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EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENT

This Agreement is entered into this ___ of January, 2017 (“Commencement Date”), by and between the Humboldt Bay Harbor, Recreation, and Conservation District (“District”), a California governmental entity, and Inyo Networks, Inc., (“Inyo”) a California State Corporation and the District are sometime collectively referred to as the “Parties” and each, individually, may be referred to as a “Party.”

1. **RECITALS.** The Parties enter into this Agreement in light of the following facts and objectives:

A. Inyo seeks to lease space described in Exhibit “A” attached, and seeks to enter into an agreement with District to conduct exclusive negotiations with District regarding the Property. The Property, as defined herein, is limited only to the Redwood Terminal 2 ocean outfall pipe and associated property as identified on Exhibits “A” and attached hereto and incorporated by reference. Non-exclusive use of the ocean outfall pipe is currently leased to D.G. Fairhaven Power LLC for discharge of water used as a coolant in the power plant operation and a potential lease to Inyo would be required to not unreasonably interfere with the current use by D.G. Fairhaven Power.

B. The Parties acknowledge that the Project will require certain entitlements, including without limitation discretionary approvals from the District, California Coastal Commission, U.S. Army Corps of Engineers, California State Land Commission, all of which will require environmental review pursuant to the California Environmental Quality Act (“CEQA”) or National Environmental Policy Act. The parties contemplate that a negotiated lease will include reduced rent for the time period required for obtaining the necessary agency permits and approvals and for construction of the improvements that will be necessary for Inyo’s operations.

2. **TERM**

A. Term. The term of this Agreement shall be for the shorter of 12 months (360 days), or as otherwise provided in Section 12, commencing on the date of this Agreement (the “Term”) or signature to the Port Lease. B. Extensions. At the option of the Parties, the Term may be extended for an additional two (2) three (12) month periods by mutual written consent of District and Inyo. The Executive Director is authorized to approve such extensions on behalf of District. Additionally, in the event that Inyo has fully performed under the terms and conditions of this Agreement in a timely manner, and in the event that the Parties have negotiated a preliminary lease agreement over which the Parties have reached agreement about its terms, District shall extend the Term by the amount of time necessary to complete the legal review of the lease agreement.

C. Additional Extensions. Notwithstanding Sections 2.B and 11, if District determines that it is in the best interests of District, District may extend the time for Inyo’s performance of any of the terms and conditions of this Agreement. District shall have sole discretion to grant such

additional extensions to Inyo and in no event shall this provision be construed so as to convey any right or entitlement to an additional extension for performance to Inyo.

3. NEGOTIATIONS

A. District and Inyo shall negotiate diligently and in good faith during the Term towards a lease agreement providing for the leasing by District to Inyo, of all or part of the Property. The good faith negotiations agreed to between the Parties requires each to reasonably communicate with the other. This will include all methods of communication including via telecommunications (fax, phone, e-mail, etc.), face-to-face meetings between the Parties' representatives, and written correspondence. Nothing in this Agreement shall be construed to require Inyo or District to ultimately agree to specific terms for a lease, and both Parties have the discretion to decide not to enter a lease if the Parties do not reach agreement on the details for the lease agreement.

B. District shall not negotiate with any other person or entity regarding long-term leasing or other long-term use authorization of the Property or any portion of the Property, or solicit or entertain bids or proposals to do so, during the Term, without the written consent of Inyo. Any such negotiations would require that the contemplated or potential use of any third party not interfere with the contemplated potential uses of Inyo.

C. District and Inyo will engage in good faith efforts to prepare the necessary documents to allow the District's Board of Commissioners ("Board") to determine whether it wishes to approve the CEQA documents, Project entitlements, and lease.

D. Each Party agrees that any and all data, reports and documentation supplied by one Party ("Disclosing Party"), or its affiliates or third parties on its behalf, to the other Party under this Agreement ("Receiving Party"), which are confidential, to the extent permitted by the California Public Records Act, cannot be disclosed or otherwise disseminated by the Receiving Party without the consent of the Disclosing Party. If District is challenged regarding a document that Inyo deems confidential, then Inyo shall defend, indemnify and hold harmless District and its officers, officials, employees and agents against and from such challenge.

