

SAN FRANCISCO PUBLIC UTILITIES COMMISSION  
REVOCABLE PERMIT

(Permit #)

**THIS REVOCABLE PERMIT** (this "**Permit**") dated for reference purposes only as of \_\_\_\_\_, 2012, is made by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation ("**San Francisco**"), acting by and through its Public Utilities Commission ("**PUC**"), and the City of Milpitas, a municipal corporation ("**Permittee**").

**RECITALS**

**A.** San Francisco is the fee owner of that real property located in the City of Milpitas, Santa Clara County, California, described or shown on attached Exhibit A (the "**Permit Area**").

**B.** \_\_\_\_\_, the owner of the adjacent real property identified on Exhibit B as "Lot A", has constructed and installed on Lot A certain facilities for a public park, including playground facilities.

**C.** Pursuant to a revocable consent letter dated July 2, 2009, issued by PUC, \_\_\_\_\_ has constructed on the Permit Area certain facilities including a walkway, lighting and landscaping, as more particularly shown on attached Exhibit B (the "Facilities").

**D.** \_\_\_\_\_ intends to offer Lot A for dedication to Permittee. Permittee desires to accept the offer of dedication and to operate and maintain a community park on Lot A and the Permit Area the "**Community Park**"). San Francisco is willing to allow the use of the Permit Area as part of the Community Park on the terms and conditions set forth herein, and Permittee is willing to accept such terms and conditions.

NOW THEREFORE, San Francisco and Permittee agree as follows:

**1. License.** San Francisco confers to Permittee a revocable, personal, non-exclusive and non-possessory privilege to enter upon and use the Permit Area for the limited purpose and subject to the terms, conditions and restrictions set forth below. This Permit gives Permittee a license only and notwithstanding anything to the contrary herein, this Permit does not constitute a grant by San Francisco of any ownership, leasehold, easement or other property interest or estate whatsoever in the Permit Area, or any portion thereof. Nothing in this Permit shall be construed as granting or creating any franchise rights pursuant to any federal, state or local laws.

THE PRIVILEGE GIVEN TO PERMITTEE UNDER THIS PERMIT IS EFFECTIVE ONLY INsofar AS THE RIGHTS OF CITY IN THE PERMIT AREA ARE CONCERNED, AND PERMITTEE SHALL OBTAIN ANY FURTHER PERMISSION NECESSARY BECAUSE OF ANY OTHER EXISTING RIGHTS AFFECTING THE PERMIT AREA. WITHOUT LIMITING THE FOREGOING, THIS PERMIT IS BEING ISSUED SUBJECT AND SUBORDINATE TO ALL OF THE TERMS AND CONDITIONS OF THAT CERTAIN DEED DATED FEBRUARY 5, 1951, AND RECORDED IN BOOK 2174, PAGE 394, OF OFFICIAL RECORDS OF SANTA CLARA COUNTY, PURSUANT TO WHICH CITY ACQUIRED ITS INTEREST IN THE PERMIT AREA, A COPY OF WHICH IS ATTACHED TO THIS PERMIT AS EXHIBIT C (THE "**DEED**"), AND ALL OTHER EXISTING AND FUTURE DOCUMENTS AND INSTRUMENTS OF RECORD AFFECTING THE PERMIT AREA (COLLECTIVELY, WITH THE DEED, THE "**RECORDED DOCUMENTS**"). PERMITTEE MUST SECURE ALL ADDITIONAL NECESSARY APPROVALS, PERMITS AND CONSENTS, AND DELIVER ALL NECESSARY NOTICES, BEFORE COMMENCING ANY WORK IN THE PERMIT AREA, INCLUDING ANY APPROVALS, PERMITS, CONSENTS

OR NOTICES REQUIRED FROM OR TO THE GRANTOR UNDER THE RECORDED DOCUMENTS. PERMITTEE COVENANTS AND AGREES, FOR THE BENEFIT OF CITY, THAT PERMITTEE 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 PERMITTEE ON THE PERMIT AREA PURSUANT TO THIS PERMIT, AND CITY SHALL HAVE NO RESPONSIBILITY OR LIABILITY OF ANY KIND WITH RESPECT THERETO. PERMITTEE ACKNOWLEDGES AND AGREES THAT NEITHER CITY NOR ANY OF ITS AGENTS HAVE MADE, AND CITY HEREBY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE PRESENT OR FUTURE SUITABILITY OF THE PERMIT AREA FOR PERMITTEE'S INTENDED WORK OR FACILITIES, THE IMPACT OF ANY TERM OR CONDITION OF THE RECORDED DOCUMENTS ON PERMITTEE'S RIGHTS UNDER THIS PERMIT, OR THE ABILITY TO OBTAIN OR DELIVER, OR THE PROCEDURE FOR OBTAINING OR DELIVERING, ANY NECESSARY APPROVALS, 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 PERMIT.

**2. Use of Permit Area.**

(a) **Permitted Acts.** Permittee may enter and use the Permit Area for the sole purpose of maintaining the Facilities and operating the Community Park in strict accordance with this Section 2 and Section 3(a) hereof, and for no other purpose whatsoever.

(b) **Subject to San Francisco Uses.** Permittee is aware that the Permit Area constitutes a portion of San Francisco's water pipeline delivery system. Notwithstanding anything to the contrary in this Permit, any and all of Permittee's activities hereunder shall be subject and subordinate at all times to San Francisco's existing and future use of the Permit Area for municipal and other purposes. San Francisco shall in no way be liable for any damage or destruction to Permittee's property and/or improvements resulting from any pipeline break or from any pipeline repair or maintenance activities. Permittee shall, at San Francisco's request, immediately remove any property or improvements on the Permit Area to allow San Francisco access to the pipelines. In the event San Francisco deems it necessary, in San Francisco's sole discretion, San Francisco shall have the right to remove any such property or improvements and San Francisco shall not be responsible for restoring or returning same to its prior condition.

