

**SUCCESSOR AGENCY  
CITY OF BRISBANE**

**OVERSIGHT BOARD MEETING DATE: February 13, 2014**

**ITEM TITLE: Approval of Ground Lease for Electric Vehicle Charging Station**

RECOMMENDATION:

Consider and approve Resolution OB-2014-02 for Ground Lease for Electric Vehicle Charging Stations at Shared Use Parking at Brisbane Marina and authorize Successor Agency to execute all required documents to enter into the Ground Lease for Electric Vehicle Charging Stations.

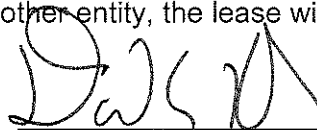
BACKGROUND

The Successor Agency has approved a Ground Lease for an Electric Vehicle Charging Station at the Shared Use Parking at the Brisbane Marina. The Ground Lease provides that a private party will install 2 electric vehicle charging stations at no cost to the Successor Agency, and these charging stations will be available for public use. The lease rate for the 3 unused parking spaces that will be leased is \$1 per year, as the costs of installing the electric vehicle charging stations are approximately \$20,000 and will be paid for entirely by the Lessee.

DISCUSSION:

The Shared Use Parking at the Brisbane Marina provides parking for the public marina facility. The Successor Agency submitted a Long Range Property Management Plan, approved by the Oversight Committee, that transferred the Shared Use Parking to the City of Brisbane as a governmental use. However, the Department of Finance has not completed its review and approval of the Long Range Property Management Plan, and accordingly any transaction involving the Shared Use Parking is subject to Successor Agency action and Oversight Board approval.

The Successor Agency was approached by a tenant of the Marina who proposed the installation of 2 electric vehicle charging stations in the Shared Use Parking at no cost to the Successor Agency. The estimated cost of installing the 2 charging stations is \$20,000, and they will be available for public use. The installation will encourage the use of environmentally progressive electric transportation and will enhance the Shared Use Parking at no cost to the Successor Agency. The term of the lease is 10 years, and in the event that the Shared Use Parking is transferred to the City of Brisbane or another entity, the lease will continue with the property.



David Kahn, Successor Agency Counsel

Attachment:  
Resolution No. OB 2014-02  
Ground Lease

**BRISBANE SUCCESSOR AGENCY OVERSIGHT BOARD**

**RESOLUTION OB 2014-02**

**A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE REDEVELOPMENT AGENCY OF THE CITY OF BRISBANE AUTHORIZING THE SUCCESSOR AGENCY TO ENTER INTO A GROUND LEASE FOR AN ELECTRIC VEHICLE CHARGING STATION**

WHEREAS, the California state legislature enacted Assembly Bills x1 26 and 1484 to dissolve and unwind the affairs of redevelopment agencies formed under the Community Redevelopment Law (Health and Safety Code Section 33000 et seq.); and

WHEREAS, the City Council of the City of Brisbane (the "City Council") declared that the City of Brisbane, acting in a separate legal capacity and as a separate public entity pursuant to Health and Safety Code Section 34173(g), will act as successor agency (the "Successor Agency") for the dissolved Redevelopment Agency of the City of Brisbane (the "Dissolved RDA") effective February 1, 2012; and

WHEREAS, an Oversight Board for the Successor Agency (the "Oversight Board") has been established and is functioning in accordance with Health and Safety Code Section 34179; and;

WHEREAS, the Successor Agency has received a Certificate of Completion from the Department of Finance and has timely submitted a Long Range Property Management Plan("LRPMP") to the Department of Finance, and the LRPMP includes the Shared Use Parking at the City Marina, which is a public use; and

WHEREAS, the Successor Agency has reviewed and approved a ground lease for an electric vehicle charging station to be located at the Shared Use parking at the City Marina, at no cost to the Successor Agency; and

WHEREAS, the Oversight Board is required to review and approve this action of the Successor Agency pursuant to Health and Safety Code Section 34179, and the Oversight Board has determined that the ground lease for an Electric Vehicle charging station at no cost to the Successor Agency is environmentally progressive and consistent with the continued use of the Shared Use parking property;

NOW, THEREFORE, BE IT RESOLVED that the Oversight Board of the Successor Agency hereby finds, resolves, approves, determines, and directs as follows:

SECTION 1. The foregoing recitals are true and correct, and together with the following documents and information form the basis for the approvals, authorizations, findings, and determinations set forth in this Resolution: (1) the Ground Lease for Electric Vehicle Charging Station;

SECTION 2. The Oversight Board hereby acknowledges and confirms that the Ground Lease for Electric Vehicle Charging Station at the Shared Use Parking property is an appropriate and environmentally progressive use of the property and will not limit the future transfer of the property as a governmental use or other use.

