

RECORDING REQUESTED BY:

City and County of San Francisco

WHEN RECORDED RETURN TO:

**Director of Property
Real Estate Department
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102-6051**

**Documentary Transfer Tax is Zero;
No fee for recording pursuant to
Government Code § 27383**

APN: Block 4154, Lot 001

Space above this line for Recorder's Use

**EASEMENT AGREEMENT
(Underground Utilities)
(Zuckerberg San Francisco Hospital Campus Near 23rd Street)**

This Easement Agreement ("**Agreement**") is made this _____ day of _____, 20__, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**" or "**Grantor**"), and THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California public corporation ("**Regents**" or "**Grantee**"), with reference to the following facts:

A. Grantor is the owner of that certain real property situated in the City and County of San Francisco, State of California, described in **Exhibit A** and **Exhibit A-1** attached hereto (the "**Burdened Property**"). The Burdened Property is part of the campus of the Priscilla Chan and Mark Zuckerberg San Francisco General Hospital and Trauma Center (the "**ZSFG Campus**"), which is generally bounded by 23rd Street, Potrero Avenue, Highway 1, San Bruno Avenue, 22nd Street and Vermont Street. The ZSFG Campus, including the Burdened Property, is in the jurisdiction of City's Department of Public Health.

B. Grantor and the Regents have entered into or will enter into a long term ground lease under which the Regents will lease from City a portion of the ZSFG Campus, shown and described on **Exhibit B** attached hereto (the "**Benefited Property**") on which the Regents will develop and operate a research facility. In connection with the construction of the research facility, Grantee has requested from Grantor a non-exclusive easement in, over, under and across that portion of the Burdened Property shown and described on **Exhibit C** and **Exhibit C-1** attached hereto (the "**Easement Area**"), as more specifically set forth herein, for the purpose of

constructing, reconstructing, maintaining, operating, using, repairing and replacing one or more subsurface connections for _____ [*describe – sewer laterals? what type of pipe for water connection? what kind of facilities for PG&E? what kind of conduit for AT&T?*] (the “**UCSF Facilities**”), as more specifically set forth herein, for the purposes permitted under this Agreement.

C. The Board of Supervisors adopted [Ordinance/Resolution] No. _____ on _____, 20__ (the “**Approval Action**”), which, among other matters, approved a Lease Disposition and Development Agreement by and between City and the Regents providing for the development of the research facility (the “**LDDA**”) and execution and delivery of a ground lease for the Benefited Property on the terms and conditions specified in the LDDA (the “**UCSF Ground Lease**”), and delegated authority to City's Director of Property to negotiate with Grantee regarding the terms of this Agreement.

D. This Agreement and the easement herein granted are being executed and delivered in order to allow Grantee to construct, reconstruct, maintain, operate, use, repair, and replace the UCSF Facilities within the Easement Area in accordance with the provisions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing Recitals and the covenants and agreements of the parties contained herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Grant of Easement. Subject to the provisions of this Agreement, Grantor hereby grants to Grantee and Grantee hereby accepts a non-exclusive, irrevocable easement in, over, under and across the Easement Area (“**Easement**”) for the purpose of constructing, reconstructing, installing, operating, using, maintaining, repairing, replacing and removing the UCSF Facilities, which UCSF Facilities shall all be located at a depth between 2 feet below the finished grade surface of 23rd Street and 19 feet below the finished grade surface of 23rd Street, together with reasonable access thereto for the purposes set forth in this Section 1.

2. Limitation on Use.

(a) Grantee acknowledges that the UCSF Facilities (including any replacement UCSF Facilities) shall be for the exclusive benefit of the Benefitted Property, and shall not be used to connect any property other than the Benefitted Property to the facilities of any third party utility provider, vendor or property owner.

(b) Grantee acknowledges that the Easement granted herein is nonexclusive and that the UCSF Facilities will be located over, under or adjacent to utility facilities serving the ZSFG Campus or other public and private utility facilities (collectively, the “**Campus Facilities**”). The grant of the Easement is made subject to all licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens and claims of title that may affect the Easement Area that are in effect as of the date hereof. Grantor makes no warranty as to its title to the Easement Area or as to the existence of any encumbrance or utility installations affecting the Easement Area.