(c) **Operation of Community Park.** Permittee shall use, and shall cause its Agents (as defined in Section 18) to use, due care to maintain and operate the Community Park at all times in a neat, safe condition and in compliance with all applicable laws and prevailing industry standards for community parks. Without limiting the foregoing, Permittee shall provide regular patrols and enforcement as necessary to prevent vandalism, vagrancy and other unlawful activities in the Community Park, and to ensure that the park facilities are used only during daylight hours and only for lawful recreational uses. Except for lawn mowers, maintenance vehicles (pick up truck) and wheelchairs, no motorized vehicles will be permitted on the Permit Area.

**3. Installation of Facilities.** Permittee may install additional facilities or modify the existing Facilities on the Permit Area only upon satisfaction of the following conditions, which are for the sole benefit of San Francisco:

(a) **Approval of Plans and Specifications.** Permittee shall install the permitted facilities in accordance with plans and specifications (including drawings) approved in advance and in writing by PUC and attached hereto as Exhibit D. The plans and specifications may be revised or amended only with prior written approval of PUC after PUC's Bureau of

Environmental Regulation and Management has determined that no further environmental review is required by CEQA as a result of any such revision or amendment.

(b) **Permits and Approvals.** Before beginning any work in the Permit Area, Permittee shall obtain any and all permits, licenses and approvals (collectively, "**Approvals**") of all regulatory agencies and other third parties that are required to commence, complete and maintain the permitted work. Promptly upon receipt of such Approvals, Permittee shall deliver copies of them to PUC. Permittee recognizes and agrees that no approval by PUC for purposes of Permittee's work hereunder shall be deemed to constitute the approval of any federal, state or local regulatory authority with jurisdiction, and nothing herein shall limit Permittee's obligation to obtain all such regulatory Approvals, at Permittee's sole cost.

(c) **Exercise of Due Care.** Permittee shall use, and shall cause its Agents (as defined below) to use, due care at all times to avoid any damage or harm to San Francisco's water pipelines or other property and to native vegetation and natural attributes of the Permit Area and to minimize slope erosion. Permittee shall not disturb the surface of the Permit Area or perform any excavation work without the prior written approval of San Francisco, which San Francisco may withhold in its sole discretion. San Francisco shall have the right to condition and/or oversee any permitted excavation work. Permittee shall mark, at its own expense, the location of the San Francisco's water transmission mains within the Permit Area and shall not use any pick, plow or other sharp tool to remove the two feet of soil around the transmission mains, provided that Permittee may use hand shovels or pneumatic shovels in compliance with all other terms and conditions of this Permit. Permittee shall immediately inform San Francisco of any actual or potential damage to the coating of the pipeline, and any such damage shall be promptly repaired by Permittee, at its own expense, to the satisfaction of San Francisco prior to backfilling; provided, San Francisco may elect, in its sole discretion, to make any necessary repairs itself, at Permittee's sole cost, by notifying Permittee of such fact. Upon completion of the repairs, San Francisco shall send to Permittee a bill therefore which Permittee shall pay within thirty (30) days following receipt. Under no circumstances shall Permittee damage, harm or take any rare, threatened or endangered species on or about the Permit Area.

(d) **Cooperation with Public Utilities Commission.** Permittee and its Agents shall work closely with San Francisco personnel to minimize any potential disturbance (even if temporary) of the natural features of the Permit Area and to avoid disruption (even if temporary) of San Francisco facilities, in, under, on or about the Permit Area and San Francisco uses thereof.

(e) **Heavy Equipment.** Permittee shall not use any heavy construction equipment over or about San Francisco's pipelines, except as otherwise expressly allowed in Section 4(i) hereof.

(f) **Work Schedule.** Permittee must begin installation work, if at all, within ninety (90) days after the commencement of the term of this Permit. At least five (5) days prior to the commencement of any work on the Permit Area, Permittee shall notify Mr. Ben Ayala, Construction Inspector, at (650) 872-5908, of the date such work shall commence and the intended construction schedule. Notwithstanding the approval of such schedule by PUC, the Construction Inspector shall have the right to require Permittee 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. to 4:30 p.m., exclusive of San Francisco holidays. Any work performed during any other time or day must be preapproved by the PUC at least forty-eight (48) hours prior to commencing such work. In connection with such approval, San Francisco shall have the right to charge Permittee additional inspection fees payable prior to PUC's approval of the request.

(g) **Restoration of Permit Area.** Immediately following completion of any work permitted hereunder, Permittee shall remove all debris and any excess dirt and shall restore the

Permit Area to its condition immediately prior to Permittee's work hereunder, to the satisfaction of San Francisco. Permittee shall restore excavated areas with new vegetation (including irrigation and maintenance until established) and erosion control netting, all as requested by San Francisco.

**(h) Pipeline Depth/Installation of Above-Ground Markers.** Before commencing any excavation work in the Permit Area, Permittee shall measure the depth of San Francisco's pipelines located in the Permit Area and shall forward such information to San Francisco. Permittee shall install above-ground markers identifying the location of any underground facilities installed pursuant to this Permit. The location, type and installation of markers and identifying information on the markers shall be subject to the prior written approval of PUC.