SECTION 3. In accordance with Health and Safety Code Section 34179, the Oversight Board hereby authorizes and directs the Chair of the Successor Agency to sign the Ground Lease on behalf of the Successor Agency.

SECTION 4. The Successor Agency Executive Director, or the Executive Director's designee, is hereby authorized and directed to execute all documents and take all actions necessary and appropriate to effectuate the Ground Lease for Electric Vehicle Charging Stations.

SECTION 6. The Successor Agency is hereby directed to notify the Department of the actions set forth in this Resolution in accordance with Health and Safety Code Sections 34179(h) and Section 34181(f).

SECTION 7. This Resolution shall take effect at the time and in the manner prescribed in Health and Safety Code Section 34179(h).

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Paul Scannell, Chair

ADOPTED February 13, 2014 by the Members of the Oversight Board of the Successor Agency by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

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Sheri Marie Spediacci, Clerk to the Board

# GROUND LEASE

**THIS GROUND LEASE**, dated \_\_\_\_\_, by and between THE SUCCESSOR AGENCY OF THE REDEVELOPMENT AGENCY OF THE CITY OF BRISBANE, a municipal corporation ("Landlord"), and SUPERIOR INFO MANAGEMENT, INC., a S-Corporation ("Tenant"), is made with reference to the following facts:

A. Landlord is the owner of certain real property in the City of Brisbane, County of San Mateo, State of California, generally known as the Brisbane Shared Use Parking lot ("SUP") and more particularly described in Exhibit "A" attached hereto and made a part hereof.

B. Tenant desires to rent from Landlord a portion of the SUP, consisting of three existing parking spaces, for the purpose of constructing and operating two (2) electric vehicle charging stations ("Charging Stations") thereon, and Landlord has agreed to lease such property to Tenant, on the terms and conditions hereinafter set forth.

**NOW, THEREFORE, the parties agree as follows:**

## ARTICLE 1 LEASED PREMISES

**1.01** Landlord, for and in consideration of the rents, covenants and agreements on the part of the Tenant to be paid, kept and performed, does hereby lease to Tenant and Tenant does hereby rent from Landlord that portion of the SUP consisting of three existing parking spaces, consisting of approximately 432 square feet, and more particularly shown and described in Exhibit "B," attached hereto and incorporated herein by reference (the "Leased Premises").

**1.02** Tenant shall have the exclusive right to install on the Leased Premises two Charging Stations, which Charging Stations shall be available for public use. Any and all costs of installation, operation and maintenance of the Leased Premises and Charging Stations shall be the sole and exclusive obligation of Tenant. Tenant expressly warrants that Landlord shall not be liable for any funds for this project, whether for installation, monitoring or maintenance.

## ARTICLE 2 TERM

**2.01** The term of this Lease shall be a period of ten (10) years, commencing on \_\_\_\_\_, and ending on \_\_\_\_\_, unless sooner terminated as provided herein.

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**ARTICLE 3  
RENT**

**3.01** Tenant covenants and agrees to pay to Landlord as rent the sum of One Dollar (\$1.00) per year, payable in advance on \_\_\_\_\_ 1st of each year during the lease term. Tenant shall also pay such other sums identified in this Lease as constituting additional rent.

**3.02** In order that the rent due hereunder shall be absolutely net to Landlord, Tenant shall pay and hold Landlord harmless from and against all insurance premiums, carrying charges, costs, expenses, property or other taxes or assessments, and obligations of every kind and nature whatsoever relating to the Leased Premises or the Improvements to be constructed by Tenant thereon (as described in Section 6.01), which may arise, accrue, or become due during the term of this Lease.

**ARTICLE 4  
POSSESSION AND USE**

**4.01** The Leased Premises shall be used by Tenant solely for the purpose of operating two Charging Stations for use by the general public, including Tenant, and for no other or additional purpose without the prior written approval of Landlord.