(c) Grantee agrees that the use of the Easement granted herein shall

not unreasonably impede work required to be performed by City or a private or public utility company to repair or maintain the Campus Facilities. Additionally, City shall have the right to (i) modify the Campus Facilities, (ii) construct, install, or place new facilities located on or within the Easement Area to serve the ZSFG Campus and (iii) otherwise utilize the Easement Area for any public or private utility purposes, provided in each instance that (A) Grantee and Grantee's agents, employees, contractors, guests, invitees, heirs, successors, executors, administrators and assigns (collectively, the "**Grantee Parties**") shall at all times (except in the case of an emergency) have reasonable access to, over and across the Easement Area for the purposes set forth in Section 1 above in accordance with the provisions of this Agreement, and (B) any such modifications or other actions permitted in the foregoing items (i), (ii) and (iii) shall at no time unreasonably interfere with or restrict Grantee's or the Grantee Parties' access to or use of the Easement Area as provided in Section 1 above or otherwise adversely affect the UCSF Facilities located in the Easement Area or Grantee's easement rights as provided in this Agreement.

3. Approval of Access and Installation; Regulations.

(a) General Access Requirements. If Grantee wishes to enter the Burdened Property to repair, maintain, replace or relocate any of the UCSF Facilities and/or construct or install New Installations or Modifications (each as defined in Section 3(b) below) within the Easement Area (including the initial installation of the UCSF Facilities), Grantee shall provide at least five (5) business days' prior written notice of such desired entry (except in the case of an emergency in which case only reasonable notice shall be required). In connection with any such entry, Grantee shall comply with such reasonable conditions as the Director of Property may reasonably impose thereon and shall follow such reasonable procedures as the Director of Property may reasonably require with respect to such access and work (which conditions and procedures may be similar to those imposed by the City on work within the public right of way). No New Installation or Modifications shall be made without the approval or deemed approval of City, as provided in Section 3(b) below.

(b) Proposed New Installations and Modifications. Prior to installing any utility facilities, including the initial UCSF Facilities, within the Easement Area (a proposed "**New Installation**"), or materially modifying any existing UCSF Facilities (each a "**Modification**"), Grantee shall submit a written request for consent for such New Installation or Modification, together with reasonably detailed plans and specifications and the projected locations for the proposed New Installation or Modification, as applicable, (collectively, "**Plans**") for City's approval, which approval shall not be unreasonably withheld, conditioned or delayed. In evaluating any proposed Plans, the Director of Property, in consultation with such other City departments and such consultants as the Director of Property elects to consult, at City's sole cost, may consider the likely impact of the proposed New Installation or Modification, as applicable, on existing and future utilities and other City facilities in the Burdened Property, including any likelihood of an increase in City's cost of operating, maintaining or repairing any City facility in the Burdened Property. Provided that (i) Grantee's request for approval displays prominently on the envelope enclosing such request and the first page of such request, substantially the following words: "UTILITY PLACEMENT APPROVAL REQUEST FOR ZSFG CAMPUS. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND COULD RESULT IN THE REQUEST BEING DEEMED APPROVED," and City

fails to notify Grantee in writing of its approval or disapproval of any proposed New Installation or Modification and/or Plans therefore within thirty (30) days of receipt thereof. and (ii) Grantee thereafter provides a second request for approval that displays prominently on the envelope enclosing such request and the first page of such request, substantially the following words: "SECOND REQUEST: UTILITY PLACEMENT APPROVAL REQUEST FOR ZSFG CAMPUS. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND COULD RESULT IN THE REQUEST BEING DEEMED APPROVED," and City thereafter fails to notify Grantee in writing of City's approval or disapproval such proposed New Installation or Modification, as applicable, and the Plans therefore within ten (10) business days of receipt thereof, such failure to notify grantee in writing of its approval or disapproval of such shall be deemed an approval of such New Installation or Modification, as applicable, and the Plans therefore. Any New Installation or Modification made by Grantee shall be performed in accordance with the Plans for the same approved (or deemed approved) by City and in accordance with the provisions of this Section 3. Upon completion of any New Installation or Modification in compliance with the requirements hereof, the term "**UCSF Facilities**" shall include such New Installation or Modification, as applicable. [Grantee shall promptly reimburse City for City's actual costs in reviewing the New Installation or Modification.] *[open]*

(c) Approval Authority. City represents and warrants to Grantee that, in the Approval Action, City's Board of Supervisors delegated to the Director of Property the authority to approve New Installations and Modifications, subject to review and approval of plans for such New Installations and Modifications.

