

LEASE

between

INNES PARTNERS, LP,  
a Nevada domestic limited partnership,

as Landlord

and

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

as Tenant

For the lease of  
1976 Innes Avenue  
San Francisco, California

January 24, 2025

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LIST OF EXHIBITS

EXHIBIT A — Legal Description of Property/Floor Plan

EXHIBIT B — Notice of Commencement Date

## OFFICE LEASE

THIS OFFICE LEASE (this "**Lease**"), dated for reference purposes only as of January 24, 2025, is by and between INNES PARTNERS, LP, a Nevada domestic limited partnership ("**Landlord**"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**" or "**Tenant**").

Landlord and City hereby agree as follows:

### 1. BASIC LEASE INFORMATION

The following is a summary of basic lease information (the "**Basic Lease Information**"). Each item below is deemed to incorporate all of the terms in this Lease pertaining to that item. If there is any conflict between the information in this Section and any more specific provision of this Lease, the more specific provision will control.

|   |  |
|---|--|
| Lease Reference Date:                             | January 24, 2025   |
| Landlord:   | INNES PARTNERS, LP,<br>a Nevada domestic limited partnership   |
| Tenant:   | CITY AND COUNTY OF SAN FRANCISCO,<br>a municipal corporation   |
| Building ( <u>Section 2.1</u> ):                  | An approximately 20,900 rentable square foot warehouse building.   |
| Premises ( <u>Section 2.1</u> ):                  | 1976 Innes Avenue, San Francisco, CA   |
| Rentable Area of Premises ( <u>Section 2.1</u> ): | Building on an approximately 43,000 square foot lot.   |
| Term ( <u>Section 3</u> ):                        | Estimated commencement date:<br>March 1, 2025<br><br>Expiration date:<br>February 28, 2030   |
| Extension Options ( <u>Section 3.3</u> ):         | Two (2) additional terms of 5 years each, exercisable by City by notice to Landlord given not less than 180 days in advance, with rent determined by Fair Market Value at the time the applicable Option is exercised. |
| Base Rent ( <u>Section 4.1</u> ):                 | Annual Base Rent: \$388,000.00<br><br>(\$18.56 per sq. ft.)<br><br>Monthly payments: \$32,333.33<br><br>(\$1.55 per sq. ft.)   |
| Permitted Use ( <u>Section 5.1</u> ):             | All activities pertinent to Vehicle Fleet Management   |

Utilities (Section 8.1):

Tenant pays utility costs.

Services (Section 8.2):

Tenant pays for janitorial and security services.

Notice Address of Landlord (Section 23.1):

Innes Partners, LP  
1529 Rollins Road  
Burlingame, CA 94010

with a copy to:

Paul Marotta  
The Corporate Law Group  
1342 Rollins Road  
Burlingame, CA 94010  
Fax: (650) 227-8001  
(which copy does not constitute notice)

Landlord's Key Contacts:

Leslie Lopez / Sue Merrill

Landlord Contact Telephone No.:

(650) 259-5959 / (415) 990-1312

Tenant's Notice Address (Section 23.1):

Real Estate Division  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102  
Attn: Director of Property  
Re: 1976 Innes Avenue

with a copy to:

Director of Fleet Management  
Fleet Management - Central Shops  
555 Selby Street  
San Francisco, CA 94124  
Attn: Don Jones  
Email: Don.Jones@sfgov.org

and to:

Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4682  
Attn: Real Estate & Finance Team  
Re: 1976 Innes Avenue  
Fax No.: (415) 554-4757

Tenant's Key Contact:

Don Jones

Tenant Contact Telephone No.:

(628) 652-5621

Brokers (Section 23.8):

Calco Commercial, Inc.

Tenant's Right of First Refusal (Section 21)

Tenant has a right of first refusal to purchase the Property during the Term.

## 2. PREMISES

### 2.1 Lease Premises

Landlord leases to City and City leases from Landlord, subject to the provisions of this Lease, those premises in the warehouse building identified in the Basic Lease Information (the “**Building**”) and the land on which the Building is located, which are shown on the plan(s) attached as **Exhibit A** (collectively, the “**Premises**”). The Premises and all other improvements on or appurtenances to the land are referred to collectively as the “**Property**”.

### 2.2 Condition of the Property on Delivery

Landlord will deliver the Property to City in good, broom clean condition, fully demised, water tight, with all Building Systems (as defined in Section 7.1) in good working order, condition, and repair, and all other systems in and serving the Property in good working order, condition, and repair, and the Property, in compliance with all applicable Laws, as provided in Section 9.1.

### 2.3 Disability Access

California Civil Code Section 1938 requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist (“**CASp**”) to determine whether the property meets all applicable construction-related accessibility requirements.

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

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

If City elects to obtain an inspection, City and Landlord will mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the CASp inspection fee, and the cost of any repairs necessary to correct violations of construction-related accessibility standards.

### 3. TERM

#### 3.1 Term of Lease

The Property is leased for a term (the “**Term**”) commencing on the date that Landlord has delivered and City has accepted the Property in the condition required under this Lease, which may not be before the Effective Date, as provided in Section 23.22. The Term will end on the expiration date specified in the Basic Lease Information, or the date that this Lease is earlier terminated under the provisions of this Lease, unless City extends the Term pursuant to Section 3.3 below.

#### 3.2 Commencement Date and Expiration Date

The dates that the Term commences and expires under this Lease are the “**Commencement Date**” and the “**Expiration Date**.” If the Commencement Date occurs on a date other than the Estimated Commencement Date provided in the Basic Lease Information, then Landlord will promptly deliver to City a notice substantially in the form of the attached Exhibit B confirming the actual Commencement Date, but Landlord’s failure to do so will not affect the dates of commencement or expiration of the Term.

#### 3.3 Extension Options

Landlord grants City the right to extend the Term (the “**Extension Options**”) for the additional terms specified in the Basic Lease Information (the “**Extended Terms**”). The Extended Terms will be on all of the terms and conditions contained in this Lease. Landlord acknowledges and agrees that City’s exercise of an Extension Option will be conditioned on and subject to the Board of Supervisors and the Mayor enacting a resolution, at their respective sole and absolute discretion, approving and authorizing the extension (“**Exercise Approval**”). Accordingly, City’s exercise of an Extension Option will occur, if at all, in two steps. City may exercise an Extension Option, if at all, by giving first written notice to Landlord of City’s intent to extend the Lease (the “**Exercise Notice**”) no later than one hundred eighty (180) days before expiration of the applicable Term; provided, however, if there is an uncured Event of Default on the date City gives an Exercise Notice, then Landlord may reject City’s Exercise Notice if City fails to cure the Event of Default within ten (10) days after Landlord’s written demand for City to cure the Event of Default. City will have sixty (60) days after the date City delivers the Exercise Notice to Landlord to obtain Exercise Approval (unless the parties are proceeding under Section 4.2, in which event within sixty (60) days after the date the Director of Property approves the Base Rent under Section 4.2(b) to obtain Exercise Approval). City makes no representation or warranty at the time of giving the Exercise Notice that City will receive Exercise Approval, and Landlord agrees that this Lease will not be extended if City does not receive Exercise Approval for any reason or cause, including any alleged failure of advocacy. If the Exercise Approval is not received within the sixty (60)-day period, then Landlord may reject City’s exercise upon written notice to City at any time before City receives the Exercise Approval. On receipt of the Exercise Approval, Tenant shall notify Landlord and the Extension Option will be deemed exercised and binding on the parties. If City extends the Term as provided in this Section, then the word “**Term**” will mean and include any Extended Terms.

### 4. RENT

#### 4.1 Base Rent

Beginning on the Commencement Date, City will pay to Landlord the annual Base Rent specified in the Basic Lease Information (the “**Base Rent**”). The Base Rent is payable in equal monthly payments at the address specified for Landlord in the Basic Lease Information, or other place as Landlord may designate in writing on not less than thirty (30) days’ and not more than

one hundred eighty (180) days' advance notice. City will pay the Base Rent monthly within thirty (30) days after invoice date from Landlord and without any deductions or setoff except as otherwise provided in this Lease. If the Commencement Date occurs on a day other than the first day of a calendar month or the Expiration Date occurs on a day other than the last day of a calendar month, then the monthly payment of the Base Rent for the fractional month will be prorated based on a thirty (30)-day month.

#### 4.2 Determination of Base Rent for the Extended Term

(a) At the commencement of any Extended Term, the Base Rent will be adjusted to equal the prevailing market rate for space of comparable size and location to the Property then being offered for rent in other buildings similar in age, location, and quality to the Building ("**Comparable Space**") situated within the Bayshore Corridor, Potrero Hill, and Mission areas of San Francisco ("**Reference Area**"). As used in this Section, "**prevailing market rate**" means the base rent for Comparable Space, taking into account (i) any additional rent and all other payments and escalations payable under this Lease, (ii) floor location and size of the premises covered by leases of the Comparable Space, (iii) the duration of Extended Term under this Lease and the term of the leases for Comparable Space, (iv) free rent and any other tenant concessions given under the leases for Comparable Space, (v) annual increases and escalations of rent under the leases for Comparable Space, and (vi) tenant improvement allowances and other allowances given under the leases for Comparable Space.

(b) Within thirty (30) days after City's exercise of the Extension Option, Landlord will notify City of Landlord's determination of the prevailing market rate for the Premises, together with reasonable supporting documentation. If City disputes Landlord's determination of the prevailing market rate, City will notify Landlord within fourteen (14) days after Landlord's notice to City of the prevailing market rate and the dispute will be resolved as follows:

(i) Within thirty (30) days after Landlord's notice to City of the prevailing market rate, Landlord and City will attempt in good faith to meet no less than two (2) times, at a mutually agreeable time and place, to attempt to resolve the disagreement.