4. RIGHT OF ENTRY

A. Inyo, its agents, and independent contractors shall have the right to enter on the Property, upon reasonable prior notice to District, to perform, at Inyo's expense, any and all structural, soil, hydrological, archaeological, or environmental site assessments, and to conduct any surveys, title work, planning, and any other investigations as Inyo deems appropriate in its sole and absolute discretion. District will cooperate and provide reasonable assistance to Inyo and its representatives in carrying out its inspection.

B. Inyo shall indemnify and hold District, its elected officials, agents, directors, staff, volunteers and designated representatives, harmless from any lien, loss, claim, liability, damage, or expense, including reasonable attorneys' fees and costs, that District may suffer or incur, arising out of or in connection with Inyo's entry upon and inspection of the Property, including, without limitation, any loss, damage, or liability that District may

suffer or incur by reason of any injury to any person or property caused by Inyo, its agents, employees, independent contractors, consultants, or invitees. Inyo shall also require that all third parties performing investigation on the site to have and maintain liability insurance with minimum coverage of \$1,000,000 for general commercial liability. Inyo shall require written proof of insurance and shall provide copies to District at District's request. Upon the completion by Inyo of any and all such investigations of the Property, Inyo shall restore the Property to substantially the same condition existing prior to such investigations. Notwithstanding anything to the contrary provided in this paragraph, Inyo shall not be obligated to remediate, restore or indemnify District for incidental or consequential damages with respect to any environmental or physical condition that is merely discovered, as opposed to caused, by Inyo. Inyo's obligations hereunder shall survive termination of this Agreement or, if applicable, any lease agreement.

5. EQUIPMENT STORAGE. Inyo or its designees may store equipment necessary for site investigation purposes, for the time period such equipment is reasonably necessary for site investigation purposes, on the Property during the Term provided the equipment is in operating condition and currently licensed (if appropriate). Inyo or its designees shall store equipment only in areas approved by District. District shall not be responsible for any damage or theft of equipment stored on the Property by Inyo or its designees. In the event of termination of this Agreement, Inyo shall remove stored equipment from the Property within ten (10) days of the date of termination of this Agreement. If not removed within ten (10) days after the date of termination, stored equipment will be removed, sold or destroyed by District at Inyo's expense.

6. CONSIDERATION. The Parties agree to strictly comply with the recitals and mutual covenants and conditions contained in this Agreement. Further, within five (5) days of the Commencement Date, Inyo shall pay to the District the sum of Five Thousand Dollars (\$5,000) for the exclusive right and initial services of District staff and administration during the Term and \$2,500 for any extension. If a lease agreement is executed arising out of negotiations pursuant to this Agreement, these amounts shall be credited to the initial lease payment(s). The parties acknowledge that due to the unknown contingencies that may occur in exploring issues related to a potential lease the actual costs to the District may exceed \$5,000 in the initial term and \$2,500 in the extensions. Should the District incur additional staff time and expenses related to a potential lease during the initial term or in extensions Inyo shall reimburse the District for said additional expenses and costs. District shall document any such expenses and costs and provide to Inyo in writing. If the parties cannot reach agreement on reimbursement the issue shall be resolved by arbitration pursuant to paragraph 11 D. of this agreement. Any costs and expenses incurred by the District in excess of the specific initial term and/or extension payments shall not be credited to the initial lease payment.

7. SCHEDULE OF PERFORMANCE

A. Project Submissions

Within sixty (60) days of the Commencement Date, Inyo shall provide to District the following information:

1. The name and identification of the type of legal entity with which District would contact.
2. Name and person (or persons) who will represent Inyo in negotiations with District.
3. A narrative description of the development proposed, including a description of its physical characteristics, potential leasehold improvements and number of proposed employees.
4. Funding sources and proposed uses for the Project, including all anticipated development costs.
5. Estimated development and pre-development schedule including time required for all design and permit processing including but not limited to compliance with CEQA.
6. Executed copies of any contracts which Inyo has entered into with its consultants for the Project pertaining to architectural, engineering, environmental analysis, and soil analysis.
7. Proposed site plans for the Project showing the site layout, legal description of the proposed lease area, proposed leasehold improvements, access points, and parking layout areas. The plan should show adjacent land uses to illustrate the Project's relationship to the surrounding area.

