any part of the Combined License Area. Licensee shall further comply with all applicable Laws requiring notice of such releases or threatened releases to governmental agencies, and shall take all action necessary or desirable to mitigate the release or minimize the spread of contamination. If Licensee or its Agents or Invitees cause a release of Hazardous Material, Licensee shall promptly return the Combined License Area to the condition immediately prior to the release, without cost to City, in accordance with all Laws, and using the highest and best technology available. In connection with such remedial action, Licensee shall afford City a full opportunity to participate in any discussion or negotiations with governmental agencies and environmental consultants regarding any settlement agreement, cleanup or abatement agreement, consent decree, or other compromise proceeding involving Hazardous Material, and any other abatement or cleanup plan, strategy, and procedure. For purposes of this License, "**Hazardous Material**" means material that, because of its quantity, concentration, or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state, or local governmental authority to pose a present or potential hazard to public health, welfare, or the environment. Hazardous Material includes the following: any material or substance defined as a "hazardous substance, pollutant or contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended,

42 U.S.C. Sections 9601 et seq., or pursuant to Section 25316 of the California Health & Safety Code or any other federal, state, or local Law; a “hazardous waste” listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the Combined License Area or are naturally occurring substances in the Combined License Area; and any petroleum, including crude oil or any crude-oil fraction, natural gas, or natural gas liquids, provided, the foregoing shall not prohibit Licensee from traversing to, from, and across the Combined License Area in standard motor vehicles that do not exceed the weight limitations set forth below. The term “**release**” or “**threatened release**” when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under, or about the Combined License Area. Notwithstanding any contrary provision contained in this License, Licensee will not be responsible for any release of Hazardous Materials to the extent caused by any act or omission of the City.

(e) **Nuisances.** Licensee shall not conduct any activities in, on, under, or about the Combined License Area that constitute waste, nuisance, or unreasonable annoyance (including emission of objectionable odors, noises, or lights) to City, to the owners or occupants of neighboring property, or to the public, or that constitute waste or nuisance per se.

(f) **Damage.** Licensee shall not do anything in, on, under, or about the Combined License Area that could cause damage to or interference with any pipelines, facilities, or other property located in, on, under, or about the Combined License Area. Licensee will compensate City for any and all damage caused to the Combined License Area and City facilities resulting from the activities of Licensee and its Agents and Invitees, including damage resulting from defective work.

(g) **Use of Adjoining Land.** Licensee acknowledges that the privilege given under this License shall be limited strictly to the Combined License Area. Licensee shall not traverse over or otherwise use any adjoining lands of City.

(h) **Ponding; Water Courses.** Licensee shall not cause any ponding on the Combined License Area or any flooding on adjacent land. Licensee shall not engage in any activity that causes any change, disturbance, fill, alteration, or impairment to the bed, bank, or channel of any natural water course, wetland, or other body of water on, in, under, or about the Combined License Area, nor shall Licensee engage in any activity that could pollute or degrade any surface or subsurface waters or result in the diminution or drainage of such waters.

(i) **Heavy Equipment and Vehicles.** To prevent damage to City’s underground pipelines, Licensee’s use of vehicles and equipment within twenty feet (20’) of each side of the centerline of any City pipeline (measured on the surface) shall be subject to the following restrictions:

(i) The depth of soil cover over the tops of City’s pipelines must be at least three feet (3’) for steel cylinder pipe and four feet (4’) for reinforced pre-stressed concrete cylinder pipe to accommodate the loading defined in **subsection (ii)** below. If any equipment with axle loading exceeds the loads stated in **subsection (ii)** below or if the depth of soil cover is less than stated above, Licensee shall submit to the SFPUC for review and approval, at the SFPUC’s sole discretion, engineering calculations prepared by a licensed Professional Engineer licensed in California showing that City’s pipelines will not be adversely affected by Licensee’s proposed



activities. If City's pipelines may be adversely affected, Licensee shall submit remedial measures for City's approval to ensure that no adverse effect will occur.

(ii) The effects of vehicle and equipment loads to the pipeline must not exceed the effects of the "AASHTO Standard H-10 Loading." H-10 loading is defined as loading caused by a two-axle truck with a gross weight of ten tons (20,000 lbs.), axles fourteen feet (14') apart, and rear axle carrying eight tons (16,000 lbs.). Licensee shall be responsible for providing the SFPUC adequate evidence that its equipment and vehicles meet the foregoing requirements.

(iii) Licensee shall not use vibrating compaction equipment without the SFPUC's prior written approval, which approval may be given or withheld at the SFPUC's sole discretion.

(iv) If the depth of the soil cover over the pipeline (determined by potholing or other proof procedure) is less than the minimum stated in **subsection (i)** above, unless an alternate method is approved by the SFPUC in writing, all excavation and grading over the pipeline shall be performed manually. For any machinery or equipment excavation and grading over and/or within twenty feet (20') of each side of the centerline of the pipeline (measured on the surface), Licensee shall submit a written proposal together with all supporting calculations and data to the SFPUC for review and approval. In any case, the two feet (2') of soil around the pipeline shall be removed manually or by other methods approved by the SFPUC with due care as provided in **Section 7(e)** [Exercise of Due Care] above.

**9. License Fee(s).** Without limiting its right to revoke this License or any of its other rights under this License, at any time, upon not less than thirty (30) days' written notice to Licensee, City may charge a use fee for the privileges granted by this License if City establishes a general policy for charging fees for the use(s) permitted by this License, and City may increase such fee from time to time in accordance with such policy.