(ii) If within that thirty (30)-day period Landlord and City cannot agree on the prevailing market rate, then each will select one appraiser to determine the prevailing market rate. Within thirty (30) days after the expiration of the thirty (30)-day consultation period, each party will cause its appraiser to prepare and complete an appraisal report determining the prevailing market rate and submit the report to Landlord and City.

(iii) If only one appraisal report is submitted within that thirty (30)-day period, then the prevailing market rate determined in that appraisal report will be used to establish the Base Rent for the Extended Term. If both appraisal reports are submitted within the thirty (30)-day period, and if the prevailing market rates determined in the two appraisal reports differ by less than ten percent (10%) of the higher of the two, then the average of the two will be the prevailing market rate. If the prevailing market rates in the two appraisal reports differ by more than ten percent (10%) of the higher of the two, then the two appraisers will immediately select a third appraiser. Within thirty (30) days after the third appraiser is selected, the third appraiser will prepare an appraisal report determining the prevailing market rate and submit the report to Landlord and City. The prevailing market rate determined in the third appraisal report will then be averaged with the closer of the prevailing market rates from the two previous appraisals and the result will be



the prevailing market rate. The determination of the third appraiser will be final and binding on the parties.

(iv) If City's Director of Property does not approve the prevailing market rate as determined by the appraisal procedure specified above, the Director of Property may revoke City's exercise of the Extension Option.

(v) All appraisers must be "MAI" designated members of the Appraisal Institute with not less than five (5) years' recent experience appraising leases of commercial properties similar to the Premises in the Reference Area. Landlord and City will pay the cost of the appraiser it selects and one-half of the cost of the third appraiser.

### 4.3 Additional Charges

City will pay to Landlord any charges or other amounts that may be required under this Lease as additional rent ("**Additional Charges**"). The Base Rent and Additional Charges are sometimes collectively referred to as "**Rent**." City is expressly responsible for the ordinary operation of the Premises and all repairs and maintenance described in Section 7.2. Landlord is expressly responsible for all Real Estate Taxes (defined below), Property insurance, and all repairs and maintenance described in Section 7.1.

### 4.4 Definitions

"**Real Estate Taxes**" means all taxes, assessments, and charges levied assessed or imposed on or with respect to the Property. Real Estate Taxes include all general or special real property taxes and general and special assessments, charges, fees, or assessments for transit, housing, police, fire, or other governmental services, service payments in lieu of taxes that are now or later levied or assessed against Landlord by the federal, state, or local government, district or public corporation, and will also include any other tax, fee, or other excise, however described, that may be levied or assessed as a substitute for, or as an addition to, in whole or in part, any other Real Estate Taxes, franchise, real property transfer, other transfer, inheritance, gross receipts, business registration, payroll expense, or capital stock taxes, or income taxes of Landlord from all sources, and any penalties, fines, interest, or charges attributable to the late payment of any taxes.

### 4.5 Records and Audits

Landlord will maintain at its offices in a safe, complete, and organized manner all of its records related to this Lease and any other charges paid by City under this Lease, for at least three (3) years after the Expiration Date or earlier termination of the Term. Landlord will maintain the records on a current basis and in sufficient detail to facilitate adequate review and audit. All books and records related to this Lease will be available for inspection, copying, and audit by City and its representatives, at City's expense.

### 4.6 Payments by City

Landlord acknowledges that City cannot make any payments to Landlord unless Landlord is qualified as an approved vendor in City's financial and payment system. Therefore, City will not be in default of any monetary obligation under this Lease and no interest or late charge will apply, if Landlord is not an approved vendor with City. More information about being an approved vendor with City is available at <https://sfcitypartner.sfgov.org/Vendor/BecomeSupplier>. All Rent that has accrued while Landlord was not an approved vendor will be payable within twenty (20) after City receives

Landlord's written notice and the Contract Monitoring Division confirms that Landlord has been approved as a City vendor, which confirmation will not be unduly delayed, conditioned, or withheld.

#### **4.7 Landlord's Compliance with City Business and Tax Regulations Code**

Landlord acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the withholding of payments to any vendor that is delinquent in the payment of any amounts that the vendor is required to pay the City under the San Francisco Business and Tax Regulations Code. If, under that authority, any payment City is required to make to Landlord under this Lease is withheld, then City will not be in breach or default under this Lease, and the Treasurer and Tax Collector will authorize release of any payments withheld under this paragraph to Landlord, without interest, late fees, penalties, or other charges, upon Landlord coming back into compliance with its San Francisco Business and Tax Regulations Code obligations.

#### **4.8 Additional Services**

City may request that Landlord provide or arrange for additional services for the Premises, which Landlord may provide or arrange in its reasonable discretion. If Landlord elects to provide the requested additional services and City has approved the cost and scope of those services in advance, then City will pay Landlord as Additional Charges the cost of those services plus a three percent (3%) administrative fee. Landlord may not contract for or provide any services (and City will not be obligated to pay for such services) without City's prior written approval of the cost of the additional services (which may be the known costs, or an hourly rate and maximum number of hours, or a cost estimate with a not-to-exceed maximum amount) in writing before Landlord incurs any costs. City will pay for the cost of the additional services and the administrative fee within thirty (30) days after receipt of an invoice; provided, however, that City may elect to provide any deposit or other prepayment that City determines is appropriate given the nature of the requested services. Any additional terms for the additional services will be memorialized by a written agreement, which, upon execution by Landlord and City, will be considered a part of this Lease.

### **5. USE**

#### **5.1 Permitted Use**

City may use the Premises for all activities pertinent to vehicle fleet management which will include a temporary fuel station and any other uses specified in the Basic Lease Information, and for no other use without Landlord's prior written consent, which may not be unreasonably withheld, conditioned, or delayed.

#### **5.2 Interference with Access**

Landlord will provide to City uninterrupted access to the Property twenty-four (24) hours per day, seven (7) days per week, including during any power outages affecting the Property; but Landlord may, after consultation with City's Administrator, interrupt City's access to the Property if there is an immediate threat that will render the Property unsafe for human occupancy. If City's use of any of the Property or access to the Property is interrupted because the Property is unsafe for human occupancy due to Landlord's failure to comply with its obligations under this Lease or for any other reason other than an Event of Default, then Landlord will immediately undertake all necessary steps to correct the condition. If the condition continues for five (5) business days and materially impairs City's ability to carry on its business at the Property, then the Rent will be abated based on the extent to which the condition interferes with City's ability to normally and safely carry on its business at the Property. If the



condition continues for thirty (30) days or more after City's use is interrupted or impaired then, without limiting any of its other rights under this Lease, City may terminate this Lease, unless Landlord supplies City with evidence reasonably satisfactory to City that City's normal and safe use will be restored within sixty (60) days after the date City's use was interrupted or impaired, and City's full use is actually restored within that sixty (60)-day period. Nothing in this Section will limit City's rights with respect to any disruption due to casualty under Section 11 (Damage and Destruction).

## 6. ALTERATIONS

### 6.1 Alterations by City

City may not make or permit any alterations, installations, additions, or improvements (collectively, "**Alterations**") to the Premises without first obtaining Landlord's written consent, which Landlord will not unreasonably withhold, condition, or delay. Installation of furnishings, fixtures, equipment, or decorative improvements that do not affect the Building Systems or structural integrity of the Building, and the repainting and recompeting of the Premises (collectively, "**Aesthetics**") do not constitute Alterations and do not require Landlord's consent. Nevertheless, City will give Landlord not less than thirty (30) days written notice of any Aesthetics, and Landlord may approve or disapprove of such Aesthetics. Any Alterations permitted under this Lease will be made at City's cost in compliance with applicable Laws (as defined in Section 9.1 (Landlord's Compliance with Laws)). Without cost to itself, Landlord will cooperate with City in City's securing building and other permits and authorizations needed for any permitted Alterations. Landlord will not be entitled to any construction or other administrative fee in connection with any Alteration. City will not be required to remove any Alterations on the expiration or sooner termination of this Lease unless Landlord notifies City in writing at the time Landlord approves the Alterations that they must be removed. City is not required to remove any Aesthetics unless disapproved by Landlord.

### 6.2 Title to Improvements

Except for City's Personal Property (as defined in the next Section) all appurtenances, fixtures, improvements, equipment, additions, and other property permanently installed in the Premises as of the Commencement Date or during the Term will be and will remain Landlord's property. City may not remove Landlord's property without Landlord's written approval.

### 6.3 City's Personal Property

(a) All furniture, furnishings, equipment, trade fixtures, and articles of movable personal property installed in the Premises by or for City and that can be removed without structural damage to the Premises (collectively, "**City's Personal Property**") are and will remain City's property. If City requests, Landlord may assist City by ordering and installing City's Personal Property and City will reimburse Landlord for all fees, costs, and expenses approved by City in advance within thirty (30) days after receipt of an invoice; provided, however, that City may elect to provide any deposit or other expense required at the time of ordering City's Personal Property. To the extent possible, any maintenance contract or warranty in connection with the purchase or lease of tangible personal property will be optional (namely, City may, but is not required to, purchase a maintenance contract or warranty). To the extent feasible, Landlord and any vendors of Landlord will separately itemize any shipping charges. Although Landlord may order and install City's Personal Property, all items will remain City's Personal Property. With regard to any personal property purchased by Landlord on behalf of City or leased by City under this Lease, (a) Landlord represents that it is fully compliant with the California Sales and Use Tax Law and warrants to City that Landlord will fulfill its use tax obligations under that law with respect to the subject transaction; (b) Landlord will accept a Use Tax Direct Payment Exemption Certificate in lieu of any use tax payment if the City, in its sole

discretion, elects to provide such Certificate to Landlord; (c) If the City pays use tax to Landlord, Landlord will remit the entire amount of the use tax payment to the state and provide the City with a receipt in accordance with the California Sales and Use Tax Law; and (d) Landlord will be liable to the City for all amounts of use tax paid to Landlord that Landlord fails to remit to the State. This obligations of Landlord under the foregoing sentence will survive and termination or expiration of the Lease.