(d) Permits. Grantee shall obtain all permits, licenses and approvals (collectively, "**Permits**") of any regulatory agencies required to commence and complete the any proposed New Installations or Modification. Grantor agrees to reasonably cooperate with Grantee, at no cost to Grantor, to obtain such Permits, to the extent required by the applicable governmental authorities. Grantee's installation of any New Installations or Modification shall be performed in accordance with all applicable Permits and all applicable laws, statutes, ordinances, rules and regulations of federal, state and local authorities.

(e) Manner of Undertaking. Grantee covenants to complete all installation, reconstruction, maintenance or repair activities in the Easement Area in an expeditious and diligent manner.

(f) As-Built Drawings. Promptly upon completion of the installation of any New Installations or Modification, Grantee shall furnish City's Director of Property with final as-built drawings for the applicable New Installation or Modification, showing, in detail, the exact location, depth, and size of the same, including an electronic copy of such as-built plans, if available.

4. Term of Easement.

(a) The Easement granted under Section 1, above, shall commence on the date hereof and continue in perpetuity unless otherwise terminated pursuant to the provisions of this Section 4 or as determined by operation of law.

(b) In the event that Grantee abandons its use of the Easement and the Easement Area for a period in excess of twenty-four (24) consecutive months and, during such period, no UCSF Facilities existing in the Easement Area are being used to serve the Benefitted Property, Grantor may terminate this Easement with ninety (90) days advance written notice unless Grantee shall commence use of the Easement and the Easement Area for the purposes set forth herein within such ninety (90) day period.

(c) Upon the termination of the Easement, in whole or in part, in accordance with this Section 4, upon Grantor's request, Grantee shall cause to be executed, acknowledged and delivered on behalf of Grantee to Grantor a quitclaim deed to evidence such termination.

5. Condition of the Burdened Property.

(a) Grantor makes no representations or warranties whatsoever, under this Agreement with respect to the current physical condition of the Burdened Property, and Grantor shall have no responsibility under this Agreement with respect thereto (except as otherwise specifically set forth herein). The use of the Easement herein granted shall be with the Burdened Property in an "as is" physical condition, except as otherwise specifically provided herein. Except to the extent caused by City's breach of this Agreement or the gross negligence or willful misconduct of City, Grantee hereby waives any and all claims against Grantor arising from, out of or in connection with the physical or environmental condition of the Burdened Property and any related improvements or any law or regulation applicable thereto or the suitability of the physical condition of the Burdened Property for the uses permitted under Section 1 above; provided, however, that Grantor shall not take any action that would unreasonably impair the ability of Grantee to use the Easement herein granted, and the parties acknowledge that the placement of some utilities may require a vertical separation. Nothing herein shall be construed in any way to alter, amend, or otherwise relieve Grantor or Grantee of any of their respective responsibilities with regard to the physical condition of the Burdened Property (including without limitation, responsibilities with regard to environmental investigation and remediation) set forth in any other document, instrument or agreement by and among the parties.

(b) During the term of the UCSF Ground Lease, Grantee shall maintain the UCSF Facilities in good working order and condition. Except as expressly set forth herein, Grantee shall have no obligation to maintain the Burdened Property, the Easement Area or any improvements located therein (other than the UCSF Facilities) or to repair any damage to the Burdened Property, the Easement Area or such other improvements caused by any party other than Grantee or any Grantee Parties. Upon termination of the UCSF Ground Lease, Grantee shall surrender the UCSF Facilities to Grantor in accordance with and subject to the terms and conditions of the UCSF Ground Lease (modified so as to relate to the Easement Area instead of the UCSF Ground Lease premises), free and clear of any liens or encumbrances caused by the Grantee Parties.

(c) Prior to the commencement by Grantee or any of the Grantee Parties of any construction, repair, maintenance, replacement, or other activities permitted under this Agreement within the Easement Area, Grantee shall verify the location of City and other

public or private utility company facilities that may be affected by such work and shall be responsible for any damage to such facilities due to such work. In the event that any City or public or private utility company facilities within the Easement Area reasonably require temporary relocation solely as a result of any work performed by Grantee or any Grantee Parties hereunder, Grantee shall make reasonable satisfactory arrangements for any such temporary relocation, which temporary relocation shall be performed at Grantee's sole cost and expense. If Grantee should excavate or drill on any portion of the Burdened Property, including without limitation, the Easement Area, then Grantee shall explore with hand tools to a depth of at least eight feet (8') below the surface of the ground or, at Grantee's option, use suitable detection equipment prior to drilling or excavating with mechanized equipment. Absence of markers does not constitute a warranty or implied representation by City that there are no subsurface installations. It shall be Grantee's responsibility to determine the existence of any underground facilities and Grantee shall call Underground Service Alert at 1-800-642-2444 prior to beginning any work on the Burdened Property.