**10. Required Insurance Coverages.** Licensee's compliance with the provisions of this **Section 10** shall in no way relieve or decrease Licensee's indemnification or other obligations under this License. Licensee must maintain in force for the use of the Combined License Area, during the full term of this License, insurance in the amounts and coverages listed below. In addition, Licensee shall cause each Agent (defined in **Section 21** [Indemnity] below) performing work on the Combined License Area to procure and keep in effect during the course of such work appropriate amounts of insurance and add City as additional insureds for those respective policies.

(a) Commercial General Liability Insurance with limits not less than \$3,000,000 each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Independent Contractors, Explosion, Collapse, and Underground (XCU), Broad Form Property Damage and Products, and Completed Operations.

(b) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned, and Hired auto coverage, as applicable.

(c) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness.

**(d) Additional Insured Endorsements.**

(i) The Commercial General Liability policy must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(ii) The Commercial Automobile Liability Insurance policy must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

**(e) Waiver of Subrogation Endorsements.** The Workers' Compensation policy(ies) and all Liability Policies referenced above shall be endorsed with a waiver of subrogation in favor of City for all work performed by Licensee or its Agents.

**(f) Primary Insurance Endorsements.**

(i) The Commercial General Liability policy shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this License, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

(ii) The Commercial Automobile Liability Insurance policy shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this License, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

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

**(g) Other Insurance Requirements.**

(i) Thirty (30) days' advance written notice shall be provided to City of cancellation, intended non-renewal, or reduction in coverages, except for non-payment for which no less than ten (10) days' notice shall be provided to City. Notices shall be sent to the City address set forth in Section 31 [Notices].

(ii) Should any of the required insurance be provided under a claims-made form, Licensee shall maintain such coverage continuously throughout the term of this License and, without lapse, for a period of three years beyond the expiration of this License, to the effect that, should occurrences during the License term give rise to claims made after expiration of the License, such claims shall be covered by such claims-made policies.

(iii) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

(iv) Should any required insurance lapse during the term of this License, requests for payments originating after such lapse shall not be processed until City receives satisfactory evidence of reinstated coverage as required by this License, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option, terminate this License effective on the date of such lapse of insurance.

(v) Prior to the Commencement Date of this License, Licensee shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Licensee and its contractors shall submit or cause their respective insurance brokers to submit requested information through the Exigis insurance verification program designated by City or any successor program used by City for verification of Licensee and contractor insurance coverage. Approval of the insurance by City shall not relieve or decrease Licensee's liability hereunder. If Licensee shall fail to procure such insurance, or to deliver such policies or certificates, at its option, City may procure the same for the account of Licensee, and Licensee shall reimburse City for any costs so paid by City within five (5) business days after delivery to Licensee of bills therefor.

(vi) If Licensee will use any subcontractor(s) to perform the Permitted Acts, Licensee shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees, and the Licensee as additional insureds.

(vii) Upon City's request, Licensee and City shall periodically review the limits and types of insurance carried pursuant to this Section. If the general commercial practice in the City and County of San Francisco is to carry liability insurance in an amount or coverage materially greater than the amount or coverage then being carried by Licensee for risks comparable to those associated with the Combined License Area, then, at its sole discretion, City may require Licensee to increase the amounts or coverage carried by Licensee hereunder to conform to such general commercial practice.

**(h) Self-Insurance.**

Licensee shall have the right to self-insure with respect to any of the insurance requirements required under this License, to the extent permitted by applicable law. If Licensee elects to self-insure with respect to any of the insurance requirements required under this License, before the Commencement Date and upon written request by the SFPUC, within thirty (30) days of the commencement of each year thereafter, Licensee shall submit to the SFPUC a certificate of self-insurance signed by a duly authorized representative of Licensee, such certificate evidencing that Licensee's self-insurance program is adequately funded, in full force and effect and in compliance with and subject to all the terms, agreements, covenants, conditions and provisions of this License. If Licensee elects to self-insure, Licensee shall give City prompt written notice of any significant change in or the depletion of its self-insurance fund. Notwithstanding the foregoing, Licensee is also responsible for causing any contractors, subcontractors, and/or Agents to maintain commercially reasonable insurance coverages and coverage limits as required under this License.

Any deductibles or self-insured retentions must be declared. All deductibles and self-insured retentions shall be paid by Licensee.

With respect to any claim, loss, or liability that would have been covered by the insurance policies (including the status as an “additional insured” thereunder of City, the SFPUC, and their respective Agents and Employees) required by this License to be maintained by Licensee but within the self-insured retention or deductible amount, Licensee shall cover such claim, loss, or liability on the same basis as the insurance arrangements or deductibles on such insurance policies, including such insurance carrier responsibility to protect City, the SFPUC, and their respective Agents and Employees as an “additional insured.”

#### **11. Compliance with Laws.**

(a) At its expense, Licensee shall conduct and cause to be conducted all activities on the Combined License Area permitted by this License in a safe and reasonable manner and in compliance with all laws, statutes, ordinances, rules, regulations, policies, orders, edicts, and the like (including, without limitation, the Americans with Disabilities Act (“**ADA**”) codified at Title 42 U. S.C. 12-101 and the regulations issued thereunder, and any other applicable disability access ordinances, laws and regulations, fire safety laws, ordinances or regulations collectively the “**Disability and Safety Regulations**”) (collectively, “**Laws**”) of any governmental or other regulatory entity with jurisdiction and all covenants, restrictions, and provisions of record, whether presently in effect or subsequently adopted and whether or not in the contemplation of the parties.