**(i) As-Built Drawings/Reports.** Promptly upon completion of the installation of the facilities, Permittee shall furnish PUC with two (2) complete copies of final as-built drawings for the facilities, which drawings shall include sufficient detail so as to allow San Francisco to precisely locate the facilities. In the event that Permittee or its agents or consultants prepares any environmental, seismic, geophysical or other written report relating to the Permit Area and/or any work performed thereon, Permittee shall furnish to San Francisco a complete copy of such report, including any schedules, exhibits and maps, promptly upon completion of the same.

**(j) Responsibility for Maintenance of Facilities.** Permittee shall be solely responsible for repairing and maintaining all facilities placed in or on the Permit Area pursuant hereto in good and safe condition, and San Francisco shall have no duty whatsoever for any repair or maintenance of the Permit Area or any such facilities therein. Permittee shall notify San Francisco in writing not less than five (5) days before performing any repair or maintenance work in the Permit Area, except in the case of an emergency wherein Permittee shall notify San Francisco telephonically and in writing as soon as reasonably possible.

**(k) Revocability.** Permittee acknowledges and agrees that the installation of the facilities permitted hereunder, regardless of cost, shall not in any way whatsoever limit San Francisco's right to revoke this Permit pursuant to the terms hereof or any of San Francisco's other rights hereunder.

**(l) Contractors.** Permittee shall not accept and release its contractor for work authorized or required by this Permit before securing the PUC's written approval.

**(m) Cathodic and Other Protection.** San Francisco may adopt from time to time such rules and regulations with regard to Permittee's facilities and operations hereunder as San Francisco may determine are necessary or appropriate, in San Francisco's sole discretion, to safeguard against corrosion of, or other damage to, San Francisco's pipelines and related facilities. Permittee shall immediately comply with all such rules and regulations upon receipt of a copy thereof.

**(n) Potholing.** The potholing authorized by this Permit shall be subject to the direction of the San Francisco's inspector. Potholing using the soft dig method (vacuum soil extraction system) is preferred. The use of other mechanical methods such as digging with a backhoe must be approved by PUC at least five (5) days prior to commencing such work. Notwithstanding the foregoing, the last two (2) feet above the top of the pipe must be dug manually, without the use of any machines.

**4. Restrictions on Use.** Permittee agrees that, by way of example only and without limitation, the following uses of the Permit Area by Permittee, or any other person claiming by or through Permittee, are inconsistent with the limited purpose of this Permit and are strictly prohibited as provided below:

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

(b) **Trees and Other Plantings.** Permittee shall not plant any trees or other vegetation in or on the Permit Area, except as otherwise expressly provided herein and except in accordance with detailed plans consistent with the PUC's vegetation management policy and as approved by the PUC in writing in advance.

(c) **Dumping.** Permittee shall not cause or permit the dumping or other disposal in, on, under or about the Permit Area of landfill, refuse, Hazardous Material (as defined below) or any other materials, including but not limited to 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.** Permittee shall not cause, nor shall Permittee allow any of its Agents or Invitees (as such terms are defined below) to cause, any Hazardous Material (as defined below) to be brought upon, kept, used, stored, generated, released or disposed of in, on, under or about the Permit Area, or transported to, from or over the Permit Area. Permittee shall immediately notify San Francisco when Permittee learns of, or has reason to believe that, a release of Hazardous Material has occurred in, on, under or about the Permit Area. Permittee shall further comply with all laws, statutes, ordinances, rules, regulations, policies, orders, edicts and the like (collectively, "**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. In the event that Permittee or its Agents or Invitees cause a release of Hazardous Material, Permittee shall, without cost to San Francisco and in accordance with all Laws and using the highest and best technology available, promptly return the Permit Area to the condition immediately prior to the release. In connection therewith, Permittee shall afford San Francisco a full opportunity to negotiate and participate in any discussion 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 clean-up plan, strategy and procedure. For purposes hereof, "**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, without limitation, 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 Permit Area or are naturally occurring substances in the Permit Area; and any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas or natural gas liquids, provided, the foregoing shall not prohibit Permittee from traversing to, from and across the Permit 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 Permit Area.

(e) **Nuisances.** Permittee shall not conduct any activities in, on, under or about the Permit Area that constitute waste, nuisance or unreasonable annoyance (including, without

limitation, emission of objectionable odors, noises or lights) to San Francisco, to the owners or occupants of neighboring property, or to the public, or that constitute waste or nuisance per se.

(f) **Damage.** Permittee shall not do anything in, on, under or about the Permit Area that could cause damage or interference to any pipelines or other property located in, on, under or about the Permit Area.

(g) **Use of Adjoining Land.** Permittee acknowledges that the privilege given under this Permit shall be limited strictly to the Permit Area. Permittee shall not traverse over or otherwise use any adjoining lands of San Francisco.

(h) **Ponding; Water Courses.** Permittee shall not cause any ponding on the Permit Area or any flooding on adjacent land. Permittee 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 Permit Area, nor shall Permittee 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 San Francisco's underground pipelines, Permittee's use of vehicles and equipment within twenty feet (20') of each side of the centerline of San Francisco's pipelines (measured on the surface) shall be subject to the following restrictions:

(1) The depth of soil cover over the tops of San Francisco'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 as defined below in subsection (2). If any equipment with axle loading exceeds the loads stated in subsection (2) below or if the depth of soil cover is less than stated above, Permittee shall submit to PUC for review and approval, in PUC's sole discretion, engineering calculations prepared by a licensed Professional Engineer showing that San Francisco's pipelines will not be adversely affected by Permittee's proposed activities. In the event that San Francisco's pipelines may be adversely affected, Permittee shall submit remedial measures for San Francisco's approval to ensure that no adverse effect will occur.