(b) At any time during the Term, City may remove any of City's Personal Property, and City will repair any damage to the Premises resulting from that removal. On the expiration or earlier termination of this Lease, City will remove City's Personal Property from the Premises in accordance with Section 19 (Surrender of Premises). Landlord acknowledges that some of City's Personal Property may be financed by an equipment lease financing otherwise subjected to a security interest, or owned by an equipment company and leased to City ("**Secured Personal Property**"). Landlord recognizes the rights of any supplier, lessor, or lender who has an interest in any items of Secured Personal Property to enter the Premises and remove that Secured Personal Property at any time during the Term. On City's reasonable request and at City's cost, Landlord will execute and deliver any document required by any supplier, lessor, or lender in connection with the installation of any items of Secured Personal Property in the Premises, under which Landlord waives any rights it may have or acquire with respect to the Secured Personal Property, so long as the supplier, equipment supplier, lessor, or lender agrees that it (i) will remove the Secured Personal Property from the Premises before the Expiration Date (and if it does not remove the Secured Personal Property within that time the equipment supplier, lessor, or lender will have waived any rights it may have had to the Secured Personal Property), and (ii) will repair any damage caused by the removal of the Secured Personal Property.

#### **6.4 Alteration by Landlord**

Landlord will use its best efforts to minimize interference with or disruption to City's use and occupancy of the Premises during any alterations, installations, additions, or improvements to the Building. Landlord will promptly remedy any interference or disruption on receiving City's notice thereof.

### **7. REPAIRS AND MAINTENANCE**

#### **7.1 Landlord's Repairs**

At its cost, Landlord will repair and maintain the exterior and structural portions of the Building in the condition delivered to City, including, the roof, foundation, bearing and exterior walls, windows, doors, door frames, demising walls, and subflooring, and the heating, ventilating, air conditioning, plumbing, electrical, and other mechanical, electrical, and communications systems of the Building (collectively, the "**Building Systems**"). Landlord will also retain responsibility for repairing and maintaining the paved areas and entrances and exits to the Property in the condition delivered to City, and for painting the exterior of the Building. Without limiting the foregoing, Landlord will maintain the Building in a clean and safe manner, will provide exterior graffiti removal with reasonable frequency, and will not interfere with City's use of the Premises or permit to be done in or about the Premises anything that is illegal, is dangerous to persons or property, or constitutes a nuisance.

#### **7.2 City's Repairs**

Subject to Landlord's warranty under Section 9.1 (Premises Condition) and Landlord's repair and maintenance obligations under this Lease, City will repair and maintain at its cost the interior portions of the Premises and will keep the Premises in good working order and in a safe and sanitary condition, except for ordinary wear and tear and damage by casualty or

condemnation. City will make any required repairs and replacements to the interior of the Premises that Landlord specifies in writing **(a)** at City's cost, **(b)** by contractors or mechanics selected by City and reasonably approved by Landlord, **(c)** so that the interior portions of the Premises will be at least substantially equal in quality, value, and utility to the original work or installation before the damage, **(d)** in a manner and using equipment and materials that will not materially interfere with or impair the operations, use, or occupation of the Building or the Building Systems, and **(e)** in compliance with all applicable Laws, including any applicable contracting requirements under City's Charter and Administrative Code. At all times during the Term, promptly after City's reasonable notice, Landlord will provide City and its Agents with access to those portions of the Building that are necessary to maintain or repair the telecommunications and data and computer cabling facilities and equipment installed by City.

### **7.3 Liens**

City will keep the Premises free from liens arising out of any work performed, material furnished, or obligations incurred by City during the Term. Landlord may post on the Premises any notices permitted or required by Laws or that are needed for the protection of Landlord, the Premises, or the Building, from mechanics' and material suppliers' liens. City will give Landlord at least ten (10) days' prior written notice of commencement of any repair or construction by City on the Premises.

## **8. UTILITIES AND SERVICES**

### **8.1 Landlord's Provision of Utilities**

City will pay its own utility costs for use of the Premises and the utility costs incurred for the Premises. At Landlord's discretion, Landlord may maintain its existing contract with the utility service providers servicing the Premises, and will bill City monthly as Additional Rent.

### **8.2 Services**

City will pay the costs incurred for any janitorial service for the Premises and/or security service for the Property, as well as the fire monitoring system, and security systems. At Landlord's discretion, Landlord may maintain its existing contract with the janitorial service provider servicing the Premises or the security service provider servicing the Property, and will bill City monthly as Additional Rent.

### **8.3 Disruption in Essential Utilities or Services**

If any failure, stoppage, or interruption of any utilities or services caused by Landlord impairs City's ability to carry on its business in the Premises for five (5) or more consecutive business days, then the Rent will be abated based on the extent that the lack of such services impairs City's ability to normally carry on its business in the Premises. The abatement will continue until the applicable services have been restored so that the lack of any remaining service no longer materially impairs City's ability to carry on its business in the Premises. If the failure, stoppage, or interruption caused by Landlord of any utilities or services that impairs City's ability to carry on its business occurs for any reason for thirty (30) days or more in any sixty (60)-day period, then, without limiting any of its other rights or remedies under this Lease or at law or in equity, City may terminate this Lease on written notice to Landlord, unless Landlord supplies City with evidence reasonably satisfactory to City that the applicable utilities or services will be reliably restored within sixty (60) days after the date City's use was first interrupted, and the applicable utilities or services are actually restored and reliable within the sixty (60)-day period. City will not be entitled to any abatement of Rent or right to terminate if the failure, stoppage, or interruption of any utilities or services results solely due to the negligent acts or omissions of City and its Agents.



## **9. COMPLIANCE WITH LAWS; PREMISES CONDITION**

### **9.1 Landlord's Compliance with Laws; Premises Condition; Indemnity**

Subject to City's obligation under Section 7.2 (City's Repairs), Landlord will at all times during the Term maintain, at its cost, the Property, Building, and the Building Systems in compliance with applicable federal, state, local, and administrative laws, rules, regulations, orders, and requirements (collectively, "**Laws**"). Landlord represents and warrants to City, and covenants with City, as follows: **(a)** the Building is not an unreinforced masonry building, and is now, and as of the Commencement Date will be, in compliance with all applicable Laws relating to seismic safety; **(b)** the Building and Building Systems serving the Premises are now, and as of the Commencement Date will be, in compliance with all other applicable Laws; and **(c)** there are not now, and as of the Commencement Date will not be, any material physical or mechanical defects in the Premises, Building, or the Building Systems that would materially adversely affect City's intended use of the Premises. Without limiting Section 15.2 (Landlord's Indemnity), Landlord will Indemnify City against any and all Claims (defined in Section 15.1 (City's Indemnity) below) arising out of **(i)** any failure of the Property, Building, Building Systems (or any portion of any of them) to comply with applicable Laws; or **(ii)** any misrepresentation by Landlord under this Section. Notwithstanding the foregoing, Landlord acknowledges that City may, without Landlord's prior written consent and at no cost to Landlord, upgrade: **(A)** the physical structure, fixtures, and permanent improvements of the Premises and all portions of the Property and the Building along the path of travel to the Premises to be in compliance with the requirements of the Americans With Disabilities Act of 1990, California Code of Regulations Title 24, and all other applicable Laws intended to provide equal accessibility for persons with disabilities (collectively, "**Disabilities Laws**"); and **(B)** the Building and Building Systems serving the Premises to be in full compliance with all applicable Laws relating to fire and life safety (including the San Francisco High-Rise Sprinkler Ordinance).

### **9.2 City's Compliance with Laws; Indemnity**

City will use the Premises during the Term in compliance with applicable Laws, except that City will not be required to make any structural alterations, additions, or other modifications, other than as set forth herein, in order to comply with applicable Laws. City will be responsible for complying with any requirement of the Disabilities Laws relating to the placement of City's furniture or other City Personal Property and the operation of any programs in the Premises, other than any requirement relating to the physical structure, fixtures, and permanent improvements of the Premises or portions of the Property or Building along the path of travel to the Premises, which are Landlord's obligation as provided in Section 9.1 (Premises Condition). Without limiting Section 15.1 (City's Indemnity), City will Indemnify Landlord against any and all Claims arising out of City's failure to comply with all applicable Laws.

### **9.3 City's Compliance with Insurance Requirements**

City will not conduct any use in or about the Premises that would: **(a)** invalidate or be in conflict with any fire or other casualty insurance policies covering the Building or any property located in the Building, **(b)** result in a refusal by casualty insurance companies of good standing to insure the Building or Premises in amounts reasonably satisfactory to Landlord or the holder of any mortgage or deed of trust encumbering the Building, **(c)** result in a refusal by any hazardous waste or environmental insurance companies of good standing to insure the Building or Premises in amounts reasonably satisfactory to Landlord or the holder of any mortgage or deed of trust encumbering the Building, **(d)** cause an increase in the casualty insurance premium for the Building unless City agrees to pay the increase, or **(e)** subject Landlord to any liability or responsibility for injury to any person or property solely because of the business operation conducted by City in the Premises; provided, however, Landlord will provide City with

reasonable prior written notice of any applicable insurance requirements and no insurance requirements will materially and adversely interfere with City's normal business in the Premises.