(d) Grantee shall promptly repair any and all damage to pavement, sidewalk, landscaping or other improvements or property located in the Easement Area, on the Burdened Property, or on any City adjacent property that are damaged by Grantee or the Grantee Parties in the course of Grantee's operation, use, repair and maintenance of the UCSF Facilities, including, without limitation, as a result of excavation. If Grantee fails to perform Grantee's repair obligations under this Section 5(d) within thirty (30) days after written notice from Grantor of such failure (or such longer period as is reasonably required to complete such repair obligations so long as Grantee commences such repairs within the initial thirty (30) day period and at all times thereafter diligently pursues the same to completion), Grantor may perform the necessary repairs at the expense of Grantee, and Grantee shall reimburse Grantor for the cost thereof within ten (10) business days of receipt of written demand therefor, together with copies of all applicable invoices, receipts and other supporting documentation. Notwithstanding the foregoing, in the event of an emergency which requires immediate repairs in order to circumvent an immediate and imminent threat to the health or safety of any person or substantial damage to property [or to remedy a material interference with Grantor's provision of healthcare services at the ZSFG Campus] [*open*], Grantor shall be required to provide only such prior notice, if any, as shall be reasonable under the circumstances in Grantor's reasonable judgment.

6. Indemnification.

(a) Grantor Indemnification. Grantee shall indemnify, defend and hold Grantor, its officers, directors, employees and agents (hereinafter collectively called "**Grantor Indemnified Parties**") harmless from and against any and all liabilities, penalties, costs, damages, expenses, causes of action, claims or judgments (including without limitation reasonable attorneys' fees) (collectively, "**Indemnified Claims**") resulting from (i) any breach of default by Grantee in the observance or performance of any of the terms, covenants or conditions of this Agreement, and/or (ii) any injury to or the death of any person (including without limitation any Grantor Indemnified Party) or physical damage to property, real or personal, of any kind wherever located and by whomever owned (including, without limitation, property owned by any Grantor Indemnified Party) in proportion to and to the extent such injury, death or physical damage arises out of or results from any of the activities or operations of Grantee or any of the Grantee Parties on or about the Easement Area (including without limitation the

construction, installation, maintenance, repair or replacement of any UCSF Facilities), except to the extent that any such Indemnified Claims are caused by the negligence or willful misconduct of Grantor or any of the other Grantor Indemnified Parties or by Grantor's breach of its obligations under this Agreement, the UCSF Ground Lease or the LDDA.

(b) Grantee Indemnification. Grantor shall indemnify, defend and hold Grantee and its officers, directors, employees and agents, and each of their respective successors and assigns (hereinafter collectively called "**Grantee Indemnified Parties**") harmless from and against any and all Indemnified Claims resulting from (i) any breach or default by Grantor in the observance or performance of any of the terms, covenants or conditions of this Agreement and/or (ii) any injury or the death of any person (including without limitation any Grantee Indemnified Party) or physical damage to property, real or personal, of any kind wherever located and by whomever owned (including, without limitation, property owned by any Grantee Indemnified Party) in proportion to and to the extent such injury, death or physical damage arises out of any negligence, willful misconduct or other acts or omissions of Grantor or any of the other Grantor Indemnified Parties, except to the extent that any such Indemnified Claims are caused by the negligence or willful misconduct of Grantee or any of the other Grantee Indemnified Parties or by Grantee's breach of its obligations under this Agreement, the UCSF Ground Lease or the LDDA.

(c) Notice. Each party shall give prompt notice to the other, at the address for notices set forth herein, with respect to any Indemnified Claims initiated or threatened against Grantor or Grantee, which such party has reason to believe is likely to give rise to an obligation to indemnify, defend and hold harmless pursuant to Section 6(a) or Section 6(b) above and thereafter shall cooperate with the indemnifying party in the defense of such Indemnified Claims, provided however that the failure to give such notice shall not relieve the indemnifying party of its obligations hereunder except to the extent that such indemnifying party is materially prejudiced by such failure.