(2) The effects of vehicle and equipment loads to the pipe must not exceed the effects of the "AASHO 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 8-tons (16,000 lbs.). Permittee shall be responsible to provide PUC adequate evidence that its equipment and vehicles meet the foregoing requirements.

(3) Permittee shall not use vibrating compaction equipment without PUC's prior written approval, which approval may be withheld in PUC's sole discretion.

(4) 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 (1) above, unless an alternate method is approved by PUC in writing, all excavation and grading over the pipeline shall be performed manually. For any machinery equipment excavation and grading over and within twenty feet (20') on each side of the centerline of the pipeline (measured on the surface), Permittee shall submit a written proposal together with all supporting calculations and data to PUC 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 PUC with due care as provided in Section 3(c).

**5. Permit Fee(s).** Permittee shall pay to San Francisco a one-time non-refundable permit fee in the amount of Seven Hundred Fifty Dollars (\$750.00) to cover San Francisco's processing, inspection and other administrative costs. Such fee is payable at such time as Permittee signs

and delivers this Permit to San Francisco. Payment shall be made by good check payable to the San Francisco and County of San Francisco and delivered to San Francisco in care of the Director of the Real Estate Services of the San Francisco Public Utilities Commission at the address for notices to San Francisco specified in Section 30 hereof or such other place as San Francisco may designate in writing. Without limiting its right to revoke this Permit or any of its other rights hereunder, San Francisco may at any time, upon not less than 30 days' written notice to Permittee, commence charging a monthly or quarterly use fee for the privilege given hereunder if San Francisco establishes a general policy for charging fees for the use permitted hereunder, and San Francisco may increase such fee from time to time in accordance with such policy.

**6. Term of Permit.** The privilege conferred to Permittee pursuant to this Permit shall commence on the date on which this Permit is executed and delivered by San Francisco following approval by the Public Utilities Commission and approval and the receipt of all fees required to be provided hereunder (the "**Commencement Date**"), and shall immediately expire upon written notice from San Francisco revoking this Permit. San Francisco may at its sole option freely revoke this Permit at any time without cause or liability, and without any obligation to pay any consideration to Permittee or return to Permittee any part of the permit fee or, if applicable, the user fee. Upon any such revocation, Permittee will immediately surrender the Permit Area in the condition required hereunder. In no event shall the term of this Permit extend beyond the tenth anniversary of the Commencement Date.

**7. Insurance.**

(a) Permittee shall procure and keep in effect at all times during the term of this Permit, at Permittee's expense, and in the event of any future construction in accordance with Paragraph 3, shall cause its contractors and subcontractors to maintain at all times during any construction activities on the Permit Area, insurance as follows: (i) Commercial General Liability Insurance with limits not less than \$5,000,000 each occurrence combined single limit for bodily injury and property damage, including coverages for contractual liability, personal injury, independent contractors, explosion, collapse and underground (XCU), Broadform Property Damage, [Sudden and Accidental Pollution,] Products Liability and Completed Operations; (ii) Business Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage, including coverages for owned, non-owned and hired automobiles, as applicable, if Permittee uses or causes to be used any vehicles in connection with its use of the Permit Area, and (iii) Workers' Compensation Insurance, including employer's liability coverage with limits of not less than \$1,000,000 each accident. In lieu of the foregoing insurance, Permittee can elect to self-insure by providing San Francisco adequate evidence of its self-insurance program. If Permittee elects to self-insure, Permittee shall give PUC written notice of any significant change in or the depletion of its self-insurance fund.

(b) All policies required hereunder shall provide for the following: (i) name as additional insureds the San Francisco and County of San Francisco, its Public Utilities Commission and its officers, agents and employees; (ii) specify that such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Permit and that insurance applies separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limit of liability, and (iii) include a waiver of subrogation endorsement or provision wherein the insurer acknowledges acceptance of Permittee's waiver of claims against San Francisco. 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 which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period. Sudden and accidental pollution coverage in the liability policies required

hereunder shall be limited to losses resulting from Permittee's activities (and Permittee's Agents and Invitees) under this Permit (excluding nonnegligent aggravation of existing conditions with respect to Hazardous Materials).

(c) All insurance policies required to be maintained by Permittee hereunder shall be endorsed to provide thirty (30) days prior written notice to San Francisco of cancellation for any reason, intended non-renewal, or reduction in coverage to Permittee. Notice to San Francisco shall be mailed to the address(es) for San Francisco set forth in Section 30 below.

(d) Prior to the Commencement Date of this Permit, Permittee shall deliver to San Francisco certificates of insurance and additional insured policy endorsements from insurers in a form satisfactory to San Francisco, evidencing the coverages required hereunder, together with complete copies of the policies at San Francisco's request. In the event Permittee shall fail to procure such insurance, or to deliver such policies or certificates, San Francisco may procure, at its option, the same for the account of Permittee, and the cost thereof shall be paid to San Francisco within five (5) days after delivery to Permittee of bills therefore.

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

(f) Should any of the required insurance be provided under a claims made form, Permittee shall maintain such coverage continuously throughout the term of this Permit and, without lapse, for a period of three (3) years beyond the Permit expiration or termination, to the effect that should any occurrences during the Permit term give rise to claims made after expiration or termination of the Permit, such claims shall be covered by such claims-made policies.