(b) Licensee shall be responsible for causing all improvements and alterations installed by or on behalf of Licensee (including, without limitation, the Facilities and those improvements and alterations that predate this License) to be installed and maintained, in compliance with all Disability and Safety Regulations, and Licensee shall indemnify, defend, and hold City harmless from and against any and all claims or causes of action asserting (i) that any improvements or alterations installed by or on behalf of Licensee, regardless of whether such improvements or alterations predate this License, have caused the Combined License Area to be in violation of any Disability and Safety Regulations, or (ii) a cause of action or claim of violation of any applicable Disability and Safety Regulations resulting from or relating to any improvements or alterations undertaken by Licensee or on behalf of Licensee. Licensee’s obligations under this Section shall survive any revocation of this License.

(c) In the event Licensee receives a notice from any governmental agency or is otherwise made aware that any improvement or alteration on the Combined License Area, including, without limitation, the Bridge and the ADA Ramps, is in violation of any Disability and Safety Regulations, Licensee shall immediately inform City and provide City a copy of such notice or documents informing Licensee of such violation. Licensee shall, at its sole cost and expense, and without cost to City, address any such violations in accordance with such notice and shall keep the City abreast of such negotiations and obtain the City’s consent prior to performing any necessary repairs.

(d) At its sole expense, Licensee shall procure and maintain in force at all times during its use of the Combined License Area any and all business and other licenses or approvals necessary to conduct the activities allowed by this License.

(e) City is entering into this License in its capacity as a property owner with a proprietary interest in the Combined License Area and not as a regulatory agency with police powers. No approval by City for purposes of this License shall be deemed to constitute approval of any federal, state, City, or other local regulatory authority with jurisdiction, and nothing in this

License shall limit Licensee's obligation to obtain all such regulatory approvals at Licensee's sole cost, or limit in any way City's exercise of its police powers.

**12. Covenant to Maintain License Area.** Throughout the term of this License, at its sole cost, Licensee shall maintain the Combined License Area, including, without limitation, the Bridge and other Permitted Improvements, at all times in a good, clean, safe, secure, sanitary, and sightly condition, so far as the Combined License Area may be affected by Licensee's activities under this License.

**13. Monuments.**

(a) By its execution and delivery of this License, Licensee acknowledges that the monuments shown on the attached **Exhibit B**, if any, are in place and in good condition. During the installation of any permitted Facilities or alterations of, the Combined License Area pursuant to this License and at all times during Licensee's use of the Combined License Area, Licensee shall protect and safeguard City's monuments. Licensee shall promptly notify City if Licensee becomes aware of any change in the condition of City's monuments, regardless of the cause of such change.

(b) If Licensee damages a monument necessitating resurvey, repair, or replacement, as determined by City at its sole discretion, Licensee shall survey, file a land surveyor's map in the Official Records of the County of Santa Clara, and install a replacement monument within thirty (30) days of completion of work authorized under this License, all at Licensee's expense and to City's satisfaction. A recorded surveyor's map shall be furnished by Licensee to the SFPUC for its records.

(c) During the term of this License, City may replace missing monuments or install new monuments. When City replaces missing monuments or installs new monuments, City shall give Licensee written notice of such replacement or installation. Upon deposit of such notice in the U.S. mail by City, postage prepaid, Licensee shall assume the protection and replacement responsibilities set forth in this License.

(d) Notwithstanding any contrary provision contained in this License, Licensee will not be responsible for any damage, destruction or displacement of monuments caused by City's own acts or omissions.

**14. Removal or Alteration of Facilities or Improvements.** Without limiting City's rights under this License, at City's written request, Licensee shall promptly alter or remove, at its sole expense, any and all Facilities, improvements, plantings, or other property installed or placed in, on, under, or about the Combined License Area by or on behalf of Licensee (including any improvements, plantings, or other property that predate this License), as may be necessary to avoid any actual or potential interference with the installation, construction, maintenance, operation, repair, replacement, or removal of any of City's pipelines, power lines, facilities, or other structures now or later constructed or with any other operations or land uses by City. In the request, City may specify reasonable time limits for completion of the work. If, after such written notice, Licensee fails to complete the requested work within the prescribed time limits, City may perform the requested work and charge Licensee all costs and expenses so incurred by City. Such amount shall be due and payable upon City's demand. In the event of an emergency, at City's sole option, at Licensee's sole expense, and without notice, City may, alter, remove, or protect any and all

facilities, improvements, plantings, or other property installed or placed in, on, under, or about the Combined License Area by Licensee. Upon City's written or oral notice that an emergency exists, the owner of such utility facilities shall take immediate action at its sole expense to protect, remove, or relocate such facilities as required by City to meet the emergency.

**15. Interruption or Disruption of License Area.** Without limiting City's rights under this License or any applicable Laws, if Licensee's use of the Combined License Area is interrupted or disrupted for any reason in connection with any SFPUC request for removal or alteration of Licensee's Facilities located on the Combined License Area pursuant to **Section 14** [Removal or Alteration of Facilities] above, at its sole cost, Licensee shall be responsible for: **(a)** any and all costs of alteration, removal, and/or restoration of Licensee's Facilities or other improvements or alterations to a condition similar to that which existed prior to such interruption, disruption, alteration, or removal, and **(b)** the implementation or satisfaction of any mitigation measures or obligations that may arise under any applicable Laws, including the California Environmental Quality Act ("CEQA"), related to any interruption or disruption of Licensee's use of the Combined License Area. City shall not be responsible for mitigation of any potential recreational use impacts or other impacts associated with any interruption or disruption of use of the Combined License Area, or any related costs. If Licensee fails to promptly perform its obligations under this Section, at its sole option, City may elect to terminate this License immediately by written notice, or to exercise any and all other rights or remedies available to City under this License or at law, including the rights set forth in **Section 19** [City's Right to Cure Defaults by Licensee] of this License.