**4.02** Tenant shall not use the Leased Premises or permit anything to be done in or about the Leased Premises which is prohibited by or will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be in force, or which is prohibited by the standard form of fire insurance policy, or will in any way increase the existing rate of any fire or other insurance covering the Marina, or cause any change or cancellation of such insurance. The judgment of any court of competent jurisdiction or the admission of Tenant in any action against Tenant, whether Landlord be a party thereto or not, that Tenant has violated any law, statute, ordinance or governmental rule, regulation or requirement, shall be conclusive of that fact as between Landlord and Tenant. Tenant shall not do or permit anything to be done in or about the Leased Premises which will in any way obstruct or interfere with the rights of other persons using the Marina or its parking facilities, or use or allow the Leased Premises to be used for any improper, immoral, unlawful or objectionable purpose, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Leased Premises or commit or suffer to be committed any waste in, on or about the Leased Premises.

**ARTICLE 5  
CONDITION OF LEASED PREMISES**

**5.01** Tenant acknowledges and agrees that the Leased Premises are being rented to Tenant in "AS IS" condition and Landlord shall have no obligation to make any alterations or improvements to the Leased Premises for the benefit of Tenant. Tenant further acknowledges that neither Landlord nor anyone acting on Landlord's behalf has made any representation or warranty as to the suitability or fitness of the Leased Premises

for the intended use thereof by Tenant and it is the sole responsibility of Tenant to satisfy itself with respect to all such matters.

## **ARTICLE 6 IMPROVEMENTS**

**6.01** Tenant shall have the right to construct two Charging Stations upon the Leased Premises, in accordance with a site plan ("the Improvements") subject to compliance with each of the following requirements:

- (a) The Improvements, including but not limited to the Charging Stations, transformers, signage, and asphalt markings, shall be subject to administrative review by Landlord's Planning and Community Development Director.
- (b) In addition to design review approval, Tenant shall obtain all building, grading and other permits or approvals required for construction of the Improvements, including, but not limited to, any permits or approvals necessitated by the fact that the Leased Premises constitutes a part of a former land fill which currently is under the regulatory jurisdiction of the Regional Water Quality Control Board, the California Department of Toxic Substances Control, the Army Corps of Engineers, BCDC, and the San Mateo County Department of Health.
- (c) The Improvements shall be constructed strictly in accordance with plans and specifications approved in writing by Landlord by a licensed and bonded electrical contractor that specializes in the installation of the Charging Stations to be installed.
- (d) Tenant or its contractor shall provide Landlord with performance and payment bonds, in form and substance satisfactory to Landlord, naming Landlord as the obligee or co-obligee thereunder, each in an amount not less than 100 percent of the estimated cost of constructing all of the Improvements, as determined by the Brisbane City Engineer.
- (e) Prior to commencement of any work, Tenant shall have demonstrated to the satisfaction of Landlord that Tenant has sufficient financing to pay all costs and expenses related to construction of the Improvements, as and when the same become due and payable.
- (f) Tenant shall have complied with all of the insurance requirements set forth in Article 12 of this Lease.

**6.02** All fees and costs for construction of the Improvements, including application and permit fees charged by the City of Brisbane and any other governmental agency, design and construction costs, and the cost of any financing obtained by Tenant for the Improvements, shall be the sole responsibility and obligation of Tenant.

**6.03** The failure by Tenant to complete construction of all Improvements for the Charging Stations within eighteen (18) months after the date on which a building permit is issued by the City of Brisbane to Tenant for construction of the Improvements, shall constitute a material default under this Lease.

**6.04** Following completion of the Improvements, Tenant shall not make any further alterations, additions or improvements in, on or about the Leased Premises without the prior written consent of Landlord. As a condition to giving such consent, Landlord may require Tenant to provide Landlord a surety bond or other security satisfactory to Landlord to insure Landlord against mechanic's and materialmen's liens and to insure completion of the work.