(g) Upon San Francisco's request, Permittee and San Francisco shall periodically review the limits and types of insurance carried pursuant to this Section. If the general commercial practice in the San Francisco 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 Permittee for risks comparable to those associated with the Permit Area, then San Francisco in its sole discretion may require Permittee to increase the amounts or coverage carried by Permittee hereunder to conform to such general commercial practice.

(h) Permittee's compliance with the provisions of this Section shall in no way relieve or decrease Permittee's indemnification obligations under this Permit or any of Permittee's other obligations hereunder. Notwithstanding anything to the contrary in this Permit, this Permit shall terminate immediately, without notice to Permittee, upon the lapse of any required insurance coverage. Permittee shall be responsible, at its expense, for separately insuring Permittee's personal property.

**8. Compliance with Laws.** Permittee shall, at its expense, conduct and cause to be conducted all activities on the Permit Area allowed hereunder in a safe and reasonable manner and in compliance with all Laws of any governmental or other regulatory entity (including, without limitation, the Americans with Disabilities Act) 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. Permittee shall, at its sole expense, procure and maintain in force at all times during its use of the Permit Area any and all business and other licenses or approvals necessary to conduct the activities allowed hereunder. Permittee understands and agrees that San Francisco is entering into this Permit in its capacity as a property owner with a proprietary interest in the Permit Area and not as a regulatory agency with police powers. Permittee further understands and agrees that no approval by San Francisco for purposes of this

Permit shall be deemed to constitute approval of any federal, state, San Francisco or other local regulatory authority with jurisdiction, and nothing herein shall limit Permittee's obligation to obtain all such regulatory approvals at Permittee's sole cost, or limit in any way San Francisco's exercise of its police powers.

**9. Covenant to Maintain Permit Area.** In connection with its use hereunder, Permittee shall at all times, at its sole cost, maintain the Permit Area in a good, clean, safe, secure, sanitary and slightly condition, so far as the Permit Area may be affected by Permittee's activities hereunder.

**10. Monuments.**

(a) Permittee by signing this Permit acknowledges that the monuments shown on Exhibit B attached hereto, if any, are in place and in good condition. During the installation of any permitted facilities hereunder and at all times during Permittee's use of the Permit Area, Permittee shall protect and safeguard San Francisco's monuments. Permittee shall promptly notify San Francisco in the event Permittee becomes aware of any change in the condition of San Francisco's monuments, regardless of the cause of such change.

(b) If Permittee damages a monument necessitating resurvey, repair or replacement, as determined by San Francisco in its sole discretion, Permittee shall, at Permittee's expense, survey, file a land surveyor's map in the County Office and install a replacement monument within thirty (30) days of completion of work authorized under this Permit, all to the satisfaction of the San Francisco. A recorded surveyor's map shall be furnished by Permittee to the PUC for its records.

(c) During the term of this Permit, San Francisco may replace missing monuments or install new monuments. When missing monuments are replaced or new monuments installed by the San Francisco, the San Francisco shall give Permittee written notice thereof. Upon deposit of such notice in the U.S. mail by San Francisco, postage prepaid, Permittee shall assume the protection and replacement responsibilities set forth herein.

**11. Removal or Alteration of Facilities.** Without limiting San Francisco's rights hereunder, Permittee shall promptly, at San Francisco's written request, 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 Permit Area by Permittee, as may be necessary to avoid any actual or potential interference with any of San Francisco's pipelines, power lines, facilities or other structures now or later constructed, or with the maintenance thereof or with any other operations or land uses by San Francisco. In the request, San Francisco shall have the right to specify reasonable time limits for completion of the work. If after such written notice Permittee fails to complete the requested work within the prescribed time limits, San Francisco shall have the right to perform the requested work and charge Permittee all costs and expenses incurred by San Francisco in performing the work. Such amount shall be due and payable upon San Francisco's demand. In the event of an emergency San Francisco may, at its sole option and without notice, alter, remove or protect at Permittee's sole expense, any and all facilities, improvements, plantings or other property installed or placed in, on, under or about the Permit Area by Permittee [except for utility facilities owned by either a private company or a public agency that are necessary for operations after an emergency as determined by San Francisco in its sole discretion]. The owner of such utility facilities shall, upon written or oral notice by San Francisco that an emergency exists, take immediate action at its sole expense to protect, remove or relocate such facilities as required by San Francisco to meet the emergency.

**12. Signs.** Permittee shall not place, erect or maintain any sign, advertisement, banner or similar object in, on, or about the Permit Area without PUC's prior written consent, which PUC may withhold in its sole discretion; provided, however, Permittee may place in the Permit Area a

temporary sign of less than thirty (30) days' duration that is necessary for Permittee's construction use and which does not extend below the ground surface without PUC's prior written consent.

**13. Surrender.** Upon the expiration of this Permit or within ten (10) days after any sooner revocation or other termination of this Permit, Permittee shall surrender the Permit Area in the same condition as received, and broom clean, free from hazards and clear of all debris. At such time, Permittee shall remove all of its property from the Permit Area and any signs [and, upon San Francisco's request, the Facilities and any other improvements permitted hereunder, and shall repair, at its cost, any damage to the Permit Area caused by such removal. Permittee's obligations under this Section shall survive any termination of this Permit.