City would not be willing to give this License in the absence of Licensee's assurances under this **Section 15**, and Licensee expressly assumes any and all liability or obligations that may arise under this **Section 15**.

**16. Signs.** In addition to Licensee's obligations under **Section 5(a)** [Educational Signs] above, City, at its sole discretion, may require Licensee to install signs with language required by the SFPUC. Except **(a)** as expressly authorized under this **Section 16**, **(b)** as expressly authorized under Section 4 [Permitted Encroachments] or **(c)** for any pipeline markers required by City or any regulatory agency with jurisdiction, Licensee shall not place, erect, or maintain any sign, advertisement, banner, or similar object in, on, or about the Combined License Area without City's prior written consent, which City may give or withhold at its sole discretion; provided, however, that, without City's prior written consent, if necessary for Licensee's construction use, Licensee may place in the Combined License Area a temporary sign of less than thirty (30) days' duration that does not penetrate the ground surface.

**17. Surrender.** Upon the expiration of this License or within ten (10) days after any sooner revocation or other termination of this License, Licensee shall surrender the Combined License Area in the same condition as received, and broom clean, free from hazards, and clear of all debris. At such time, Licensee shall remove all of its property from the Combined License Area and all signs other than the Educational Signs and, upon City's request, the Facilities and any other structures, improvements, or alterations placed on the Combined License Area during the term of this License, and shall repair, at its cost, any damage to the Combined License Area caused by such removal. Licensee's obligations under this Section shall survive any termination of this License.

**18. Repair of Damage.** If any portion of the Combined License Area or any City property located on or about the Combined License Area is damaged or threatened by any of the activities conducted by Licensee or anyone acting by or through Licensee, at its sole cost, Licensee shall immediately notify City of such damage or threat by **(a)** telephoning the SFPUC’s dispatch operator as specified in **Section 33(b)** [Emergency Contacts] below, and **(b)** providing written notice in accordance with **Section 33(a)** [Notices] below. City may, but shall not be obligated to, remedy such damage or threat at Licensee’s sole cost, or City may elect to witness Licensee’s repair work. If City elects not to remedy such damage or threat, Licensee shall repair any and all such damage and restore the Combined License Area or property to its previous condition subject to City’s inspection, review, and approval. City has no responsibility or liability of any kind with respect to any utilities that may be on, in, or under the Combined License Area. Licensee is solely responsible for the location of any such utilities and other existing facilities and their protection from damage. Licensee shall be solely responsible to arrange and pay directly for any utilities or services necessary for its activities pursuant to this License; provided, Licensee shall obtain City’s prior written approval to the provision of such services or utilities in, on, under, or through the Combined License Area.

**19. City’s Right to Cure Defaults by Licensee.** If Licensee fails to perform any of its obligations under this License to restore the Combined License Area, remove or alter any of Licensee’s Facilities, or improvements or alterations, or repair damage, or if Licensee defaults in the performance of any of its other obligations under this License, then, at its sole option, City may remedy such failure for Licensee’s account and at Licensee’s expense by providing Licensee with three (3) days’ prior written or oral notice of City’s intention to cure such default (except that no such prior notice shall be required in the event of an emergency as determined by City). Such action by City shall not be construed as a waiver of any of City’s rights or remedies under this License, and nothing in this License shall imply any duty of City to do any act that Licensee is obligated to perform. Licensee shall pay to City upon demand, all costs, damages, expenses, or liabilities incurred by City, including reasonable attorneys’, experts’, and consultants’ fees, in remedying or attempting to remedy such default. Licensee’s obligations under this Section shall survive the termination of this License.

**20. No Costs to City.** Licensee shall bear all costs or expenses of any kind or nature in connection with its use of the Combined License Area, and shall keep the Combined License Area free and clear of any liens or claims of lien arising out of or in any way connected with its use of the Combined License Area.

**21. Indemnity.** Licensee shall indemnify, defend, reimburse, and hold harmless City, its officers, agents, employees, and contractors, and each of them, from and against any and all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages, and liabilities of any kind (“**Claims**”), arising in any manner out of **(a)** any injury to or death of any person or damage to or destruction of any property occurring in, on, or about any part of the Combined License Area, whether such injury, death, damage, or destruction is caused by the person or property of Licensee, its officers, directors, members, employees, agents, consultants, contractors, or subcontractors (collectively, “**Agents**”), its invitees, guests, or business visitors (collectively, “**Invitees**”), or third persons, relating to any use or activity under this License, **(b)** any failure by Licensee to faithfully observe or perform any of the terms, covenants, or conditions of this License, **(c)** the use of the Combined License Area, including, without limitation, the Bridge, the other Permitted Improvements and any other improvements

installed by or on behalf of Licensee that predate this License, or any activities conducted on the Combined License Area by Licensee, its Agents, or Invitees, (d) any release or discharge, or threatened release or discharge, of any Hazardous Material caused or allowed by Licensee, its Agents, or Invitees, on, in, under, or about the Combined License Area, any improvements or into the environment, or (e) any failure by Licensee to faithfully observe or perform any terms, covenants, or conditions of the Recorded Documents to the extent that such terms, covenants, or conditions relate to or are triggered by the work to be performed or Facilities or other improvements or alterations installed pursuant to this License; except solely to the extent of Claims resulting directly from the willful misconduct of City or City's authorized representatives. In addition to Licensee's obligation to indemnify City, Licensee has an immediate and independent obligation to defend City from any claim that actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent, or false, which obligation arises at the time such claim is tendered to Licensee by City and continues at all times thereafter. The foregoing indemnity shall include reasonable attorneys', experts', and consultants' fees and costs, investigation and remediation costs, and all other reasonable costs and expenses incurred by the indemnified parties, including damages for decrease in the value of the Combined License Area and claims for damages or decreases in the value of adjoining property. Licensee's obligations under this Section shall survive the expiration or other termination of this License.