**6.05** Tenant estimates that the total initial cost of this project to Tenant will be approximately \$20,000, and further estimates that it ~~will~~ ~~could~~ take ~~approximately as long~~ as ten (10) years for Tenant to recoup this initial cost through consumer use of the Charging Stations. Accordingly, there is no revenue or profit sharing for the term of this Agreement with the Successor Agency ("SA"). Tenant and Successor Agency acknowledge and agree that if this Lease is extended at the end of the 10-year term that the Successor Agency's share of any revenue and/or profit received from the Charging Stations shall be the subject of additional negotiation prior to any extension. ~~The intent of this provision is to ensure that any eventual profits realized by Tenant as a result of consumer use of the Charging Stations are shared equally with the Successor Agency ("SA"). To this end, within 14 days of final installation and approval of the Charging Stations, Tenant shall submit to Landlord a full and itemized breakdown of all costs relating to the installation and permitting of the Charging Stations, including but not limited to construction costs and permit fees. Such costs shall be denominated "Startup Costs." No later than \_\_\_\_ 1st of each year during the term of this contract, Tenant shall provide to the SA a full and itemized breakdown of income generated by, and expenditures made by Tenant for, the Charging Stations during the preceding calendar year (ending \_\_\_\_). Tenant agrees that if and when the cumulative annual income generated by the Charging Stations surpasses the sum of Tenant's Startup Costs and cumulative annual expenditures, Tenant shall remit to the SA, on or before \_\_\_\_ 1st of each year, a payment equating to 50 percent of such cumulative annual income in excess of the sum of the Startup Costs and cumulative annual expenses. For instance, assuming that the Startup Costs were \$20,000, and that in a given year the cumulative annual income was \$27,000, and the cumulative annual expenses were \$4,500, Tenant would pay the SA \$1,250 for that year. Tenant further agrees that any profits realized in years subsequent to the first year in which a profit-sharing payment is first due to the SA under this provision shall be shared equally with the SA, with statements and payments due on the timetables set forth above.~~

**6.06** All buildings, structures, improvements, foundations and fixtures (except removable trade fixtures) constructed upon the Leased Premises by Tenant at any time during the term of this Lease shall, upon the expiration or earlier termination of this Lease, become the property of Landlord without notice or execution of further instruments and shall remain upon and be surrendered with the Leased Premises, without cost, expense or obligation of any kind or nature to Landlord.

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**ARTICLE 7  
REPAIRS AND MAINTENANCE**

**7.01** Tenant shall, during the term of this Lease, at its own cost and expense, keep and maintain all improvements which may be erected on the Leased Premises, and all appurtenances thereto, in good and neat order and repair and shall allow no nuisance to exist or be maintained therein. Landlord shall not be obligated to make any repairs, replacements or renewals of any kind, nature or description whatsoever to the Leased Premises, or any buildings or improvements thereon. Tenant hereby expressly waives all right to make repairs at Landlord's expense under the provisions of Sections 1941 and 1942 of the Civil Code of the State of California.

**ARTICLE 8  
UTILITIES**

**8.01** Tenant shall pay, as additional rent, the cost of all utility and other services furnished to the Leased Premises, including, but not limited to, electricity, gas, water, sewer, telephone, and garbage collection service. Whenever possible, Tenant shall establish a separate account and meter with the utility or service provided so that all charges for service are billed directly to Tenant. However, in the event any of such charges are billed to Landlord, Landlord shall submit a statement showing the amount thereof payable by Tenant and Tenant shall pay such amount to Landlord, as additional rent, within ten (10) days after receipt of the statement.

**ARTICLE 9  
MECHANICS' AND OTHER LIENS**

**9.01** Tenant shall keep the Leased Premises free and clear of all mechanics' liens resulting from any construction work done by or for Tenant. Tenant shall have the right to contest the correctness or validity of any such lien if, immediately on demand by Landlord, Tenant: (i) procures and records a lien release bond issued by a corporation authorized to issue surety bonds in California in an amount equal to one and one-half (1-1/2) times the amount of the claim of lien, or (ii) provides other security in form and amount satisfactory to Landlord. If used, the bond shall meet the requirements of Section 3143 of the California Civil Code and shall provide for the payment of any sum that the claimant may recover on the claim, together with costs of suit. Should Tenant fail to discharge any such lien or cause the same to be released within sixty (60) days from the date the lien is filed, Landlord may, without inquiring into the validity thereof, cause the same to be discharged and all amounts so expended by Landlord, together with reasonable attorney's fees and expenses, shall be paid by Tenant to Landlord as additional rent hereunder, together with interest thereon at the rate of ten percent (10%) per annum. Tenant shall give ten (10) days prior written notice to Landlord of the date on which any



construction work will be commenced so as to afford Landlord the opportunity to post a notice of nonresponsibility.