(d) Grantee's Defense Obligations. Grantee shall, at its option but subject to the reasonable consent and approval of City, be entitled to control the defense, compromise or settlement of any matter for which Grantee is to provide defense hereunder through counsel of Grantee's own choice; provided, however, that in all cases Grantor shall be entitled to participate in such defense, compromise, or settlement at its own expense. If Grantee shall fail, however, in City's reasonable judgment, within a reasonable time following notice from City alleging such failure, to take reasonable and appropriate action to defend, compromise, or settle such suit or claim, City shall have the right promptly to use the City Attorney or hire outside counsel, at Grantee's sole expense, to carry out such defense, compromise, or settlement, which expense shall be due and payable to City twenty (20) business days after receipt by Grantee of an invoice therefor.

(e) City's Obligations. City shall, at its option but subject to the reasonable consent and approval of Grantee, be entitled to control the defense, compromise, or settlement of any such matter for which City is to provide defense hereunder through counsel of City's own choice (including, without limitation, the City Attorney); provided, however, that in all cases Grantee shall be entitled to participate in such defense, compromise, or settlement at its own expense. If City shall fail, however, in Grantee's reasonable judgment, within a reasonable

time following notice from Grantee alleging such failure, to take reasonable and appropriate action to defend, compromise, or settle such suit or claim, Grantee shall have the right promptly to use Grantee's internal counsel or hire outside counsel, at City's sole expense, to carry out such defense, compromise, or settlement, which expense shall be due and payable to Grantee twenty (20) business days after receipt by City of an invoice therefor; provided that Grantee may, in lieu of receiving a reimbursement of such expense pursuant to the foregoing Grantee may offset such expense from the next installments of rent due under the Ground Lease following Grantee's notification of such expense, which notification shall be accompanied by reasonably detailed supporting documentation.

(f) Survival. The provisions of this Section 6 shall survive the expiration or other termination of this Agreement.

7. Litigation Expenses.

(a) General. If either party hereto brings an action or proceeding (including any cross-complaint, counterclaim, or third-party claim) against the other party by reason of a default by such other party, or otherwise arising out of this Agreement, the prevailing party in such action or proceeding shall be entitled to its costs and expenses of suit, including but not limited to reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment. "Prevailing party" within the meaning of this Section 7 shall include without limitation, a party who dismisses an action for recovery hereunder in exchange for payment of the sums allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action.

(b) Appeal. Attorneys' fees under this Section 7 shall include attorneys' fees reasonable incurred on any appeal, and, in addition, a party entitled to attorneys' fees shall be entitled to all other costs and expenses reasonably incurred in connection with such action, as provided by statute or the California Rules of Court.

(c) Fee Award for Grantor's Attorneys, Grantee's In-house Counsel. For purposes of this Agreement, reasonable fees of attorneys of the Grantor's Office of City Attorney and any in-house counsel of Grantee shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience in the subject matter area of the law for which Grantor's or Grantee's counsel's services were rendered who practice in the City and County of San Francisco, State of California, in law firms with approximately the same number of attorneys as employed by the Office of City Attorney, or, in the case of Grantee, the number of attorneys employed by Grantee's in-house counsel.

8. Relocation of Easement. City may relocate the Easement if in the opinion of City it unreasonably interferes with the present or future use by City of City's land, subject to the terms and conditions of this Section 8. City acknowledges that the facilities installed in the Easement Area are connected to other facilities of Grantee located outside of the Easement Area, and that, accordingly, the substitute Easement Area must include an area reasonably required to properly connect the installations on the Easement Area with Grantee's other facilities. If City elects to relocate the Easement: (i) City shall provide to Grantee a substitute Easement Area reasonably suited to Grantee's needs at no cost to Grantee, (ii) City

shall provide Grantee with not less than three (3) years' prior written notice of Grantee's election to relocate the Easement and of the location of the proposed substitute Easement Area and of any existing installations in the proposed substitute Easement Area and any encumbrances, covenants, conditions, restrictions, reservations, contracts, leases and licenses or easements relating thereto, (iii) City shall promptly pay Grantee's cost in relocating Grantee's equipment and installations from the Easement Area to the substitute Easement Area, including, without limitation, construction costs and Grantee's staff time and costs in connection with the design, construction review and inspection, review of submittals, preparation and testing, attorney services, and other necessary administrative work regarding the relocation, (iv) City shall work closely with Grantee to minimize and avoid any potential problem or interruption in the utility services resulting from the substitution of the Easement Area. Grantee shall have access to the substitute Easement Area and construction sites. Prior to the date Grantee incurs costs in connection with City's election to designate a substitute Easement Area, Grantee shall provide City with a good faith estimate of the amount reasonably estimated by Grantee to cover Grantee's costs of the relocation. Grantee shall, on a periodic basis, provide an accounting to City of costs incurred and estimated additional costs through the completion of the relocation. Promptly following completion of the relocation, Grantee shall complete its final accounting and City shall promptly pay any sum due Grantee hereunder. [*open*]