## 10. SUBORDINATION

(a) Subject to subsection (b) below, this Lease is subject and subordinate at all times to the following (each an "**Encumbrance**"): (i) any reciprocal easement agreements, ground leases, or other underlying leases that may later be executed affecting Landlord's interest in the Property (or any portion of it), and (ii) the lien of any mortgages or deeds of trust and renewals, modifications, consolidations, replacements, and extensions of any of the foregoing that may be executed by Landlord at any time in any amount for which any part of the Property, any ground lease, or underlying lease, or Landlord's interest or estate in them is subject. But, if the ground lessor, mortgagee, trustee, or holder of any mortgage or deed of trust (each an "**Encumbrancer**") elects to have City's interest in this Lease be superior to its Encumbrance, then, on City's receipt of a notice from the Encumbrancer, this Lease will be deemed superior, whether this Lease was executed before or after the date of the Encumbrance or the date of its recording. The provisions of this subsection (a) are self-operative and no further instrument will be required. At Landlord's request, however, City will enter into a subordination, no disturbance, and attornment agreement ("**SNDA**") with Encumbrancer in a form reasonably acceptable to City and Encumbrancer evidencing the subordination or superiority of this Lease. City's covenant under this subsection (a) to subordinate this Lease to any Encumbrance is conditioned on each senior instrument containing the commitments in subsection (b) below.

(b) If any mortgage or deed of trust to which this Lease is subordinate is foreclosed or a deed in lieu of foreclosure is given to the mortgagee or beneficiary, or if any ground lease or underlying lease to which this Lease is subordinate is terminated, then this Lease will not be barred, terminated, cut off, or foreclosed and the rights and possession of City under this Lease will not be disturbed unless an Event of Default has occurred and is continuing. City will attorn to and become the tenant of the successor-in-interest to Landlord, provided that City has received proper written notice of the succession and the name and address of the successor landlord. The provisions of this subsection (b) are self-operative and no further instrument will be required. Landlord agrees, however, upon request by City and in a form reasonably acceptable to City to cause any Encumbrancer to execute an SNDA evidencing the foregoing non-disturbance provisions together with the priority or subordination of this Lease with respect to any such Encumbrance.

## 11. DAMAGE AND DESTRUCTION

(a) If the Premises, the Building, or any Building Systems are damaged by fire or other casualty, Landlord will repair the same without delay so long as the repairs can be made under applicable Laws within ninety (90) days after Landlord obtains all necessary permits but not later than two hundred ten (210) days after the date of the damage (the "**Repair Period**"). If Landlord is obligated to repair as provided above, then this Lease will remain in full force and effect, except that City will be entitled to an abatement of Rent until the Premises are restored to their condition before the casualty. The abatement in Rent will be based on the extent to which the damage, the making of the repairs, and reoccupying the repaired Premises interferes with City's use of the Premises. Landlord's repairs will not include, and the Rent will not be abated as a result of, any damage by fire or other cause to City's Personal Property or any damage caused by the negligence or willful misconduct of City or its Agents that is not covered by insurance.

(b) Within thirty (30) days after the date of the damage, Landlord will notify City whether, in Landlord's reasonable judgment made in good faith, the repairs can be made within the Repair Period. If the repairs cannot be made within the Repair Period, then either party may terminate this Lease by giving written notice to the other given within thirty (30) days after the

date of Landlord's notice. The termination date will be the date specified in the termination notice, which date may be not less than thirty (30) or more than sixty (60) days after Landlord's notice. If either party elects to terminate this Lease, then the Rent will be reduced by a proportionate amount based on the extent to which the damage interferes with the normal conduct of City's business in the Premises, and City will pay the reduced Rent up to the date of termination. Landlord will refund to City any Rent previously paid for any period after the date of termination.

(c) Notwithstanding the foregoing, if the Premises are damaged or destroyed by flood or earthquake, and the damage or destruction is not fully covered by insurance proceeds payable under the insurance policies Landlord is required to carry under this Lease (excluding any deductible, for which Landlord is solely responsible), then Landlord may terminate this Lease by written notice to City within thirty (30) days after the date Landlord receives written notice that the damage is not covered by insurance. Landlord's termination notice must include adequate written evidence of the denial of insurance coverage. If Landlord does not elect to terminate this Lease, then subsections (a) and (b) will apply.

(d) If during the last six (6) months of the Term there is substantial damage that Landlord would be required to repair under this Section, then within thirty (30) days after the date of the damage Landlord or City may, each at its option, terminate this Lease as of the date the damage occurred by giving written notice to the other party of its election to do so; provided, however, that it would take more than thirty (30) days to repair the damage.

(e) The parties intend that the provisions of this Section fully govern their rights and obligations in the event of damage or destruction. Accordingly, Landlord and City each waives and releases any right to terminate this Lease in whole or in part under Section 1932, subdivision 2, Section 1933, subdivision 4, and Sections 1941 and 1942 of the Civil Code of California or under any similar Law now or later in effect, to the extent those rights are inconsistent with the provisions of this Section.

## **12. EMINENT DOMAIN**

### **12.1 Definitions**

**"Taking"** means a taking or damaging, including severance damage, by eminent domain, inverse condemnation, or for any public or quasi-public use under law. A Taking may occur pursuant to the recording of a final order of condemnation, or by voluntary sale or conveyance in lieu of condemnation, or in settlement of a condemnation action.

**"Date of Taking"** means the earlier of (a) the date on which title to the portion of the Property taken passes to and vests in the condemner or (b) the date on which City is dispossessed.

**"Award"** means all compensation, sums, or anything of value paid, awarded or received for a Taking, whether under any judgment, agreement, settlement, or otherwise.

### **12.2 General**

If during the Term or during the period between the execution of this Lease and the Commencement Date, there is any Taking of all or any part of the Premises or the Building or any interest in this Lease, the rights and obligations of the parties will be determined under this Section. City and Landlord intend that the provisions of this Section govern fully in the event of a Taking and accordingly, Landlord and City each waives any right to terminate this Lease in whole or in part under Sections 1265.110, 1265.120, 1265.130 and 1265.140 of the California Code of Civil Procedure or under any similar Law now or later in effect.

### **12.3 Total Taking; Automatic Termination**

If there is a total Taking of the Premises, then this Lease will terminate as of the Date of Taking.

### **12.4 Partial Taking; Election to Terminate**

(a) If there is a Taking of any portion (but less than all) of the Premises, then this Lease will terminate in its entirety if all of the following exist: (i) the partial Taking, in City's reasonable judgment, renders the remaining portion of the Premises untenable or unsuitable for continued use by City for its intended purposes or otherwise materially adversely affects City's normal operations in the Premises or access to the Premises, (ii) the condition rendering the Premises untenable or unsuitable or that materially adversely affects City's normal operations or limits access to the Premises either is not curable or is curable but Landlord is unwilling or unable to cure the condition, and (iii) City elects to terminate.

(b) If a partial Taking of a substantial portion of the Building occurs, but subsection (a) above does not apply, then within thirty (30) days after the Date of Taking either City or Landlord may terminate this Lease by written notice to the other, provided that, as a condition to City's right to terminate, the portion of the Building taken must, in City's reasonable judgment, render the Premises unsuitable for continued use by City for its intended purposes or otherwise materially adversely affect City's normal operations in the Premises or access to the Premises.

(c) If either party elects to terminate this Lease under this Section, then this Lease will terminate on the later of the thirtieth (30<sup>th</sup>) day after the written notice is given or the Date of Taking.

### **12.5 Termination of Lease; Rent and Award**

On termination of this Lease in its entirety under Section 12.3 (Total Taking; Automatic Termination) or under Section 12.4 (Partial Taking; Continuation of Lease), then: (a) City's obligation to pay Rent will continue up until the date of termination and then will cease, and (b) Landlord will be entitled to the entire Award, except that City will receive any Award made specifically for City's relocation expenses or the interruption of or damage to City's business or damage to City's Personal Property.

### **12.6 Partial Taking; Continuation of Lease**

If there is a partial Taking of the Premises and this Lease is not terminated in its entirety under Section 12.4 (Partial Taking; Continuation of Lease) above, then this Lease will terminate as to the portion of the Premises taken, but will remain in effect as to the portion not taken, and the rights and obligations of the parties will be as follows: (a) Rent will be equitably reduced depending on the configuration of the Premises and the portion taken (for instance, if the area of the Premises taken has no special or significant use, then the reduction may be by an amount that is in the same ratio to the Rent as the area of the Premises taken bears to the area of the Premises before the Date of Taking), and (b) Landlord will be entitled to the entire Award in connection therewith, provided that City will receive any Award made specifically for City's relocation expenses or the interruption of or damage to City's business or damage to City's Personal Property.

### **12.7 Temporary Taking**

Notwithstanding anything to contrary in this Section, if a Taking of the Premises occurs for sixty (60) consecutive days or fewer, this Lease will remain unaffected by the temporary



Taking, and City will continue to pay Rent and to perform all of the terms, conditions, and covenants of this Lease. In the event of a temporary Taking, Landlord will be entitled to the entire Award in connection therewith, provided that City will receive that portion of any Award representing compensation for the use or occupancy of the Premises during the Term up to the total Rent owing by City and any out-of-pocket costs incurred by City due to the temporary Taking for the period of the Taking.