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## **ARTICLE 10 INDEMNITY**

**10.01** Tenant hereby waives any and all claims against Landlord for damage to any property or injury to or death of any person in, upon or about the Leased Premises, arising at any time and from any cause other than solely by reason of the negligence or willful misconduct of Landlord. Tenant expressly agrees to indemnify, defend, and hold Landlord, and its officers, officials, boards, commissions, employees, and agents, harmless from and against any and all claims, demands, causes of action, liabilities, costs or expenses, including attorney's fees, occasioned by or in any way connected with the condition, use or misuse of the Leased Premises, or occasioned by any act or omission of Tenant and Tenant's agents, servants, employees, invitees or other persons who may come upon the Leased Premises, except for damage to any property or injury to or death of any person caused solely by the negligence or willful misconduct of Landlord. The indemnity obligations of Tenant set forth herein shall survive and continue beyond the term of this Lease.

## **ARTICLE 11 INSURANCE**

**11.01** Tenant shall, at no cost to Landlord, obtain and keep or cause to be kept in force during the term hereof, fire and extended coverage insurance on all improvements on the Leased Premises that are destructible by fire or such perils as insured by a Standard Form fire and extended coverage policy of insurance and in amounts not less than 100 percent of the insurable value of such improvements. Landlord shall be named in the loss payable clause of such policy, as its interest may appear. All policies placed by Tenant upon the Leased Premises shall contain waivers of any right of subrogation said insurer might otherwise have against Landlord.

**11.02** During the term of this Lease, Tenant shall procure and maintain in full force and effect at Tenant's expense: (i) comprehensive general liability insurance with an aggregate limit of not less than One Million Dollars (\$1,000,000.00) per occurrence, insuring against all liability of Tenant and Landlord for bodily injury and property damage arising out of or in connection with Tenant's maintenance, use, or occupancy of the Leased Premises and also insuring performance by Tenant of the indemnity provisions set forth in Section 10.01 of this Lease. The amount of such insurance shall be at least \$1,000,000.00, combined single limit. However, the amount of such general liability insurance shall not limit Tenant's liability nor relieve Tenant of any obligations under this Lease. The general liability insurance policy shall name Landlord, and its officers, officials, boards, commissions, employees, and agents, as an insured parties thereunder, and shall be endorsed to provide that: (i) the insurance coverage thereunder shall be primary with respect to Landlord; and (ii) no cancellation or reduction in coverage will be made without twenty (20) days prior written notice to Landlord by the carrier.

**11.03** Tenant shall provide Landlord with a copy of each insurance policy required to be maintained hereunder, and each such policy shall be subject to approval as to form, content and amount by Landlord or its authorized representatives.

**ARTICLE 12  
DAMAGE OR DESTRUCTION**

**12.01** In case of any damage to or destruction of the Improvements situated upon the Leased Premises, or any part thereof, and such damage is covered by insurance, Tenant shall have the election to: (i) utilize the insurance proceeds for the restoration, replacement or rebuilding of the Improvements with such alterations and additions as may be approved by Landlord; or (ii) not restore Improvements so damaged or destroyed and apply the insurance proceeds to the clean-up and removal of the damaged or destroyed Improvements so as to restore the Leased Premises to their condition at the time of execution of this Lease. Any balance of insurance proceeds shall be paid to Tenant.

**12.02** In the case of any damage to or destruction of the Improvements which is not covered by the insurance required to be maintained under Section 11.01 hereof, and such damage exceeds fifty percent (50 percent) of the replacement cost of such Improvements, Tenant may, at its option, terminate this Lease by giving written notice of termination to Landlord. Otherwise, Tenant shall restore the Improvements to their original configuration or in such other manner as shall be approved in writing by Landlord.

**ARTICLE 13  
ASSIGNMENT AND SUBLETTING**

**13.01** Tenant shall not voluntarily or by operation of law assign, transfer, mortgage, sublet, pledge, hypothecate or encumber all or any part of Tenant's interest in this Lease or in the Leased Premises or any part thereof, without Landlord's prior written consent and any attempt to do so without such consent being first had and obtained shall be wholly void and shall constitute a breach of this Lease. Landlord may withhold its consent in Landlord's absolute and sole discretion.