9. Time. Time is of the essence of this Agreement and each and every part thereof.

10. Miscellaneous.

(a) Grantee shall become a member of, participate in, and share in the costs of Underground Service Alert — Northern California (U.S.A.) regional notification center.

(b) The rights granted herein do not constitute a private cable TV franchise.

11. Amendment. This Agreement may be amended or otherwise modified only in writing signed and acknowledged by Grantor and Grantee, or the successors and assigns of each, subject to the provisions of Section 15 hereof.

12. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

13. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be entitled to be the original and all of which shall constitute one and the same agreement.

14. References; Titles. Wherever in this Agreement the context requires, reference to the singular shall be deemed to include the plural. Titles of sections and paragraphs are for convenience only and neither limit nor amplify the provisions of this Agreement.

15. Notice. Any notice given under this Agreement shall be in writing and given by delivering the notice in person, by commercial overnight or same day courier or by sending it by registered or certified mail, or Express Mail, return receipt requested, with postage

prepaid, to the mailing address listed below or any other address notice of which is given. For the convenience of the parties, copies of notices may also be given by telefacsimile, to the telephone number listed below or such other numbers as may be provided from time to time.

Grantor: Director of Property
Real Estate Department
25 Van Ness Avenue Suite 400
San Francisco, California 94108

and to: City Attorney, City of San Francisco
Room 234, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4682
Attn: John Malamut and Real
Estate/Finance

Grantee: The Regents of the University of California
Office of the President
1111 Franklin Street, Sixth Floor
Oakland, California 94607
Attn: Director of Real Estate

with a copy to: University of California
Office of General Counsel
1111 Franklin Street, Eighth Floor
Oakland, California 94607
Attn: _____

Any mailing address may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days prior to the effective date of the change. All notices under this Agreement shall be deemed given, received, made or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.

16. Successors and Assigns.

(a) Subject to Section 16(b) below and except in connection with any transfer of Grantee's interest in the Benefited Property pursuant to the UCSF Ground Lease, Grantee shall not transfer, assign or convey any interest in this Agreement or in the Easement. Without limiting the foregoing Grantor and Grantee expressly agree and acknowledge that Grantee may, without the prior consent of Grantor transfer, assign or convey rights and obligations under this Agreement to any permitted assignee of Grantee's interest as tenant under the UCSF Ground Lease. Upon any assignment by Grantee pursuant to the foregoing, Grantee shall be released from any obligations under this Agreement first arising on or after the date of such assignment, if and to the extent Grantee is released from its obligations under the UCSF

Ground Lease.

(b) All provisions, agreements, easements, rights, powers, covenants, conditions and obligations contained in this Agreement shall constitute covenants running with the land pursuant to Section 1468 of the California Civil Code, as may be amended from time to time, and shall be binding upon and inure to the benefit of the Parties hereto, their respective heirs, successors and assigns, representatives, and all other persons acquiring all or any portion of any party's interest in the property described herein whether by sale, operation of law, foreclosure, deed in lieu of foreclosure, or in any manner whatsoever. This Agreement shall be recorded in the Official Records of the City and County of San Francisco, California.

17. Exclusive Benefit of Parties; Possible Future Easements.

(a) The provisions of this Agreement are for the exclusive benefit of Grantor and Grantee and their successors and assigns, subject to the provisions hereof, and not for the benefit of nor give rise to any claim or cause of action by any other person; and this Agreement shall not be deemed to have conferred any rights upon any person except Grantor and Grantee. Nothing herein shall be deemed a dedication of any portion of the Burdened Property to or for the benefit of the general public.