B. District Approval. Within thirty (30) days after District receives any information or documents required to be submitted to it by Inyo pursuant to this section, District shall advise Inyo of its acceptance or rejection of the information or documents. If District rejects any information or documents submitted to it by Inyo, Inyo may revise its submission and resubmit to District. District shall advise Inyo of its acceptance or rejection of any revised submission within thirty (30) days of its receipt of the revised submission from Inyo.

8. PERMITS REQUIRED. Inyo understands and agrees it is solely responsible for obtaining a permit from District and all other applicable governmental approvals for the Project, at Inyo's sole expense. District agrees that it will provide any documentation or authorization necessary for Inyo to proceed with the process of obtaining any and all required governmental approvals for the Project, including, without limitation, authorization for Inyo to act as District's agent with respect to those governmental approvals.

9. NEGOTIATION OF LEASE AGREEMENT. Subject to Inyo performing all of the requirements in Section 7.A above in a timely manner, District shall deliver to Inyo a draft form of lease. Inyo and District shall negotiate diligently and in good faith until a lease is agreed upon, unless the Term has expired, or the Parties terminate this Agreement.

10. DISTRICT RESPONSIBILITIES. Inyo understands and acknowledges that any lease agreement resulting from the negotiations arising from this Agreement must be considered and

approved by the Board at a regular Board meeting. The Board is the only entity for District with the power and authority to enter into any agreement on behalf of District. District staff, including but not limited to the Executive Director and District Counsel, may negotiate on behalf of District for proposed terms they believe will be acceptable to the Board, but approval by the Board is not guaranteed.

11. FAILURE TO PERFORM UNDER THIS AGREEMENT

A. Time is of the Essence. District and Inyo hereby acknowledge that time is of the essence to this Agreement, such that the Parties' failure to fully perform according to the terms and conditions of this Agreement shall be considered a material breach of this Agreement (a "Default").

B. Notice of Default. Should there be a Default in performance by a Party, the non-defaulting Party must give written notice of such Default to the defaulting Party. Such notice must specify the nature of the event or deficiency giving rise to the Default; the action required to cure the deficiency, if an action to cure is possible; and a date not less than thirty (30) calendar days from the date of the notice within which action to cure must be taken.

C. Cure. Notwithstanding anything to the contrary, a Default does not constitute cause to terminate this Agreement if the defaulting Party cures, corrects, or remedies the Default within the time period required in the notice or other agreement between the Parties. In the case of a Default by either Party, the alleged defaulting Party shall promptly commence to cure the identified Default and shall complete the cure within thirty (30) days after receipt of the notice of Default. The thirty (30) day cure period for a Default shall be extended as reasonably necessary to remedy such Default, provided that the alleged defaulting Party commences such cure promptly after receiving the notice of Default and continuously and diligently pursues such remedy at all times until such Default is cured.

D. Arbitration. Any disputes between the parties concerning or arising out of this Agreement shall be resolved by binding arbitration. The parties shall mutually agree on the arbitrator, who shall have the authority to determine procedural and substantive issues relating to the dispute, to the extent the parties are unable to agree. If the parties cannot agree on an arbitrator, the parties shall request the judge of the Humboldt County, California Superior Court who has primary responsibility for civil cases, or the presiding judge of that Court, to appoint an arbitrator. The arbitration shall take place in Humboldt County, California unless the parties agree to a different venue. The parties shall equally in the cost of the arbitration.

12. TERMINATION. This Agreement may terminate under the following circumstances:

A. By either Party upon the uncured Default of the other Party;

B. By Inyo upon giving District thirty (30) days prior written notice of its intent to terminate this Agreement;

C. Upon expiration of the Term and any extensions;

D. Upon the latest of (i) all of the Project entitlements being approved and deemed final or (ii) entering into a lease agreement between the Parties.