**13.02** No consent by Landlord to any assignment or subletting by Tenant shall relieve Tenant of any obligation to be performed by Tenant under this Lease, whether occurring before or after such consent, assignment or subletting. The consent by Landlord to any assignment or subletting shall not relieve Tenant from the obligation to obtain Landlord's express written consent to any other assignment or subletting. The acceptance of rent by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provisions of this Lease or to be a consent to any assignment, subletting or other transfer. Consent to one assignment, subletting or other transfer shall not be deemed to constitute consent to any subsequent assignment, subletting or other transfer.

**ARTICLE 14  
PERFORMANCE BY LANDLORD ON TENANT'S DEFAULT**

**14.01** In the event that Tenant shall fail or neglect to do or perform any act or thing herein provided for it to be done or performed and such failure shall continue for a period of thirty (30) days after written notice from Landlord specifying the nature of the act or thing to be done or performed, or shall continue beyond the time reasonably required for the performance of any act if the same could not reasonably be performed within said thirty (30) day period, then Landlord may, but shall not be required to, perform or cause to be performed such act or thing (including the entering upon the Leased Premises for such purpose, if Landlord elects so to do), and Landlord shall not be liable or in any way responsible for any loss, inconvenience, annoyance or damage resulting to Tenant on account thereof; and Tenant shall repay to Landlord, upon demand as additional rent, the entire reasonable cost and expense thereof, including compensation to the employees, agents and contractors of Landlord. Any act or thing done by Landlord, pursuant to the provisions of this Article 15 shall not be, or be construed as, a waiver of any covenant, term or condition herein contained or of the performance thereof.

## **ARTICLE 15 BREACH OF LEASE**

**15.01** Should Tenant fail to perform or cause to be performed any act required hereunder, including, but not limited to, the following, such failure shall constitute an event of default on the part of Tenant.

- (a) The failure for a period of more than thirty (30) days after written notice from Landlord to do, observe, keep and perform any of the terms, covenants, conditions, agreements and provisions of this Lease which Tenant hereunder is required to do, observe, keep or perform.
- (b) The permanent abandonment of the Leased Premises by Tenant without making adequate provision for the protection thereof; the adjudication of Tenant as a bankrupt; the making by Tenant of a general assignment for the benefit of creditors; the taking by Tenant of the benefit of any insolvency act or law; the appointment of a permanent receiver or trustee in bankruptcy for Tenant's property; or the appointment of a temporary receiver which is not vacated or set aside within one hundred and twenty (120) days from the date of such appointment.

**15.02** Any notice given under this Article shall specify the event of default and the applicable Lease provisions, and shall demand that Tenant perform the provisions of this Lease within the applicable period of time. No such notice shall be deemed a forfeiture or a termination of this Lease provided Tenant cures the default within the applicable period of time.

**15.03** In the event of a breach of this Lease and upon the failure of Tenant to cure same after notice as provided in this Article, Landlord, in addition to all other rights and remedies provided by law or equity, shall have the right to declare this Lease terminated by written notice to Tenant, as of a date specified in the notice which shall not

be less than thirty (30) days after the date of serving such notice, and in such event Landlord shall be entitled to re-enter and repossess the Leased Premises, together with all additions, alterations and improvements thereto.

**ARTICLE 16  
WAIVER**

**16.01** No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Acceptance by Landlord of any performance by Tenant after the time the same shall have become due shall not constitute a waiver by Landlord of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by Landlord in writing.

**ARTICLE 17  
INSPECTION OF PREMISES**

**17.01** Landlord shall be entitled, at all reasonable times, to go upon and into the Leased Premises for the purpose of: (i) inspecting the same; (ii) inspecting the performance by Tenant of the terms and conditions of this Lease; and (iii) posting and keeping posted thereon notices of non-responsibility for any construction, alteration or repair thereof as required or permitted by any law or ordinance. The aforesaid rights of Landlord shall be exercised so as not to unreasonably interfere with Tenant's use of the Leased Premises.

**ARTICLE 18  
BINDING ARBITRATION/HOLD HARMLESS**

**18.01** Any dispute or controversy arising out of, relating to, or in connection with the interpretation, validity, construction, performance, breach or termination of this Lease shall be settled by binding arbitration to be held in San ~~Mateo~~ Francisco County, California, in accordance with the rules of the American Arbitration Association as then in effect. The decision of the arbitrator shall be final, conclusive and binding on the parties to the arbitration. Judgment may be entered on the arbitrator's decision in any court of competent jurisdiction. The expenses of the arbitration (such as the fees of the arbitrator) shall be split equally between Landlord and Tenant, but each party shall bear its own costs and expenses in connection with such arbitration, including without limitation attorneys' fees and travel.