**14. Repair of Damage.** If any portion of the Permit Area or any property of San Francisco located on or about the Permit Area is damaged or threatened by any of the activities conducted by Permittee or anyone acting by or through Permittee hereunder, Permittee shall immediately, at its sole cost, notify San Francisco by facsimile of such damage or threat. San Francisco may, but shall not be obligated, to remedy such damage or threat at Permittee's sole cost, or San Francisco may elect to witness Permittee's repair work. In the event San Francisco elects not to remedy such damage or threat, Permittee shall repair any and all such damage and restore the Permit Area or property to its previous condition subject to San Francisco's inspection, review and approval. San Francisco has no responsibility or liability of any kind with respect to any utilities that may be on, in or under the Permit Area. Permittee has the sole responsibility to locate such utilities and other existing facilities and protect them from damage. Permittee shall be solely responsible for arranging and paying directly for any utilities or services necessary for its activities hereunder; provided, Permittee shall obtain San Francisco's prior written approval to the provision of such services or utilities in, on, under, or through the Permit Area.

**15. San Francisco's Right to Cure Defaults by Permittee.** If Permittee fails to perform any of its obligations under this Permit to restore the Permit Area, remove or alter facilities or repair damage, or if Permittee defaults in the performance of any of its other obligations under this Permit, then San Francisco may, at its sole option, remedy such failure for Permittee's account and at Permittee's expense by providing Permittee with three (3) days' prior written or oral notice of San Francisco's intention to cure such default (except that no such prior notice shall be required in the event of an emergency as determined by San Francisco). Such action by San Francisco shall not be construed as a waiver of any rights or remedies of San Francisco under this Permit, and nothing herein shall imply any duty of San Francisco to do any act that Permittee is obligated to perform. Permittee shall pay to San Francisco upon demand, all costs, damages, expenses or liabilities incurred by San Francisco, including, without limitation, reasonable attorneys', experts' and consultants' fees, in remedying or attempting to remedy such default. Permittee's obligations under this Section shall survive the termination of this Permit.

**16. No Costs to San Francisco.** Permittee shall bear all costs or expenses of any kind or nature in connection with its use of the Permit Area, and shall keep the Permit Area free and clear of any liens or claims of lien arising out of or in any way connected with its use of the Permit Area.

**17. Indemnity.** Permittee shall indemnify, defend, reimburse and hold harmless San Francisco, 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 the Permit Area, or any part thereof, whether such injury, death, damage or destruction is caused by the person or property of Permittee, 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 Permit, (b) any failure by Permittee to faithfully observe or perform any of the terms, covenants or conditions of this Permit, (c) the use of the Permit Area or any activities conducted thereon by Permittee, its Agents or Invitees, (d) any release or discharge, or threatened release or discharge, of any Hazardous Material caused or allowed by Permittee, its Agents or Invitees, on, in, under or about the Permit Area, any improvements or into the environment, or (e) any failure by Permittee 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 the facilities to be installed pursuant to this Permit; except solely to the extent of Claims resulting directly from the [gross negligence or] willful misconduct of San Francisco or San Francisco's authorized representatives. In addition to Permittee's obligation to indemnify San Francisco, Permittee specifically acknowledges and agrees that it has an immediate and independent obligation to defend the San Francisco 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 Permittee by San Francisco and continues at all times thereafter. The foregoing indemnity shall include, without limitation, 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, without limitation, damages for decrease in the value of the Permit Area and claims for damages or decreases in the value of adjoining property. Permittee's obligations under this Section shall survive the expiration or other termination of this Permit.

#### **18. Waiver of Claims.**

(a) Neither San Francisco nor any of its commissions, departments, boards, officers, agents or employees shall be liable for any damage to the property of Permittee, 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 Permit Area or its use by Permittee.

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

(c) Permittee acknowledges that it will not be a displaced person at the time this Permit is terminated or revoked or expires by its own terms, and Permittee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, San Francisco, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any present or future laws, statutes, or regulations, including, without limitation, any and all claims for relocation benefits or assistance from San Francisco under federal and state relocation assistance laws.

(d) Permittee expressly acknowledges and agrees that the fees payable hereunder do not take into account any potential liability of San Francisco for any consequential, punitive or incidental damages arising out of disruption to the Facilities or Permittee's uses hereunder. San Francisco would not be willing to give this Permit in the absence of a waiver of liability for

consequential or incidental damages due to the acts or omissions of San Francisco or its Agents, and Permittee expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Permittee or other waivers contained in this Permit and as a material part of the consideration for this Permit, Permittee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against for punitive, consequential and incidental damages, and covenants not to sue for such damages, San Francisco, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, arising out of this Permit or the uses authorized hereunder, including, without limitation, any interference with uses conducted by Permittee pursuant to this Permit, regardless of the cause, and whether or not due to the negligence of San Francisco or its Agents, except for the gross negligence and willful misconduct of San Francisco or its Agent.

(e) As part of Permittee's agreement to accept the Permit Area in its "As Is" condition as provided below, and without limiting such agreement, Permittee on behalf of itself and its successors and assigns, waives its right to recover from, and forever releases and discharges, San Francisco and its Agents, and their respective heirs, successors, administrators, personal representatives and assigns, from any and all Claims, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the physical or environmental condition of the Permit Area and any related improvements or any law or regulation applicable thereto or the suitability of the Permit Area for Permittee's intended use.

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

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

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

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

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

**21. Cessation of Use.** Permittee will not terminate its activities on the Permit Area pursuant hereto without prior written notice to San Francisco.

**22. No Joint Ventures or Partnership; No Authorization.** This Permit does not create a partnership or joint venture between San Francisco and Permittee as to any activity conducted by Permittee on, in or relating to the Permit Area. Permittee is not a state actor with respect to any activity conducted by Permittee on, in, under or around the Permit Area. The giving of this Permit by San Francisco does not constitute authorization or approval by San Francisco of any activity conducted by Permittee on, in, around or relating to the Permit Area.