### **13. ASSIGNMENT AND SUBLETTING**

Except as provided in this Section, City may not directly or indirectly sell, assign, encumber, pledge, or otherwise transfer or hypothecate all or any part of its interest in or rights with respect to the Premises or its leasehold estate created by this Lease or permit all or any portion of the Premises to be occupied by anyone other than itself or sublet all or any portion of the Premises, without Landlord's prior written consent in each instance, which may be withheld, conditioned, or delayed in Landlord's sole and absolute discretion. From time to time, on notice to Landlord, and with Landlord's consent which shall not be unreasonably withheld, delayed, or conditioned, City may transfer this Lease or use and occupancy of all or any of the Premises to any department, commission, or agency of the City and County of San Francisco for uses permitted under this Lease.

### **14. DEFAULT; REMEDIES**

#### **14.1 Events of Default by City**

Any of the following will constitute an "**Event of Default**" by City:

(a) After Landlord is qualified as an approved vendor as provided in Section 4.6 (Payments by City) above, City fails to make any timely payment of Rent and to cure the nonpayment within five (5) business days after receipt of written notice of nonpayment from Landlord, provided that for the first two (2) monthly payments of Rent at the beginning of the Term and for the first monthly payment of Rent after the beginning of each new fiscal year for City, City will have twenty (20) days after written notice from Landlord to cure any nonpayment.

(b) City abandons the Premises (within the meaning and under the requirements of California Civil Code Section 1951.3).

(c) City's failure to perform any other of its covenants or obligations under this Lease (not involving the payment of money) and failure to cure the non-performance within thirty (30) days of the date of receipt of Landlord's notice of the failure, provided that if more than thirty (30) days are reasonably required for the cure, no Event of Default will occur if City commences the cure within the thirty (30)-day period and diligently prosecutes the cure to completion.

#### **14.2 Landlord's Remedies**

On the occurrence and during the continuance of any Event of Default by City, Landlord will have all rights and remedies available under law or granted pursuant to this Lease, including the following:

(a) The rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including the right to terminate City's right to possession of the Premises and to recover the amount at the time of award by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that City proves could be reasonably avoided, as computed under subsection (b) of Section 1951.2.



(b) The rights and remedies provided by California Civil Code Section 1951.4 (continuation of lease after breach and abandonment), which allows Landlord to continue this Lease in effect and to enforce all of its rights and remedies under this Lease, including the right to recover Rent as it becomes due, for so long as Landlord does not terminate City's right to possession, if City has the right to sublet or assign, subject only to reasonable limitations.

### **14.3 Landlord's Default**

If Landlord fails to perform any of its obligations under this Lease, then (without limiting any of City's other cure rights under this Lease), at its sole option, City may cure the default at Landlord's expense if the default continues after thirty (30) days after the date City gives notice to Landlord of City's intention to perform the cure unless within such thirty (30) day period the Landlord commences the cure and diligently prosecutes the cure to completion. However, if a default occurs because of a cause beyond Landlord's control (excluding any financial inability to perform), and Landlord cannot with due diligence cure the default within the thirty (30)-day period, then the thirty (30)-day period will be extended if, promptly on receipt of City's notice, Landlord advises City of Landlord's intention to take all steps required to cure the default, and Landlord promptly commences the cure and diligently prosecutes the cure to completion. But if any default by Landlord continues for sixty (60) days and impairs City's ability to carry on its normal business in the Premises, then City may terminate this Lease on written notice to Landlord within thirty (30) days after the expiration of the sixty (60)-day period. Subject to the other provisions of this Lease relating to abatement of Rent, if Landlord fails to cure any default within the thirty (30)-day cure period provided above (as it may be extended as provided above), then, whether or not City elects to cure Landlord's default, the Rent will be abated based on the extent to which the default interferes with City's ability to carry on its normal business at the Premises. City's rights under this Section and under any other provisions of this Lease will not limit in any way any of its other rights and remedies under this Lease or at law or in equity.

## **15. INDEMNITIES**

### **15.1 City's Indemnity**

City will indemnify, defend, and hold harmless ("**Indemnify**") Landlord and its Agents from and against any and all claims, losses, damages, costs, and expenses, including reasonable attorneys' fees (collectively, "**Claims**"), incurred as a result of (a) City's use of the Premises, or (b) any negligent acts or omissions of City or its Agents in, on, or about the Premises or the Property; provided, however, City will not be obligated to Indemnify Landlord or its Agents to the extent any Claim arises out of the negligence or willful misconduct of Landlord or its Agents. In any action or proceeding brought against Landlord or its Agents because of a Claim Indemnified by City under this Section, at its sole option, City may elect to defend the Claim by attorneys in City's Office of the City Attorney, by other attorneys selected by City, or both. City will have the right to control the defense and to determine the settlement or compromise of any action or proceeding, provided that (i) Landlord will have the right, but not the obligation, to participate in the defense of the Claim at its sole cost, and (ii) provided that any settlement or compromise agreed to by City (A) costs Landlord nothing, (B) does not involve or include any changes to the Premises or the Property, and (C) does not limit Landlord's use of the Property or the Premises. City's obligations under this Section will survive the termination of the Lease.

### **15.2 Landlord's Indemnity**

Landlord will Indemnify City and its Agents against any and all Claims incurred as a result of (a) any default by Landlord in the performance of any of its obligations under this Lease or any breach of any representations or warranties made by Landlord under this Lease, or (b) any negligent acts or omissions of Landlord or its Agents in, on, or about the Premises or the Property; provided, however, Landlord will not be obligated to Indemnify City or its Agents to

the extent any Claim arises out of the negligence or willful misconduct of City or its Agents. In any action or proceeding brought against City or its Agents because of a Claim Indemnified by Landlord under this Section, at its sole option, Landlord may elect to defend the Claim by attorneys selected by Landlord. Landlord will have the right to control the defense and to determine the settlement or compromise of any action or proceeding, provided that City will have the right, but not the obligation, to participate in the defense of any Claim at its sole cost. Landlord's obligations under this Section will survive the termination of this Lease.

## **16. INSURANCE**

### **16.1 City's Self-Insurance**

Landlord acknowledges that City maintains a program of self-insurance and City is not required to carry any insurance with respect to this Lease. City assumes the risk of damage to any of City's Personal Property, except for damage caused by Landlord or its Agents.

### **16.2 Landlord's Insurance**

(a) At all times during the Term, Landlord will keep the Building insured against damage and destruction by fire, vandalism, malicious mischief, sprinkler damage (include earthquake sprinkler leakage) and other perils customarily covered under a cause of loss-special form property insurance policy in an amount equal to one hundred percent (100%) of the full insurance replacement value (replacement cost new, including debris removal and demolition). Upon City's request, Landlord will provide to City a certificate of insurance issued by the insurance carrier, evidencing the required insurance. The certificate must expressly provide that the policy is not cancelable or subject to reduction of coverage or otherwise subject to modification except after thirty (30) days' prior written notice to City (or, if the insurer refuses to provide notice to City, then Landlord will provide such thirty (30)-day prior notice to City). Landlord waives any rights against City for loss or damage to the Premises or any other part of the Property to the extent covered by Landlord's property insurance.

(b) In addition, at no cost to City, Landlord will procure and keep in effect at all times during the Term insurance as follows: (i) commercial general liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including contractual liability, independent contractors, broad-form property damage, fire damage legal liability (of not less than Fifty Thousand Dollars (\$50,000)), personal injury, products and completed operations, and explosion, collapse, and underground (XCU); and (ii) worker's compensation insurance in the amounts required by applicable Laws when necessary for Landlord, and employer's liability with limits not less than One Million Dollars (\$1,000,000) each accident. All insurance policies required by this Lease to be maintained by Landlord must be endorsed to provide for thirty (30) days' prior written notice of cancellation for any reason, intended non-renewal, or reduction in coverage to Landlord and City (or, if such endorsement is not available from the insurer, Landlord will provide such notice to City).

(c) Landlord will maintain loss of rent coverage for a twelve (12) month period.

(d) Landlord will maintain such umbrella policy and additional coverage as it reasonably determines necessary or as required by any Encumbrancer. The parties agree that the minimums set forth in this Section will be re-evaluated every five (5) years, and increased to the extent consistent with similarly situated landlords and properties.

### **16.3 Waiver of Subrogation**

Notwithstanding anything to the contrary in this Lease, Landlord waives any right of recovery against City for any loss or damage relating to the Building or the Premises or any operations or contents in the Building, whether or not the loss is caused by City's fault or negligence, to the extent the loss or damage is covered by Landlord insurance that is required under this Lease or any excess coverage otherwise held by Landlord or its Agents. Landlord will obtain a waiver of subrogation endorsement from applicable insurance carriers issuing policies relating to the Building or the Premises, but Landlord's failure to do so will not affect the above waiver.

### **17. ACCESS BY LANDLORD**

Landlord reserves for itself and any of its designated Agents the right to enter the Premises at all reasonable times and, except in cases of emergency (in which event Landlord will give any reasonable notice), after giving City at least twenty four (24) hours' advance written notice, to (a) inspect the Premises, (b) supply any service to be provided by Landlord under this Lease, (c) show the Premises to any prospective purchasers, mortgagees or, during the last six (6) months of the Term, tenants, (d) post notices of non-responsibility, and (e) alter, improve, or repair the Premises and any portion of the Building, and, for that purpose, Landlord may erect, use, and maintain necessary structures in and through the Premises where reasonably required by the work to be performed, provided that the entrance to the Premises may not be blocked. Landlord may not interfere with City's use of the Premises.

### **18. ESTOPPEL CERTIFICATES**

From time to time during the Term, by not less than thirty (30) days' prior written notice to the other party, either party may request the other party to execute, acknowledge, and deliver to the persons or entities designated by the other party a certificate stating: (a) the Commencement Date and Expiration Date of this Lease, (b) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified and stating the modifications), (c) that there are no defaults under this Lease (or if so, specifying the same), and (d) the date to which Rent has been paid.