(b) If, in connection with the continued use of any existing or contemplated UCSF Facilities for the limited purposes set forth in Sections 1 and 2 above, it becomes necessary for a utility company to obtain an easement from Grantor over the Easement Area for the installation, maintenance, repair, replacement, and use of any UCSF Facilities, Grantor agrees to negotiate in good faith with the such utility company regarding such addition non-exclusive easements over the Easement Area in favor of such utility company (“**Future Easements**”). Such Future Easements shall (i) be non-exclusive in nature, (ii) be limited to the Easement Area only, (iii) provide for the installation, maintenance, repair, replacement, and use of the UCSF Facilities for the limited purposes set forth in Section 1 and 2 and no other purpose, and (iv) not increase the size, scope or burden of the Easement contemplated hereunder.

18. Severability. If any provision of this Agreement shall to any extent be invalid or unenforceable, the remainder of this Agreement (or the application of such provisions to persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each provision of this Agreement, unless specifically conditioned upon such invalid or unenforceable provision, shall be valid and enforceable to the fullest extent permitted by law.

19. Entire Agreement. This Agreement, together with any attachments hereto or inclusions by reference, constitute the entire agreement between the parties on the subject matter hereof, and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties hereto with respect to the Easement which is the subject matter of this Agreement.

20. Compliance With Laws. Grantee, at Grantee's expense, shall conduct all activities undertaken by Grantee on the Easement Area in compliance with all laws, statutes, ordinances, rules and regulations of federal, state and local authorities (including, without

limitation, Grantee itself) having jurisdiction over the Burdened Property and applicable to Grantee.

21. Default. A party's failure to perform any material covenant or obligation of such party hereunder and to cure such non-performance within thirty (30) days of written notice thereof by the non-breaching party shall constitute a default hereunder, provided that if more than thirty (30) days are reasonably required for such cure, no event of default shall occur if the breaching party commences such cure within such initial thirty (30) day period and diligently prosecutes such cure to completion. Upon such event of default, the non-breaching party shall be entitled to all remedies and means to cure or correct such default, both legal and equitable, allowed by operation of law, but excluding termination of the Easement herein granted.

22. Insurance; Waiver of Subrogation.

(a) Grantee maintains a program of self-insurance. Grantor agrees that Regents, as Grantee, shall not be required to carry any liability insurance with respect to this Agreement, however, without limiting Grantee's obligations hereunder, (i) Grantee shall be liable for the full equivalent of insurance coverage which would have been available if the applicable insurance policies described in **Exhibit D** to this Agreement had been obtained by Grantee from a third party insurer, and shall pay on behalf of or indemnify Grantor for all amounts which would have been payable by the third party insurer had such insurance been maintained; and (ii) Grantee shall act with the same promptness and subject to the same standards of good faith as would apply to a third party insurance company. At City's written request, Grantee shall provide to City's Risk Manager such information as is reasonably necessary to permit a review and analysis of Grantee's self-insurance program. The right to self-insure is personal to The Regents of the University of California and shall not inure to the benefit of any other successor, or assign of Grantee other than the State of California, and any other party shall have the right to self-insure only if and to the extent such right is approved in writing by City's Risk Manager, in his or her sole discretion; provided, however, that if City's Risk Manager grants such successor or assign, as the then-current tenant under the UCSF Ground Lease, the right to self-insure under the UCSF Ground Lease, City's Risk Manager shall not withhold its approval to such successor or assign's self-insurance hereunder.

(b) The terms and provisions of this Section 21(b) shall be inoperative unless and until Grantee's policy of self-insurance changes and Grantee is procuring liability insurance covering its use of the Easement. If Grantee does obtain liability insurance, each party, for itself and, to the extent it is legally permissible for it to do so, and to the extent such waiver of subrogation is available on commercially reasonable terms, and without affecting the coverage provided by insurance maintained by such party, on behalf of its insurer hereby releases and waives any right to recover against the other party from any liability for (i) any loss or damage to property, (ii) any loss or damage to buildings or other improvements, or (iii) claims arising by reason of any of the foregoing, to the extent that such damages and/or claims under (i) through (iii) are covered (and only to the extent of such coverage) by insurance actually carried by each party, irrespective of any negligence on the part of such party which may have contributed to such loss or damage. The provisions of this paragraph (b) are intended to restrict each party (as permitted by law) to recovery for loss or damage against insurance carriers to the

extent of such coverage, and waive fully, and for the benefit of the other party, any rights and/or claims that might give rise to a right of subrogation in any such insurance carrier.

(c) **Third Party Insurance Requirements.** Grantee shall cause any of Grantee's contractors, subcontractors or agents (other than Grantee's departments or divisions) performing work under this Agreement on behalf of Grantee during the term of this Agreement to procure and maintain insurance as required by **Exhibit D**.