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

**24. Non-Discrimination in San Francisco Contracts and Benefits Ordinance.**

**(a) Covenant Not to Discriminate.** In the performance of this Permit, Permittee agrees not to discriminate against any employee of, any San Francisco employee working with Permittee, or applicant for employment with Permittee, 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.** Permittee shall include in all subcontracts relating to the Permit Area a non-discrimination clause applicable to such subcontractor in substantially the form of subsection (a) above. In addition, Permittee 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. Permittee's failure to comply with the obligations in this subsection shall constitute a material breach of this Permit.

**(c) Non-Discrimination in Benefits.** Permittee does not as of the date of this Permit and will not during the term of this Permit, in any of its operations in San Francisco, on real property owned by San Francisco, or where the work is being performed for the San Francisco 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 Permit.** As a condition to this Permit, Permittee shall, to the extent applicable, execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

**(e) Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the Permit of San Francisco property are incorporated in this Section by reference and made a part of this Agreement as though fully set

forth herein. Permittee shall comply fully with and be bound by all of the provisions that apply to this Permit under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Permittee 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 Permit may be assessed against Permittee and/or deducted from any payments due Permittee.

**25. Requiring Health Benefits for Covered Employees.** To the extent applicable and unless exempt or preempted by other law, Permittee agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance ("**HCAO**"), as set forth in San Francisco Administrative Code Chapter 12Q ("**Chapter 12Q**"), including the implementing regulations, as the same may be amended or updated from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Permit as though fully set forth herein. The text of the HCAO is currently available on the web at <http://www.sfgov.org/olse/hcao>. Capitalized terms used in this Section and not defined in this Permit shall have the meanings assigned to such terms in Chapter 12Q.

(a) For each Covered Employee Permittee shall provide the applicable health benefit set forth in Section 12Q.3 of the HCAO. If Permittee chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

(b) Notwithstanding the above, if Permittee meets the requirements of a "small business" as described in Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with part (a) above.

(c) Permittee's failure to comply with any applicable requirements of the HCAO shall constitute a material breach by Permittee of this Permit and San Francisco's remedies shall be those set forth in the HCAO. If, within thirty (30) days after receiving San Francisco's written notice of a breach of this Permit for violating the HCAO, Permittee fails to cure such breach or, if such breach cannot reasonably be cured within such 30-day period, Permittee fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, San Francisco shall have the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to San Francisco.

(d) Any Contract or Subcontract regarding services to be performed on the Permit Area entered into by Permittee shall require the Contractors and Subcontractors, as applicable, to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Permittee shall notify the Purchasing Department when it enters into such a Contract or Subcontract and shall certify to the Purchasing Department that it has notified the Contractor or Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on the Contractor or Subcontractor through written agreement with such Contractor or Subcontractor. Permittee shall be responsible for ensuring compliance with the HCAO by each Contractor and Subcontractor performing services on the Permit Area. If any Contractor or Subcontractor fails to comply, San Francisco may pursue the remedies set forth in this Section against Permittee based on the Contractor's or Subcontractor's failure to comply, provided that the Contracting Department has first provided Permittee with notice and an opportunity to cure the violation.

(e) Permittee shall not discharge, reprimand, penalize, reduce the compensation of, or otherwise discriminate against, any employee for notifying San Francisco of any issue relating to the HCAO, for opposing any practice proscribed by the HCAO, for participating in any

proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

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

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

(h) Upon request, Permittee shall provide reports to San Francisco in accordance with any reporting standards promulgated by San Francisco under the HCAO, including reports on Subcontractors or Contractors.

(i) Within five (5) business days after any request by San Francisco, Permittee shall provide San Francisco with access to pertinent records relating to any Permittee's compliance with the HCAO. In addition, San Francisco and its agents may conduct random audits of Permittee at any time during the term of this Permit. Permittee agrees to cooperate with San Francisco in connection with any such audit.

**26. Notification of Limitations on Contributions.** Through its execution of this Permit, Permittee 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 San Francisco for the selling or leasing of any land or building to or from San Francisco whenever such transaction would require the approval by a San Francisco elective officer or the board on which that San Francisco elective officer serves, from making any campaign contribution to (1) an individual holding a San Francisco elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Permittee acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Permittee further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Permittee's board of directors, chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than twenty percent (20%) in Permittee; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Permittee. Additionally, Permittee acknowledges that Permittee must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Permittee further agrees to provide to San Francisco the names of each person, entity or committee described above.

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

**28. Taxes, Assessments, Licenses, Permit Fees and Liens.**

(a) Permittee recognizes and understands that this Permit may create a possessory interest subject to property taxation and that Permittee may be subject to the payment of property

taxes levied on such interest. Permittee further recognizes and understands that any transfer or assignment permitted under this Permit and any exercise of any option to renew or extend this Permit 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) Permittee agrees to pay taxes of any kind, including, but not limited to, possessory interest taxes, that may be lawfully assessed on the interest hereby created and to pay all other taxes, excises, licenses, permit charges and assessments based on Permittee's usage of the Permit Area that may be imposed upon Permittee by law, all of which shall be paid when the same become due and payable and before delinquency.

(c) Permittee agrees not to allow or suffer a lien for any such taxes or charges to be imposed upon the Permit Area or upon any equipment or property located thereon without promptly discharging the same, provided that Permittee, if so desiring, may have reasonable opportunity to contest the validity of the same by paying under protest or posting adequate (in San Francisco's sole discretion) security during any such contest.