## **22. Waiver of Claims.**

(a) Neither City nor any of its commissions, departments, boards, officers, agents, or employees shall be liable for any damage to the property of Licensee, its officers, agents, employees, contractors, or subcontractors, or their employees, or for any bodily injury or death to such persons, resulting or arising from the condition of the Combined License Area or its use by Licensee, or Licensee's Agents or Invitees.

(b) Because this License is freely revocable by City, Licensee expressly assumes the risk of making any expenditure in connection with this License, even if such expenditures are substantial. Without limiting any indemnification obligations of Licensee or other waivers contained in this License and as a material part of the consideration for this License, Licensee fully RELEASES, WAIVES, AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, City, its departments, commissions, officers, directors, and employees, and all persons acting by, through, or under each of them, under any present or future Laws, including any claim for inverse condemnation or the payment of just compensation under law or equity, if City exercises its right to revoke or terminate this License.

(c) Licensee acknowledges that it will not be a displaced person at the time this License is terminated or revoked or expires by its own terms, and Licensee fully RELEASES, WAIVES, AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, City, its departments, commissions, officers, directors, and employees, and all persons acting by, through, or under each of them, under any present or future Laws, including any and all claims for relocation benefits or assistance from City under federal and state relocation assistance laws.

(d) The fees payable pursuant to this License do not take into account any potential City liability for any consequential or incidental damages including lost profits and arising out of disruption to or any Facilities or other improvements or alterations installed pursuant to this License; or Licensee's uses of the Combined License Area permitted by this License. City would



not be willing to grant this License in the absence of a waiver of liability for consequential or incidental damages resulting from the acts or omissions of City or its departments, commissions, officers, directors, and employees, and by all persons acting by, through, or under each of them, and Licensee expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Licensee or other waivers contained in this License and as a material part of the consideration for this License, Licensee fully RELEASES, WAIVES, AND DISCHARGES forever any and all claims, demands, rights, and causes of action against City for consequential and incidental damages (including lost profits) and covenants not to sue for such damages City, its departments, commissions, officers, directors, and employees, and all persons acting by, through, or under each of them, arising out of this License or the uses authorized under this License, including any interference with uses conducted by Licensee pursuant to this License, regardless of the cause, and whether or not due to the negligence of City or its departments, commissions, officers, directors, and employees, and all persons acting by, through, or under each of them, except for the gross negligence and willful misconduct of City or its departments, commissions, officers, directors, and employees, and all persons acting by, through, or under each of them.

(e) As part of Licensee’s agreement to accept the Combined License Area in its “As Is” condition as provided below, and without limiting such agreement, Licensee, on behalf of itself and its successors and assigns, waives its right to recover from, and forever releases and discharges, City and its officers, agents, and employees, and their respective heirs, successors, administrators, personal representatives, and assigns, from any and all Claims, whether direct or indirect, known or unknown, foreseen and/or unforeseen, that may arise on account of or in any way be connected with the physical or environmental condition of the Combined License Area and any related improvements or any applicable Laws or the suitability of the Combined License Area for Licensee’s intended use.

(f) In connection with the foregoing releases, Licensee acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

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

**23. As Is Condition of License Area; Disability Access; Disclaimer of Representations.**

Licensee accepts the Combined License Area in its “AS IS” condition, without representation or warranty of any kind by City, its departments, commissions, officers, directors, and employees, and all persons acting by, through, or under each of them, and subject to all applicable Laws governing the use of the Combined License Area. Without limiting the foregoing, this License is made subject to any and all existing and future covenants, conditions, restrictions, easements, encumbrances, and other title matters affecting the Combined License Area, whether foreseen or

unforeseen, and whether such matters are of record or would be disclosed by an accurate inspection or survey.

City discloses (i) City has not been issued a disability access inspection certificate as described in California Civil Code Section 55.53(e), (ii) pursuant to California Civil Code Section 1938, that Landlord has not ordered, performed, or caused to be performed, a Certified Access Specialist (“CASp”) inspection of the Combined License Area (sometimes referred to as “premises” or “subject premises” for the herein disclosures), and (iii) City makes the following statutory disclosure per California Civil Code Section 1938 ( required “CASp Disclosure”):

“A Certified Access Specialist (“CASp”) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.”

**24. No Assignment.** This License is personal to Licensee and shall not be assigned, conveyed, or otherwise transferred by Licensee under any circumstances. Any attempt to assign, convey, or otherwise transfer this License shall be null and void and cause the immediate termination and revocation of this License.

**25. Cessation of Use.** Licensee will not terminate its activities on the Combined License Area pursuant to this License without prior written notice to City.

**26. No Joint Ventures or Partnership; No Authorization.** This License does not create a partnership or joint venture between City and Licensee as to any activity conducted by Licensee on, in, or relating to the Combined License Area. Licensee is not a state actor with respect to any activity conducted by Licensee on, in, under or around the Combined License Area. City’s provision of this License does not constitute City’s authorization or approval of any activity conducted by Licensee on, in, around, or relating to the Combined License Area.