(d) **Review.** The insurance limits and forms of coverage required under this Agreement shall be evaluated by City's Risk Manager and Grantee for adequacy at the same time and manner described in Section 19.1(b)(v) of the UCSF Ground Lease, but not less frequently than every five (5) years, and shall be increased or decreased in accordance with the standards and process set forth in such Section 19.1(b)(v).

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. Grantee 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. Survival. All representations, warranties, waivers, and indemnities given or made hereunder shall survive termination of this Agreement.

25. Notices Concerning Use. Grantor reserves the right to record, post and publish notices as referred to in Sections 813, 1008 and 1009 of the California Civil Code; provided, that such notices shall not affect the rights and obligations of Grantor and Grantee hereunder and, where appropriate, any such notice shall include recognition of the provisions of this Agreement.

[No further text this page.]

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on the day and year first above written.

GRANTOR:

CITY AND COUNTY OF SAN FRANCISCO, a
municipal corporation

By: _____
JOHN UPDIKE
Director of Property

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By: _____

Deputy City Attorney

GRANTEE:

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA, a California corporation

By: _____
Its: _____
Title: _____

APPROVED AS TO FORM:

By: _____

University Counsel

APPROVED LEGAL DESCRIPTIONS:

By: _____

Bruce R. Storrs

City and County Surveyor

LS 6914

Expires September 30, 20____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss
County of San Francisco)

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss
County of San Francisco)

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

EXHIBIT A

LEGAL DESCRIPTION OF BURDENED PROPERTY

EXHIBIT B

LEGAL DESCRIPTION OF BENEFITTED PROPERTY

EXHIBIT C
EASEMENT AREA

EXHIBIT D

INSURANCE REQUIREMENTS

Insurance Requirements

1. Each party required to carry insurance under Section 21 of the Agreement (each "**Required Party**") shall purchase from and maintain, in a company or companies with an A.M. Best rating of A-VIII or better and lawfully authorized to do business in the State of California, insurance for protection from claims under workers' or workmen's compensation acts and other employee benefit acts which are applicable, claims for damages because of bodily injury, including death, and from claims for damages to property, other than to the applicable work itself, which may arise out of or result from such Required Party's operations, whether such operations are performed by such Required Party, by a subcontractor of such Required Party, or by anyone directly or indirectly employed by any of them. Certificates of such insurance approved in writing by City shall be filed with City's Department of Public Works before the commencement of the work.
2. The insurance required hereunder shall be written on an occurrence basis for not less than the following, or greater if required by law. Coverage shall be maintained without interruption from date of commencement of the work:
 - (1) Workers' Compensation:
 - (a) State: Statutory
 - (b) Applicable Federal: Statutory
 - (c) Employer's Liability: \$1,000,000
 - (2) Commercial General Liability (including but not limited to comprehensive form, premises operations, explosion and collapse hazard and underground hazard, products and completed operations hazard, contractual liability, broad form property damage (including completed operations), independent contractors' protective, personal injury, automobile liability comprehensive form for owned, hired and non-owned vehicles):
 - (a) Combined single limits for bodily injury and property damages:

\$2,000,000 Each Occurrence

\$2,000,000 Annual Aggregate
 - (b) Property Damage Liability Insurance shall provide X, C and U coverage if the Required Party's operations involve any exposure to explosion, collapse or underground damage.
 - (3) Pollution Liability \$1,000,000 Combined Single Limit
 - (4) [Builder's all risk during any construction, consistent with the requirements of the Ground Lease.] [*open*]

3. The certificates of insurance shall contain the following provisions:
 - (1) Name Grantor as additional insureds under all insurance policies (excluding workers' compensation and professional liability policies);
 - (2) In the event of any change in the limits of liability, decrease in coverage or other material change in coverage, or the cancellation of insurance in its entirety, the insurer must give Grantor written notice at least thirty (30) days prior to the effective date of such change or cancellation (ten (10) days for non-payment of premium), and insurance coverage shall remain in force during said period;
 - (3) Insurance must be primary to all other insurance available to Grantor; and
 - (4) Waiver of any right of subrogation of the insurers against Grantor, if commercially available at reasonable rates.
4. Each Required Party and each contractor shall carry sufficient comprehensive insurance on its equipment at the Easement Area and en route to or from the Easement Area as may be necessary to fully protect itself.