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

**San Francisco or PUC:** Real Estate Services  
Public Utilities Commission  
1145 Market Street, 7th Floor  
San Francisco, California 94103  
Attn: Director  
Re: Milpitas – NRP \_\_\_\_\_

**Permittee:** \_\_\_\_\_  
City of Milpitas  
Att: Public Works Director  
455 E. Calaveras Blvd  
Milpitas, CA 95035-5411

Any notice given by a means that affords the sender evidence of delivery, attempted delivery, or rejected delivery shall be deemed to have been given and received at the date and time of delivery, attempted delivery, or rejected delivery, whichever occurs first.

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

**31. Pesticide Prohibition.** Permittee shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "**Pesticide Ordinance**") which (a) prohibit the use of certain pesticides on San Francisco property, (b) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (c) require

Permittee to submit to the PUC an integrated pest management (“IPM”) plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Permittee may need to apply to the Permit Area during the term of this Permit, (ii) describes the steps Permittee will take to meet the San Francisco’s IPM Policy described in Section 300 of the Pesticide Ordinance, and (iii) identifies, by name, title, address and telephone number, an individual to act as the Permittee’s primary IPM contact person with San Francisco. In addition, Permittee shall comply with Sections 303(a) and 303(b) of the Pesticide Ordinance.

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

**33. Disclosure.** Permittee understands and agrees that under San Francisco's Sunshine Ordinance (San Francisco Administrative Code Chapter 67) and the State Public Records Law (Gov't Code Section 6250 et seq.), apply to this Permit and any and all records, information, and materials submitted to the San Francisco in connection with this Permit. Accordingly, any and all such records, information and materials may be subject to public disclosure in accordance with San Francisco’s Sunshine Ordinance and the State Public Records Law. Permittee hereby authorizes the San Francisco to disclose any records, information and materials submitted to the San Francisco in connection with this Permit.

**34. Cooperative Drafting.** This Permit has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Permit reviewed and revised by legal counsel. No party shall be considered the drafter of this Permit, 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 Permit.

**35. General Provisions.** (a) This Permit may be amended or modified only by a writing signed by San Francisco and Permittee. (b) No waiver by any party of any of the provisions of this Permit 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 Permit. (c) Except as expressly provided to the contrary, all approvals, consents and determinations to be made by San Francisco hereunder may be made in the sole and absolute discretion of San Francisco. (d) This instrument (including the exhibit(s) hereto) contains the entire agreement between the parties and all prior written or oral negotiations, discussions, understandings and agreements are merged herein. (e) The section and other headings of this Permit are for convenience of reference only and shall be disregarded in the interpretation of this Permit. (f) Time is of the essence in all matters relating to this Permit. (g) This Permit shall be governed by California law and San Francisco's Charter. (h) If either party commences an action against the other or a dispute arises under this Permit, the prevailing party shall be entitled to recover from the other reasonable attorneys' fees and costs. For purposes hereof and for purposes of the indemnifications set forth herein, reasonable attorneys' fees of San Francisco shall be based on the fees regularly charged by private attorneys in San Francisco with comparable experience notwithstanding the San Francisco’s use of its own attorneys. (i) If Permittee consists of more than one person then the obligations of each person shall be joint and several. (j) Permittee may not record this Permit or any memorandum hereof. (k) Subject to the prohibition against assignments or other transfers by Permittee hereunder, this Permit 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 Permit by San Francisco shall automatically revoke this Permit. (m) Notwithstanding anything to the contrary contained

in this Permit, Permittee acknowledges and agrees that no officer or employee of San Francisco has authority to commit San Francisco to this Permit unless and until a resolution of San Francisco's PUC shall have been duly adopted approving this Permit and authorizing the transaction contemplated hereby. Therefore, any obligations or liabilities of San Francisco hereunder are contingent upon enactment of such a resolution, and this Permit shall be null and void if San Francisco's PUC does not approve this Permit, in its sole discretion.

*[Signatures on following page]*

PERMITTEE REPRESENTS AND WARRANTS TO CITY THAT IT HAS READ AND UNDERSTANDS THE CONTENTS OF THIS PERMIT, 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.

**PERMITTEE:**

**CITY OF MILPITAS, A MUNICIPAL CORPORATION:**

Recommended by:

\_\_\_\_\_

Greg Armendariz  
Public Works Director/City Engineer

Attest:

\_\_\_\_\_

Mary Lavelle, City Clerk

Approved as to form:

By: \_\_\_\_\_

Michael J. Ogaz  
City Attorney

By: \_\_\_\_\_

Thomas C. Williams  
City Manager

\_\_\_\_\_

**SAN FRANCISCO:**

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

By: \_\_\_\_\_  
General Manager  
Public Utilities Commission

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

**APPROVED AS TO FORM:**

**DENNIS J. HERRERA**  
City Attorney

By: \_\_\_\_\_  
Carolyn J. Stein  
Deputy City Attorney

**Authorized by**  
**Public Utilities Commission**

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

Attested: \_\_\_\_\_  
Secretary  
Public Utilities Commission

**EXHIBIT A**

**Description of Permit Area**

All that certain real property located in \_\_\_\_\_ County, California,  
described as follows:

A portion of Parcel 121, according to PUC records and as shown on Drawing  
No. \_\_\_\_\_ attached hereto as Exhibit A-1 and made a part hereof.

**EXHIBIT A-1**

**Drawing No.** \_\_\_\_\_

**EXHIBIT B**

**Depiction of Lot A**

**EXHIBIT C**

**Deed**

**EXHIBIT D**

**Approved Plans and Specifications**