**27. MacBride Principles - Northern Ireland.** The provisions of San Francisco Administrative Code Section 12F are incorporated into and made a part of this License by this reference. By signing this License, Licensee confirms that Licensee has read and understood that City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

**28. Non-Discrimination in City Contracts and Benefits Ordinance.**

**(a) Covenant Not to Discriminate.** In the performance of this License, Licensee shall not discriminate against any employee of, any City employee working with Licensee, or applicant for employment with, Licensee, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person’s race, color, creed, religion, national origin,

ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

**(b) Other Subcontracts.** Licensee shall include in all subcontracts relating to the Combined License Area a non-discrimination clause applicable to such subcontractor in substantially the form of **Section 28 (a)** [Covenant Not to Discriminate] above. In addition, Licensee shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Licensee's failure to comply with the obligations in this subsection shall constitute a material breach of this License.

**(c) Non-Discrimination in Benefits.** Licensee does not as of the date of this License and will not during the term of this License, in any of its operations in San Francisco, on real property owned by City, or where the work is being performed for City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits, or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

**(d) Condition to License.** As a condition to this License, Licensee shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form CMD-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Contract Monitoring Division.

**(e) Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the license of City property are incorporated in this Section by reference and made a part of this License as though fully set forth. Licensee shall comply fully with and be bound by all of the provisions that apply to this License under such Chapters of the San Francisco Administrative Code, including the remedies provided in such Chapters. Without limiting the foregoing, Licensee understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this License may be assessed against Licensee and/or deducted from any payments due Licensee.

**29. Reserved.**

**30. Notification of Prohibition on Contributions.** Licensee 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 City for the selling or leasing of any land or building to or from City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to **(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 twelve months after the date the contract is approved. Licensee acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$100,000 or more. Licensee further acknowledges that (i) the prohibition on contributions applies to each Licensee; each member of Licensee's board of directors, and Licensee's chief executive officer, chief financial officer, and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Licensee; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Licensee; and (ii) within thirty (30) days of the submission of a proposal for the contract, the City department seeking to enter into the contract must notify the Ethics Commission of the parties and any subcontractor to the contract. Additionally, Tenant certifies it has informed each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 by the time it submitted a proposal for the contract to the City, and has provided the names of the persons required to be informed to the City department seeking to enter into that contract within thirty (30) days of submitting its contract proposal to the City department receiving that submittal, and acknowledges the City department receiving that submittal was required to notify the Ethics Commission of those persons.

**31. Tropical Hardwoods and Virgin Redwoods.** City urges companies not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product, except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code. Except as permitted by the application of Sections 802(b) and 803(b), Licensee shall not use or incorporate any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product in the performance of this License.

**32. Taxes, Assessments, Licenses, License Fees, and Liens.**

(a) Licensee recognizes and understands that this License may create a possessory interest subject to property taxation and that Licensee may be subject to the payment of property taxes levied on such interest. Licensee further recognizes and understands that any transfer or assignment permitted under this License and any exercise of any option to renew or extend this License may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder.

(b) Licensee shall pay taxes of any kind, including possessory interest taxes, that may be lawfully assessed on the interest created by this License and shall pay all other taxes, excises, licenses, permit charges, and assessments based on Licensee's usage of the Combined License Area that may be imposed upon Licensee by law, all of which shall be paid when the same become due and payable and before delinquency.

(c) Licensee shall not allow or suffer a lien for any such taxes or charges to be imposed upon the Combined License Area or upon any equipment or property located on the Combined License Area without promptly discharging the same, provided that Licensee may contest the validity of the same by paying under protest or posting adequate (at City's sole discretion) security during any such contest.

**33. Notices.**

(a) Any notice, consent, or approval required or permitted to be given under this License shall be in writing and shall be given by (i) hand delivery, against receipt, (ii) reliable next-business-day courier service that provides confirmation of delivery, or (iii) United States registered or certified mail, postage prepaid, return receipt required, and addressed as follows (or to such other address as either party may from time to time specify in writing to the other upon five (5) days' prior, written notice in the manner provided above):

**City or the SFPUC:** Real Estate Services Division  
San Francisco Public Utilities Commission  
525 Golden Gate Avenue, 10<sup>th</sup> Floor  
San Francisco, California 94102  
Attn: Real Estate Director  
Re: Los Altos Trail License  
License P4550  
Telephone No.: (415) 487-5210

**with a copy to:** Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102  
Attn: Real Estate & Finance Team  
Re: Los Alto Trail License

**Licensee:** City of Los Altos  
Los Altos City Hall  
1 N. San Antonio Road  
Los Altos, CA 94022  
Attn: City Manager  
Re: Los Altos Trail  
License P4550  
Telephone No.: (\_\_\_\_) \_\_\_\_ - \_\_\_\_  
E-mail: \_\_\_\_\_

A properly addressed notice transmitted by one of the foregoing methods shall be deemed received upon the confirmed date of delivery, attempted delivery, or rejected delivery, whichever occurs first. Any e-mail addresses, telephone numbers, or facsimile numbers provided by one party to the other shall be for convenience of communication only; neither party may give official or binding notice orally or by e-mail or facsimile. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of an oral notice or an e-mail or telefacsimile copy of the notice.

(b) **Emergency Contacts.** Licensee shall immediately notify the SFPUC's Millbrae Dispatch facility by phone at (650) 872-5900 of any emergency or incident requiring emergency response.

(c) **Day-to-Day Communications.** Day-to-Day communications that are not intended as a notice or demand under this License may be communicated by email or telephone.