13. INDEMNIFICATION. Inyo hereby covenants, on behalf of itself, its successors and assigns, to indemnify, save and hold harmless and defend District, its elected officials, agents, directors, staff, volunteers and designated representatives, from any action brought by a third party challenging the validity of this Agreement or seeking damages which may arise directly or indirectly from the negotiation, formation, execution, enforcement or termination of this Agreement. Nothing in this section shall be construed to mean that Inyo is required to hold District harmless and/or defend it from any claims arising from, or alleged to arise from, the negligent acts, or negligent failure to act, on the part of District. District agrees that it will fully cooperate with Inyo in the defense of any matter in which Inyo is defending and/or holding District harmless.

14. LIMITATIONS. By its execution of this Agreement, District is not committing to itself to or agreeing to undertake (a) commitment or reservation of public funds, revenues or reserves to the Project; (b) approval of the Project by District; or (c) any other acts or activities requiring the subsequent independent exercise of discretion by District. Execution of this Agreement by District is merely an agreement to enter into a period of exclusive negotiations according to the terms of this Agreement, and the Board reserves final discretion and approval by District as to any lease agreement and all proceedings and decisions in connection with any lease agreement. This Agreement also shall not prevent District from providing any person or entity with any information regarding the Property that is contained in public records, as that term is defined by California Government Code Section 6252, which is not exempt from disclosure under the California Public Records Act.

15. NOTICES

Notices for District shall be addressed to:

Jack Crider
Executive Director
Humboldt Bay Harbor, Recreation, and Conservation District
601 Startare Drive
Eureka, CA 95501
E-Mail Address: jcrider@humboldtby.org

Copied to:

Paul A. Brisso
Mitchell, Brisso, Delaney & Vrieze LLP
814 Seventh Street
Eureka, CA 95501
E-mail: pbrisso@mitchelllawfirm.com

Notices for Inyo shall be addressed to:

Nicolas Keeler

Inyo Networks, Inc.
10630 Town Center Dr suite #117
Rancho Cucamonga CA 91730

16. **ASSIGNMENT.** This Agreement cannot be assigned by Inyo without District's prior written approval, except that approval shall not be required for a successor-in-interest formed by Inyo for the express purpose of fulfilling the obligations set forth in this Agreement.

17. **INTERPRETATION/VENUE.** This Agreement and its performance will be governed, interpreted, construed, and regulated by the laws of the State of California. Exclusive venue for any action arising from this Agreement will be in Humboldt County Superior Court.

18. **ENTIRE AGREEMENT.** This Agreement, and its attachments, sets forth the entire understanding of the Parties as to the matters covered in this Agreement. There are no other understandings, terms or other agreements expressed or implied, oral or written.

19. **SEVERABILITY.** If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, then such portion will be deemed modified to the extent necessary in the opinion of the court to render such portion enforceable and, as so modified, such portion and the balance of this Agreement will continue in full force and effect.

20. **CONSTRUCTION.** This Agreement shall be construed as a whole and in accordance with its fair meaning and without regard to any presumption or other rule requiring construction against the Party preparing this Agreement. This Agreement is the result of negotiations between the Parties who are each represented by an attorney. This Agreement shall be interpreted as though it was jointly drafted by the Parties, and it shall not be construed against a Party based upon the Party that drafted any particular section, phrase or word of the Agreement.

21. **COUNTERPARTS.** This Agreement may be executed in any number or counterparts, each of which will be an original, but all of which together will constitute one instrument executed on the same date.

IN WITNESS WHEREOF the Parties hereto have executed this contract the day and year first hereinabove written.

DISTRICT:

Inyo Associates, Inc.:

**HUMBOLDT BAY HARBOR,
RECREATION AND CONSERVATION
DISTRICT**

Patrick Higgins, President
Board of Commissioners

Nicolas Keeler
General Manager

ATTEST:

Paul Brisso, District Counsel

EXHIBIT A

DESCRIPTION OF PROPERTY

1. **36 inch outflow to be used to land 4 four International Cables.**
 - a. **Pricing**
 - i. **First Cable \$1,250,000.00 one time fee.**
 - ii. **Second Cable \$500,000.00 one time fee**
 - iii. **Third and Fourth Cable \$250.000 each one time Fee**
2. **Right Of Way for conduit and fiber optic cable to access 36 inch outflow.**

Optional:

1. **Yard space to store Fiber Optic Cable, Vaults and other Constructions Material**