**18.02** Should Landlord, without fault on Landlord's part, be made a party to any litigation instituted by Tenant against any third party or by any third party against Tenant, or by or against any person holding under or using the Leased Premises by license of Tenant, or for the foreclosure of any lien for labor or materials furnished to or for Tenant or any such other person or otherwise arising out of or resulting from any act or transaction of Tenant or of any such other person, Tenant covenants to save, defend, and hold Landlord harmless from any judgment rendered against Landlord or the Leased

Premises or any part thereof, and all costs and expenses, including reasonable attorney's fees, incurred by Landlord in connection with such litigation.

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## **ARTICLE 19 NOTICES**

**19.01** Any notices or other communications required or permitted to be given under this Lease shall be in writing and shall be either personally delivered or sent by certified mail, return receipt requested, or by a delivery service such as Federal Express which provides a receipt or other written evidence of delivery, addressed to the other party at such address as may be furnished from time to time as the place for delivery of notices hereunder. Any notice or other communication sent by mail shall be deemed received on the third business day after deposit of the notice in the U.S. Mail with full postage prepaid thereon. Pursuant to this section, notices or other communications shall be addressed to the following recipients:

If to Landlord: CITY OF BRISBANE  
50 Park Place  
Brisbane, CA 94005  
Attn: Director of Public Works/City Engineer

If to Tenant: SUPERIOR INFO MANAGEMENT, INC.  
c/o Michael Carter  
603 Seagaze Drive, #510  
Oceanside, CA 92054

## **ARTICLE 20 AUTHORITY OF TENANT TO EXECUTE LEASE**

**20.01** Tenant represents and warrants to Landlord that: (i) this Lease is duly executed and delivered by and is binding upon and enforceable against Tenant; and (ii) Tenant has the capacity to enter into this Lease and consummate the transactions herein provided and nothing prohibits or restricts the right or ability of Tenant to carry out the terms hereof.

## **ARTICLE 21 SURRENDER**

**21.01** Upon the expiration or earlier termination of this Lease, Tenant shall surrender the Leased Premises and remove all of Tenant's personal property and trade fixtures. Any personal property or trade fixtures not removed at the expiration or earlier termination of this Lease shall be deemed abandoned by Tenant. If Landlord so elects, Tenant shall also remove any alterations or improvements installed by or for Tenant which

would otherwise remain as part of the Leased Premises and Tenant shall restore the Leased Premises to their condition prior to such installation.

**21.02** Should Tenant fail to remove any personal property or trade fixtures, or fail to remove any alterations or improvements as requested by Landlord, Tenant shall be liable to Landlord for any and all removal costs, transportation and storage expenses, and the cost of restoring the Leased Premises as required herein. Tenant shall indemnify Landlord against any loss, damage or liability resulting from delay by Tenant in so surrendering the Leased Premises.

**ARTICLE 22  
MISCELLANEOUS**

**22.01 Captions.** The captions used in this Lease are for convenience only and shall not be deemed to be relevant in resolving any question of interpretation or construction of any provision contained herein.

**22.02 Entire Agreement.** This Agreement constitutes the entire agreement between the parties and supersedes and cancels any prior agreements or understandings, whether written or oral. This Agreement can only be modified by a written amendment hereto executed by both parties.

**22.03 Severability.** If any term or provision of this Lease shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

**22.04 Calendar Days.** All references herein to any acts or obligations to be performed within a certain number of days shall mean calendar days.

**22.05 Choice of Law.** This Lease shall be governed by and interpreted in accordance with the laws of the State of California.

**22.06 Successors and Assigns.** Subject to the restrictions against assignment and subletting by Tenant, this Lease shall be binding upon and inure to the benefit of the respective heirs, executors, administrators, personal representatives, successors and assigns of the parties hereto, including a transfer under the SA's Long Range Property Management Plan.

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**IN WITNESS WHEREOF,** the parties have executed this Ground Lease the day and year first above written.

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**LANDLORD:**

SUCCESSOR AGENCY,  
a municipal corporation

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

Attest: \_\_\_\_\_  
Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Successor Agency Attorney

**TENANT:**

SUPERIOR INFO MANAGEMENT, INC.  
a S-Corporation

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

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