### **19. SURRENDER OF PREMISES**

On the expiration or sooner termination of this Lease, City will surrender the Premises to Landlord in good order and condition, excepting reasonable use and wear and damage by fire or other casualty or condemnation. By the Expiration Date, City will remove from the Premises all of City's Personal Property, City's telecommunications, data, and computer facilities and any Alterations or Aesthetics City desires or is required to remove from the Premises under the provisions of Section 6.1 (Alterations by City). City will repair or pay the cost of repairing any damage to the Premises or the Building resulting from that removal. City's obligations under this Section will survive the expiration or earlier termination of this Lease.

### **20. HAZARDOUS MATERIALS**

#### **20.1 Definitions**

As used in this Lease, the following terms are defined below:

**"Environmental Laws"** means any Law relating to industrial hygiene, environmental conditions, or Hazardous Material, whether now in effect or later adopted.

**“Hazardous Material”** means any material that, because of its quantity, concentration, or physical or chemical characteristics, is deemed by any federal, state, or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes any material or substance defined as a “hazardous substance,” or “pollutant” or “contaminant” under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”, also commonly known as the Superfund law), as amended (42 U.S.C. Section 9601 et seq.), or under California Health & Safety Code Section 25316; any “hazardous waste” listed under California Health & Safety Code Section 25140; any asbestos and asbestos containing materials whether or not those materials are part of the structure of the Building or are naturally occurring substances on or about the Property; and petroleum, including crude oil or any fraction thereof, natural gas, or natural gas liquids.

**“Release”** when used with respect to Hazardous Material includes any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside the Building, or in, on, under, or about the Property.

## **20.2 Landlord’s Representations and Covenants**

Landlord represents and warrants to City that, to the best of Landlord’s knowledge, the following statements are true and correct and will be true and correct as of the Commencement Date **(a)** the Property is not in violation of any Environmental Laws; **(b)** the Property is not now, and has not been, used for the manufacture, use, storage, discharge, deposit, transportation, or disposal of any Hazardous Material, except for the use of Hazardous Material in limited quantities as are customarily used in properties such as the Property, which limited use is and has been in compliance with Environmental Laws; **(c)** the Property does not consist of any landfill or contain any underground storage tanks; **(d)** the Building does not contain any asbestos-containing materials or have building materials that contain any other Hazardous Material, and the Premises or the Property do not contain any lead-based paints; **(e)** there is and has been no Release of any Hazardous Material in the Building or in, on, under, or about the Property; and **(f)** the Property is not subject to any claim by any governmental regulatory agency or third party related to the Release of any Hazardous Material, and there is no inquiry by any governmental agency (including the California Department of Toxic Substances Control or the Regional Water Quality Control Board) with respect to the presence of Hazardous Material in the Building or in, on, under, or about the Property, or the migration of Hazardous Material from or to other real property. Subject to City’s obligations under this Section below, Landlord will maintain the Property throughout the Term in compliance with all Environmental Laws that could affect the health, safety, and welfare of City’s employees or City’s use, occupancy, or enjoyment of the Premises for their intended purposes.

## **20.3 Landlord’s Environmental Indemnity**

Without limiting Landlord’s Indemnity in Section 15.2 (Landlord’s Indemnity), Landlord will Indemnify City and its Agents against any and all Claims arising during or after the Term **(a)** as a result of any breach of any of Landlord’s representations, warranties, or covenants in the preceding Section, or **(b)** in connection with any presence or Release of Hazardous Material in the Building or on, under, or about the Property, unless City or its Agents caused the Release.

## **20.4 City’s Covenants**

Neither City nor its Agents will cause any Hazardous Material to be brought on, kept, used, stored, generated, or disposed of in, on or about the Premises or the Property, or transported to or from the Premises or the Property, in violation of any Environmental Laws.



## 20.5 City's Environmental Indemnity

If City breaches its obligations contained in the preceding Section 20.4 (City's Covenants), or if City or its Agents cause the Release of Hazardous Material from, in, on, or about the Premises or the Property, then City will Indemnify Landlord against any and all Claims arising during or after the Term as a result of the Release, except to the extent Landlord or its Agents is responsible for the Release. The foregoing Indemnity will not include any Claims resulting from the non-negligent aggravation by City, its Agents, or Invitees of physical conditions of the Premises, or other parts of the Property, existing before City's occupancy.

## 21. RIGHT OF FIRST REFUSAL TO PURCHASE

City shall have the right of first refusal to purchase the Property ("**Right of First Refusal**") upon the following terms and conditions:

(a) If at any time during the initial or any extended term of this Lease Landlord determines to sell the Property, Landlord shall give written notice to City ("**Right of First Refusal Notice**") of the economic terms and conditions on which Landlord would be willing to sell the Property. If City, within thirty (30) days after receipt of Landlord's Right of First Refusal Notice, agrees in writing to purchase the Property on the terms and conditions stated in the notice, Landlord shall sell and convey the Property to City on the economic terms and conditions stated in the notice.

(b) If City does not agree in writing to purchase the Property within thirty (30) days after receipt of Landlord's Right of First Refusal Notice, or if Landlord and City have not entered into a purchase and sale agreement within thirty (30) days thereafter, Landlord shall have the right to sell and convey the Property to a third party on economic terms and conditions no more favorable than the economic terms and conditions stated in the Right of First Refusal Notice, and, upon any such sale, the Right of First Refusal Notice shall terminate. If Landlord does not sell and convey the Property within one hundred eighty (180) days after the Right of First Refusal Notice, any sale transaction thereafter shall be deemed a new determination by Landlord to sell and convey the Property and the provisions of this Section shall again be applicable.

(c) City's obligation to purchase the Property under the Right of First Refusal is subject to approval by City, at its sole discretion, of an appraisal (if required by City), the title to the Property, and any environmental and other investigations of the Property that City may deem appropriate, and approval by City's Board of Supervisors and Mayor, at their respective sole discretion, and adoption of legislation approving, adopting and authorizing the purchase and ordinance appropriating all necessary funds in accordance with all applicable laws (including CEQA), all within one hundred twenty (120) days after City's exercise.

(d) After City's approval of the appraisal (if required), title, and the results of all investigations, and obtaining all necessary approvals, City will be obligated to purchase from Landlord and Landlord will be obligated to sell and convey to City the Property on the terms and conditions set forth in the Right of First Refusal Notice. Notwithstanding such obligation, the purchase and sale of the Property shall be pursuant to a real estate purchase agreement reasonably acceptable to both City and Landlord.

(e) If City purchases the Property pursuant to the Right of First Refusal, this Lease shall terminate on the date title vests in City, and Landlord shall remit to City any security deposit and all prepaid and unearned Rent. Notwithstanding the foregoing, if City, at its option, should determine to take title to the Property in the name of an affiliate of City, this Lease shall not terminate on the date title vests in any such affiliate of City unless City and such affiliate agree otherwise.

## **22. CITY PROVISIONS**

### **22.1 MacBride Principles - Northern Ireland**

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

### **22.2 Controller's Certification of Funds**

The terms of this Lease are governed by and subject to the budgetary and fiscal provisions of City's Charter. Notwithstanding anything to the contrary contained in this Lease, there will be no obligation for the payment or expenditure of money by City under this Lease unless the Controller of the City and County of San Francisco first certifies, under Section 3.105 of City's Charter, that there is a valid appropriation from which the expenditure may be made and that unencumbered funds are available from the appropriation to pay the expenditure. Without limiting the foregoing, if in any fiscal year of City after the fiscal year in which the Term of this Lease commences, sufficient funds for the payment of Rent are not appropriated, then City may terminate this Lease, without penalty, liability, or expense of any kind to City, as of the last date on which sufficient funds are appropriated. City will use its reasonable efforts to give Landlord reasonable advance notice of the termination. City will use reasonable commercial efforts to (i) ensure funds are appropriated for City to perform its obligations hereunder and (ii) give Landlord notice as soon as practicable that City believes that sufficient funds will not be appropriated.

### **22.3 Prevailing Wages and Working Conditions**

Any undefined, initially-capitalized term used in this Section has the meaning given to that term in San Francisco Administrative Code section 23.61. Landlord will require its Contractors and Subcontractors performing (i) labor in the construction of a "public work" as defined in California Labor Code Section 1720 et seq. (which includes certain construction, alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling if paid for in whole or part out of public funds), or (ii) Covered Construction at the Premises to (A) pay workers performing the work not less than the Prevailing Rate of Wages, (B) provide the same hours, working conditions, and benefits as in each case are provided for similar work performed in San Francisco County, and (C) employ Apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, "**Prevailing Wage Requirements**"). Landlord will cooperate with City in any action or proceeding against a Contractor or Subcontractor that fails to comply with the Prevailing Wage Requirements.

Landlord will include, and require its Contractors and Subcontractors (regardless of tier) to include, the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract with specific reference to San Francisco Administrative Code Section 23.61. Each Construction Contract must name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third-party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any Contractor or Subcontractor in accordance with San Francisco Administrative Code Section 23.61. Landlord's failure to comply with its obligations under this Section will constitute a material breach of this Lease. A Contractor's or Subcontractor's failure to comply with this Section will enable City to seek the remedies specified in San Francisco Administrative Code Section 23.61 against the breaching party.

## 22.4 Non-Discrimination in City Contracts and Benefits Ordinance

### (a) Covenant Not to Discriminate

In the performance of this Lease, Landlord will not discriminate against any employee of Landlord, any City employee working with Landlord, any applicant for employment with Landlord, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of those protected classes, or in retaliation for opposition to discrimination against those classes.