City’s key contact for day-to-day communications is:

Attn: Emily Read, Right of Way Manager  
Natural Resources and Land Management Division  
San Francisco Public Utilities Commission  
1657 Rollins Road  
Burlingame, CA 94010  
Telephone No.: (650) 652-3204  
Email: ERead@sfgwater.org

Los Altos’ key contact for day-to-day communications is:

Attn: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

Email: \_\_\_\_\_

**34. Prohibition of Tobacco Sales and Advertising.** No advertising or sale of cigarettes or tobacco products is allowed on the Combined License Area. This advertising prohibition includes the placement of the name of a company producing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product.

**35. Prohibition of Alcoholic Beverage Advertising.** No advertising of alcoholic beverages is allowed on the Combined License Area. 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 alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product.

**36. Restrictions on the Use of Pesticides.** Chapter 3 of the San Francisco Environment Code (“Integrated Pest Management Program Ordinance or “**IPM Ordinance**”) describes an integrated pest management (“**IPM**”) policy to be implemented by all City departments. Licensee shall not use or apply or allow the use or application of any pesticides on the Combined License Area or contract with any person or entity to provide pest abatement or control services to the Combined License Area without first receiving City’s written approval of an IPM plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Licensee may need to apply to the Combined License Area during the term of this License, (b) describes the steps Licensee will take to meet the City’s IPM Policy described in Section 300 of the IPM Ordinance and (c) identifies, by name, title, address, and telephone number, an individual to act as the Licensee’s primary IPM contact person with the City. Licensee shall comply, and shall require all of Licensee’s contractors to comply, with the IPM plan approved by the City and shall comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Licensee were a City department. Among other matters, such provisions of the IPM

Ordinance: (i) provide for the use of pesticides only as a last resort, (ii) prohibit the use or application of pesticides on property owned by the City, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City's Department of the Environment), (iii) impose certain notice requirements, and (iv) require Licensee to keep certain records and to report to City all pesticide use at the Combined License Area by Licensee's staff or contractors.

If Licensee or Licensee's contractor will apply pesticides to outdoor areas at the Combined License Area, Licensee must first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation ("CDPR") and any such pesticide application shall be made only by or under the supervision of a person holding a valid, CDPR-issued Qualified Applicator certificate or Qualified Applicator license. City's current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website, <http://sfenvironment.org/ipm>.

**37. Conflict of Interest.** Licensee acknowledges that it is familiar with the provisions of Section 15.103 of City's Charter, Article III, Chapter 2 of City's 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 that would constitute a violation of said provisions. If Licensee becomes aware of any such fact during the term of this License, Licensee shall immediately notify City.

**38. Disclosure.** City's Sunshine Ordinance (San Francisco Administrative Code Chapter 67) and the State Public Records Law (Gov't Code Sections 6250 et seq.), apply to this License and any and all records, information, and materials submitted to City in connection with this License. Accordingly, any and all such records, information, and materials may be subject to public disclosure in accordance with City's Sunshine Ordinance and the State Public Records Law. Licensee authorizes City to disclose any records, information, and materials submitted to City in connection with this License.

**39. Food Service and Packaging Waste Reduction.** Licensee shall comply fully with and be bound by all of the provisions of the Food Service and Packaging Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided therein, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated into this License by this reference and made a part of this License as though fully set forth. Capitalized terms used in this Section that are not otherwise defined in this License have the same meaning assigned to such terms in San Francisco Environment Code, Chapter 16. Accordingly, Licensee acknowledges that City contractors, lessees, and licensees may not use Disposable Food Service Ware that contains Polystyrene Foam in City Facilities while performing under a City contract, lease, or license, and shall instead use suitable Biodegradable/Compostable or Recyclable Disposable Food Service Ware. This provision is a material term of this License.

**40. Severability.** If any provision of this License, or its application to any person, entity, or circumstance, shall be held to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this License, or the application of such provision to persons, entities, or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this License shall be valid and be enforceable to the fullest extent permitted by law, except to the extent that enforcement of this License without the invalidated provision would

be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this License.

**41. Cooperative Drafting.** This License has been drafted through a cooperative effort of both Parties, and both Parties have had an opportunity to have the License reviewed and revised by legal counsel. No party shall be considered the drafter of this License, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this License.

**42. Reserved.**

**43. San Francisco Packaged Water Ordinance.** Licensee shall comply with San Francisco Environment Code Chapter 24 (“**Chapter 24**”). Licensee shall not sell, provide or otherwise distribute Packaged Water, as defined in Chapter 24 (including bottled water), in the performance of this License or on City property unless Licensee obtains a waiver from the City’s Department of the Environment. If Licensee violates this requirement, the City may exercise all remedies in this License and the Director of the City’s Department of the Environment may impose administrative fines as set forth in Chapter 24.