### (b) Subcontracts

Landlord will include in all subcontracts relating to the Premises a non-discrimination clause applicable to the subcontractor in substantially the form of subsection (a) above. In addition, Landlord will incorporate by reference in all subcontracts the provisions of San Francisco Labor and Employment Code Section 131.2 and require all subcontractors to comply with those provisions. Landlord's failure to comply with the obligations in this subsection will constitute a material breach of this Lease.

### (c) Non-Discrimination in Benefits

Landlord does not as of the date of this Lease, and will not during the Term, in any of its operations in San Francisco, on real property owned by City, or where the work is being performed for City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits, or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of the employees, where the domestic partnership has been registered with a governmental entity under state or local law authorizing that registration, subject to the conditions set forth in San Francisco Labor and Employment Code Section 131.2.

### (d) CMDB Form

As a condition to this Lease, Landlord will execute the "Equal Benefits Program Declaration: Nondiscrimination in Contracts and Benefits" form (Article 131, formerly 12B Declaration) (the "**Equal Benefits Program Declaration**") with supporting documentation and secure the approval of the form by the San Francisco Contract Monitoring Division (the "**CMD**"). Landlord represents that before execution of the Lease: (i) Landlord executed and submitted to the Equal Benefits Program Declaration with supporting documentation, and (ii) the CMD approved the form.

### (e) Incorporation of Administrative Code Provisions by Reference

The provisions of San Francisco Labor and Employment Code Articles 131 and 132 relating to non-discrimination by parties contracting for the lease of property to City are incorporated into this Section by reference and made a part of this Lease as though fully set forth. Landlord will comply fully with and be bound by all of the provisions that apply to this Lease under Labor and Employment Code Sections 131 and 132, including the remedies provided in those Articles. Without limiting the foregoing, Landlord understands that under San Francisco Labor and Employment Code Section 131.2(h) a penalty of Fifty Dollars (\$50) for

each person for each calendar day during which that person was discriminated against in violation of the provisions of this Lease may be assessed against Landlord and/or deducted from any payments due Landlord.

## **22.5 Bicycle Parking Facilities**

San Francisco Planning Code (the “**Planning Code**”) Article 1.5, Section 155.3 requires that bicycle parking must be provided at City-leased buildings at no cost to Landlord. During the Term, City will have the right to install and maintain, at no cost to Landlord, Bicycle Parking Spaces (as defined in the Planning Code) in the Building locations required under the Planning Code.

## **22.6 Resource-Efficient City Buildings**

Landlord acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 713 relating to green building requirements for the design, construction, and operation of City buildings. Landlord will comply with all applicable provisions of those code sections at no cost to Landlord.

## **22.7 Sunshine Ordinance**

In accordance with San Francisco Administrative Code Section 67.24(e), contracts, contractors’ bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between City and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person’s or organization’s net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement, or other benefit until and unless that person or organization is awarded the contract, lease, agreement, or benefit. Information provided that is covered by this Section will be made available to the public on request.

## **22.8 Conflicts of Interest**

Through its execution of this Lease, Landlord acknowledges that it is familiar with the provisions of City’s Campaign and Governmental Conduct Code Article III, Chapter 2 and California Government Code Section 87100 et seq. and Section 1090 et seq., and certifies that it does not know of any facts that would constitute a violation of those provisions. If Landlord becomes aware of any such fact during the Term of this Lease, Landlord will immediately notify City.

## **22.9 Notification of Prohibition on Contributions**

By executing this Lease, Landlord acknowledges its obligations under Section 1.126 of the City’s Campaign and Governmental Conduct Code, which prohibits any person who leases, or seeks to lease, to or from any department of the City any land or building from making any campaign contribution to **(a)** a City elected official if the lease must be approved by that official, **(b)** a candidate for that City elective office, or **(c)** a committee controlled by that elected official or a candidate for that office, at any time from the submission of a proposal for the lease until the later of either the termination of negotiations for the lease or twelve (12) months after the date the City approves the lease. Landlord acknowledges that the foregoing restriction applies only if the lease or a combination or series of leases or other contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of one hundred thousand dollars (\$100,000) or more. Landlord further acknowledges that **(i)** the prohibition on contributions applies to each prospective party to the lease; any person with an ownership interest of more than 10 percent (10%) in Landlord; any subcontractor listed in the lease; and any committee that is sponsored or controlled by Landlord; and **(ii)** within thirty (30) days of the submission of a



proposal for the Lease, the City department with whom Landlord is leasing is obligated to submit to the Ethics Commission the parties to the lease and any subcontractor. Additionally, Landlord certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the lease, and has provided the names of the persons required to be informed to the City department with whom it is leasing.

#### **22.10 Preservative-Treated Wood Containing Arsenic**

Landlord may not purchase preservative-treated wood products containing arsenic in the performance of this Lease unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Environment Code Section 1304. The term "preservative-treated wood containing arsenic" means wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Landlord may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Landlord from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" means a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

### **23. GENERALLY APPLICABLE PROVISIONS**

#### **23.1 Notices**

Except as otherwise specifically provided in this Lease, any notice given under this Lease must be in writing and given by delivering the notice in person or by commercial courier, or by sending it by first-class mail, certified mail, return receipt requested, or Express Mail, return receipt requested, with postage prepaid, to: (a) City at City's address set forth in the Basic Lease Information; or (b) Landlord at Landlord's address set forth in the Basic Lease Information; or (c) any other address designated by either Landlord or City as its new address for notices by notice given to the other in accordance with this Section. A properly addressed notice transmitted by one of the foregoing methods will be deemed received upon confirmed delivery or rejected delivery. For convenience of the parties, copies of notices may also be given by email to the email address number set forth in the Basic Lease Information or any other email address as may be provided from time to time, but, neither party may give official or binding notice by email.

#### **23.2 No Implied Waiver**

No failure by either party to insist on the strict performance of any obligation of the other party under this Lease or to exercise any right, power, or remedy after a breach of this Lease will constitute a waiver of any breach or of term, covenant, or condition. No acceptance of full or partial Rent by Landlord while City is in default will constitute a waiver of the default by Landlord. No express written waiver of any default or the performance of any provision if this Lease will affect any other default or performance, or cover any other period of time, other than the default, performance, or time specified in the express waiver. One or more written waivers of a default or the performance of any provision of this Lease will not be deemed to be a waiver of a subsequent default or performance. The consent of Landlord or City given in one instance under the terms of this Lease will not relieve the other party of any obligation to secure the consent to any other or future instance under the terms of the Lease.

### 23.3 Amendments

The terms and provisions of this Lease may only be changed, waived, discharged, or terminated by a written instrument signed by both parties. No waiver of any breach will affect or alter this Lease, and each and every term, covenant, and condition of this Lease will continue in full force and effect with respect to any other then-existing or subsequent breach. Whenever this Lease requires or permits City's consent or approval, the Director of Property, or his or her designee, will be authorized to provide the consent or approval, except as otherwise provided by applicable Law, including the Charter of the City and County of San Francisco. City's agreement to any amendments or modifications to this Lease (including the exhibits) may be made on the sole approval of the Director of Property, or his or her designee; provided, however, material amendments or modifications to this Lease (a) changing the legal description of the Premises, (b) increasing the Term, (c) increasing the Rent, (d) changing the general use of the Premises from the use authorized under Section 5.1 (Permitted Use), and (e) any other amendment or modification that materially increases City's liabilities or financial obligations under this Lease will also require the approval of City's Board of Supervisors.

### 23.4 Authority

Landlord represents and warrants to City that it is the sole owner of the Property and the execution and delivery of this Lease by Landlord does not violate any provision of any agreement or any applicable Laws. If Landlord is a corporation, limited liability company, or a partnership, each person executing this Lease on behalf of Landlord, by their signature, covenants and warrants that Landlord is a duly authorized and existing entity, that Landlord is qualified to do business in California, that Landlord has the full right and authority to enter into this Lease, and that each person signing on behalf of Landlord is authorized to do so. On City's request, Landlord will provide City with evidence reasonably satisfactory to City confirming these representations and warranties.

### 23.5 Parties and Their Agents; Approvals

If applicable, the word "**Landlord**" will include the plural as well as the singular. The term "**Agents**" when used with respect to either party includes the agents, employees, officers, and contractors of the party, and the term "**Invitees**" when used with respect to City will include the clients, customers, invitees, guests, licensees, assignees, or subtenants of City. All approvals, consents, or other determinations permitted or required by City under this Lease, including City's exercise of any option, must be made by or through City's Director of Property unless otherwise provided in this Lease, subject to any applicable limitations in City's Charter. If there is more than one entity that comprises Landlord, the obligations and liabilities under this Lease imposed on Landlord are joint and several.

### 23.6 Interpretation of Lease

The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and will in no way define or limit the scope or intent of any provision of this Lease. Except as otherwise specifically provided in this Lease, wherever Landlord or City is required or requested to give its consent or approval to any matter or action by the other, unless otherwise provided herein, the consent or approval will not be unreasonably withheld or delayed and the reasons for disapproval of consent will be stated in reasonable detail in writing. Provisions in this Lease relating to number of days will be calendar days, unless otherwise specified. If the last day of any period to give notice, reply to a notice, or to take any other action occurs on a Saturday, Sunday, or a bank or City holiday, then the last day for taking the action or giving or replying to the notice will be the next succeeding business day. The words "**include**" or "**including**" or similar words will not be construed to limit any

general term, statement, or other matter in this Lease or any of its attached exhibits, whether or not language of non-limitation, such as "without limitation" or similar words, are used.

### **23.7 Successors and Assigns**

Subject to the provisions of Section 13 (Assignment and Subletting), the terms, covenants, and conditions contained in this Lease will bind and inure to the benefit of Landlord and City and, except as otherwise provided in this Lease, their personal representatives and successors and assigns. There are no third-party beneficiaries to this Lease.