**44. General Provisions.** (a) This License may be amended or modified only by a writing signed by City and Licensee. (b) No waiver by any party of any of the provisions of this License shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver. No waiver shall be deemed a subsequent or continuing waiver of the same, or any other, provision of this License. (c) The exhibits referenced in and attached to this instrument are incorporated into this License. (d) This License contains the entire agreement between the Parties regarding the subject matter of this License, and all prior written or oral negotiations, discussions, understandings, and agreements are merged into this License. (e) The Section and other headings of this License are for convenience of reference only and shall be disregarded in the interpretation of this License. (f) Time is of the essence in all matters relating to this License. (g) This License shall be governed by California law and City’s Charter. (h) If either party commences an action against the other or a dispute arises under this License, the prevailing party shall be entitled to recover from the other reasonable attorneys’ fees and costs. For purposes of this License and the indemnifications set forth in this License, reasonable attorneys’ fees of City shall be based on the fees regularly charged by private attorneys in San Francisco with comparable experience notwithstanding City’s use of its own attorneys. (i) If Licensee consists of more than one person then the obligations of each person shall be joint and several. (j) Licensee may not record this License or any memorandum of this License. (k) Subject to the prohibition against assignments or other transfers by Licensee hereunder, this License shall be binding upon and inure to the benefit of the Parties and their respective heirs, representatives, successors, and assigns. (l) Any sale or conveyance of the property burdened by this License by City shall automatically revoke this License. (m) Notwithstanding anything to the contrary contained in this License, no officer or employee of City has authority to commit City to this License unless and until a resolution of the SFPUC shall have been duly adopted approving this License and authorizing the transaction contemplated by this License. Therefore, any of City’s obligations or liabilities pursuant to or under this License are contingent upon enactment of such a resolution, and this License shall be null and void if, at its sole discretion, the SFPUC does not approve this License. (n) Each of the persons executing this License on Licensee’s behalf do hereby represent and warrant that Licensee is a duly formed or organized (as applicable) and validly existing entity under the laws of California, that Licensee



is in good standing and qualified to do business in California (and covenants to maintain such status during the term of this License), that Licensee has full right and authority to enter into this License, and that each and all of the persons signing on behalf of Licensee are authorized to do so. Upon City's request, Licensee shall provide City with evidence reasonably satisfactory to City confirming the foregoing representations and warranties. **(o)** Except as expressly provided to the contrary, all approvals, consents, and determinations to be made by City under this License may be made at City's sole and absolute discretion. **(p)** Whenever this License requires City's or the SFPUC's consent or approval, the General Manager of the SFPUC, or his or her designee, shall be authorized to provide such consent or approval, except as otherwise provided by applicable Laws, including City's Charter, or by the SFPUC's Real Estate Guidelines. No consent, approval, election, or option shall be effective unless given, made, or exercised in writing. **(q)** This License may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. **(r)** City and Licensee respectively agree to execute and deliver such further instruments and to take such further actions as City may reasonably request from time to time in order to carry out the provisions of this License. **(s)** Use of the word "including" or similar words will not be construed to limit any general term, statement, or other matter in this License, whether or not language of non-limitation, such as "without limitation" or similar words, are used.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LICENSE, NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS LICENSE UNLESS AND UNTIL CITY'S PUBLIC UTILITIES COMMISSION SHALL HAVE DULY ADOPTED A RESOLUTION APPROVING THIS LICENSE AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED IN THIS LICENSE. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY UNDER THIS LICENSE ARE CONTINGENT UPON ADOPTION OF SUCH A RESOLUTION, AND THIS LICENSE SHALL BE NULL AND VOID IF CITY'S PUBLIC UTILITIES COMMISSION DO NOT APPROVE THIS LICENSE, AT THEIR RESPECTIVE SOLE DISCRETION. APPROVAL OF THIS LICENSE BY ANY DEPARTMENT, COMMISSION, OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ENACTED, NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

*[SIGNATURES ON FOLLOWING PAGE]*

LICENSEE REPRESENTS AND WARRANTS TO CITY THAT IT HAS READ AND UNDERSTANDS THE CONTENTS OF THIS LICENSE, HAS HAD AN OPPORTUNITY TO REVIEW AND DISCUSS IT WITH COUNSEL OF ITS CHOOSING, AND AGREES TO COMPLY WITH AND BE BOUND BY ALL OF ITS PROVISIONS.

**LICENSEE:**

**CITY OF LOS ALTOS,**  
a municipal corporation

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

**CITY:**

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

By: \_\_\_\_\_  
DENNIS J. HERRERA  
General Manager  
San Francisco Public Utilities Commission  
Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

**DAVID CHIU**  
City Attorney

By: \_\_\_\_\_  
Vincent L. Brown  
Deputy City Attorney

**Authorized by**  
**San Francisco Public Utilities Commission**

Resolution No. \_\_\_\_\_  
Adopted: \_\_\_\_\_

**EXHIBIT A**

**Description of Pathway Area**

Approximately 80,000 square feet of all that certain real property located in the City of Los Altos, County of Santa Clara, California, described as follows:

The Pathway Area consists of the entirety of SFPUC Parcel Nos. 236 and 237, according to SFPUC records and as shown on the attached **Exhibit B** and made a part of this License.

**EXHIBIT B**

**Depiction of Combined License Area**

*[see attached]*

**EXHIBIT B-1**

**Depiction of 1961 Revocable Permit Area for Street and Sewer Crossings**

*[see attached]*

**EXHIBIT B-2**

**Depiction of 1963 Revocable Permit Area for Street Crossing, Storm Drain and Fire Access  
Roadway**

*[see attached]*

**EXHIBIT B-3**

**Depiction of 1972 Revocable Permit Area for Street Widening and Landscaping**

*[see attached]*

**EXHIBIT B-4**

**Engineering Drawings for 1974 Adobe Creek Pedestrian and Bicycle Bridge**

*[see attached]*



**EXHIBIT B-5**

**Depiction of 1987 Revocable Permit Area for Bicycle Path and Landscaping**

*[see attached]*

**EXHIBIT B-6**

**Depiction of 1985 Drawing for Added Permit Area**

*[see attached]*

**EXHIBIT C**

**Depiction of Maintenance Area**

*[see attached]*

**EXHIBIT D**

**Deeds**

*[see attached]*

**EXHIBIT E**

**SFPUC Vegetation Management Policy**

*[see attached]*

**EXHIBIT F**

**SFPUC Encroachment Policy**

*[see attached]*