### **23.8 Brokers**

Neither party has had any contact or dealings or communications regarding leasing the Premises through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the lease of the Premises, except for the broker, if any, identified in the Basic Lease Information. That broker's commission is Landlord's sole responsibility under a separate written agreement between Landlord and the broker, and City has no liability for that commission. If any other broker or finder perfects a claim for a commission or finder's fee based on any contact, dealings, or communication, the party through whom the broker or finder makes his claim will be responsible for the commission or fee and will Indemnify the other party from any and all Claims incurred by the indemnified party. The provisions of this Section will survive any termination of this Lease.

### **23.9 Severability**

If any provision of this Lease or its application to any person, entity, or circumstance is found to be invalid or unenforceable, the remainder of this Lease, or the application of the provision to persons, entities, or circumstances other than those as to which it is invalid or unenforceable, will not be affected by that finding, and each other provision of this Lease will be valid and be enforceable to the full extent permitted by Law, except to the extent that enforcement of this Lease without the invalidated provision would be unreasonable under all the circumstances or would frustrate a fundamental purpose of this Lease.

### **23.10 Governing Law**

This Lease will be construed and enforced in accordance with the laws of the State of California and City's Charter. Any legal suit, action, or proceeding arising out of or relating to this Lease shall be instituted in the Superior Court for the City and County of San Francisco, unless federal courts have exclusive jurisdiction of the subject matter thereof, and each party agrees to the exclusive jurisdiction of such court in any such suit, action, or proceeding (unless federal courts have exclusive jurisdiction of the subject matter thereof). The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such court and irrevocably waive and agree not to plead or claim that any suit, action, or proceeding brought in San Francisco Superior Court relating to this Lease has been brought in an inconvenient forum.

### **23.11 Entire Agreement; Incorporation of Exhibits**

The parties intend that this Lease (including all of the attached exhibits, which are made a part of this Lease by this reference) are the final expression of their agreement with respect to the lease of the Premises and may not be contradicted by evidence of any prior or contemporaneous written or oral agreements or understandings. The parties further intend that this Lease will constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts and changes) may be introduced in any judicial, administrative, or other legal proceeding involving this Lease.

### **23.12 Holding Over**

If City holds over in possession of the Premises after the expiration of the Term with Landlord's consent, that holding over will not be deemed to extend the Term or renew this Lease, and City's tenancy will continue as a month-to-month tenancy until the tenancy is terminated by either party by giving at least thirty (30) days' prior written notice of termination. The month-to-month tenancy will be on all the terms and conditions of this Lease and at the monthly Base Rent in effect during the last month of the Term or as Landlord and City may mutually agree in writing. If City holds over without Landlord's consent, the rent payable by City during the period of holding over will be one hundred thirty percent (130%) of the monthly Base Rent in effect during the last month of the Term of this Lease, and the tenancy will otherwise be on the terms and conditions contained in this Lease. If, as provided in Section 19 (Surrender of Premises) above, City fails to remove its furniture, furnishings, equipment and City's Personal Property and designated Alterations by the Expiration Date, then City's continued possession will be deemed a holding over, but Base Rent will not be payable for a ten (10)-day period so long as City complies with Section 19 (Surrender of Premises) no later than the last day of such ten (10)-day period; if City remains in possession of the Premises beyond that ten (10)-day period, then City's possession will be deemed a holding over and Base Rent will be payable for the entire hold over period (including the 10 days) as set forth in this Section.

### **23.13 Cumulative Remedies**

All rights and remedies of either party set forth in this Lease are cumulative, except as otherwise specifically provided in this Lease.

### **23.14 Time of Essence**

Time is of the essence for all provisions of this Lease.

### **23.15 Survival of Indemnities**

Termination of this Lease will not affect the right of either party to enforce any indemnities and representations and warranties given or made to the other party, and it will not affect any provision of this Lease that expressly states it will survive termination. With respect to each of the indemnities contained in this Lease, the indemnitor has an immediate and independent obligation to defend the indemnitees from any claim that actually or potentially falls within the indemnity provision even if the claim is or may be groundless, fraudulent, or false, and the obligation to defend arises at the time the claim is tendered to the indemnitor by the indemnitee and continues at all times until resolved.

### **23.16 Signs**

City may erect or post exterior signs on or about the Premises with Landlord's prior approval. Landlord reserves the right to review and approve the placement, design, and plan for before erecting or posting any sign, which review and approval will not be unreasonably withheld or delayed.

### **23.17 Quiet Enjoyment and Title**

Landlord covenants and represents that it has full right, power, and authority to grant the leasehold estate as provided in this Lease, and covenants that City, on paying the Rent and performing the covenants contained in this Lease, will peaceably and quietly have, hold, and enjoy the Premises and all related rights during the Term as against all persons or entities or on account of any action, inaction, or agreement of Landlord or its Agents. Without limiting the provisions of Section 15.2 (Landlord's Indemnity), Landlord will Indemnify City and its Agents



against Claims arising out of any assertion that would interfere with City's right to quiet enjoyment as provided in this Section.

### **23.18 Bankruptcy**

Landlord represents and warrants to City that Landlord has neither filed nor been the subject of any filing of a petition under the federal bankruptcy law or any federal or state insolvency laws or laws for composition of indebtedness or for the reorganization of debtors, and, to the best of Landlord's knowledge, no such filing is threatened. City's leasehold estate under this Lease includes all rights to receive and enjoy all services, facilities, and amenities of the Premises and the Building as provided in this Lease. If any of the services, facilities, or amenities are terminated, or materially limited or restricted because of any such case or proceeding, or for any other reason, City may (a) contract directly with any third-party provider of those services, facilities, or amenities, and (b) offset against the Rent all reasonable costs and expenses incurred by City in obtaining those services, facilities, or amenities.

### **23.19 Transfer of Landlord's Interest**

Landlord may transfer its interest in the Property, the Building, or this Lease to any other financially responsible person or entity. If Landlord transfers its interest in the Property, the Building, or this Lease to another other financially responsible person or entity, then Landlord will be relieved of Landlord's obligations under this Lease accruing from and after the date of the transfer when (a) Landlord has provided notice to City of the name and address of Landlord's successor, (b) Landlord has provided City with supporting documentation reasonably acceptable to City demonstrating the transferee's financial ability to assume this obligations transferred to it by Landlord, (c) Landlord has transferred any security deposit to the transferee, and (d) Landlord has delivered to City an express written assumption by the transferee of all of Landlord's obligations under this Lease.

### **23.20 Non-Liability of City Officials, Employees, and Agents**

Notwithstanding anything to the contrary in this Lease, no elected or appointed board, commission, member, officer, employee, or other Agent of City will be personally liable to Landlord, its successors, or its assigns for any City default or breach or for any amount that may become due to Landlord or its successors or assigns, or for any obligation of City under this Lease.

### **23.21 Counterparts**

This Lease may be executed in two or more counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument.

### **23.22 Effective Date**

This Lease will become effective on the date (the "**Effective Date**") that (a) City's Mayor and Board of Supervisors, at their sole and absolute discretion, pass legislation approving, adopting and authorizing this Lease and the transactions in accordance with all applicable laws and (b) this Lease is duly executed by Landlord and City.

### **23.23 Cooperative Drafting**

This Lease has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Lease reviewed and revised by legal counsel. No party will be considered the drafter of this Lease, and no presumption or rule that an ambiguity will be

construed against the party drafting the clause will apply to the interpretation or enforcement of this Lease.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, LANDLORD ACKNOWLEDGES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS LEASE UNLESS CITY'S BOARD OF SUPERVISORS HAS DULY ADOPTED LEGISLATION APPROVING, ADOPTING AND AUTHORIZING THIS LEASE AND AUTHORIZING CONSUMMATION OF THE TRANSACTION CONTEMPLATED BY THIS LEASE. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY UNDER THIS LEASE ARE CONTINGENT ON ADOPTION OF THAT LEGISLATION, AND THIS LEASE WILL BE NULL AND VOID UNLESS CITY'S MAYOR AND BOARD OF SUPERVISORS APPROVE THIS LEASE, AT THEIR RESPECTIVE SOLE AND ABSOLUTE DISCRETION, AND IN ACCORDANCE WITH ALL APPLICABLE LAWS. APPROVAL OF THIS LEASE BY ANY DEPARTMENT, COMMISSION, OR AGENCY OF CITY WILL NOT BE DEEMED TO IMPLY THAT THE LEGISLATION WILL BE ADOPTED AND NO SUCH APPROVAL WILL CREATE ANY BINDING OBLIGATIONS ON CITY.

Landlord and City have executed this Lease as of the date first written above.

*[Landlord also acknowledges that they have read and understood the City's statement urging companies doing business in Northern Ireland to move toward resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.]*

LANDLORD:

INNES PARTNERS, LP,  
a Nevada domestic limited partnership

By:  Signed by:  
FB50B32921FD423

Its: \_\_\_\_\_

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

Its: \_\_\_\_\_

CITY:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_  
ANDRICO Q. PENICK  
Director of Property

RECOMMENDED:

\_\_\_\_\_  
**Department Authority**

APPROVED AS TO FORM:

DAVID CHIU, City Attorney

By: \_\_\_\_\_  
Vicente P. Reyes  
Deputy City Attorney

Signature Page  
to  
Lease

**EXHIBIT A**

**Legal Description of Property/Floor Plan**

CONSISTING OF ONE PAGE



**EXHIBIT B**

**NOTICE OF COMMENCEMENT DATE**

[Date]

Mr. Andrico Q. Penick  
Director of Property  
Real Estate Division  
City and County of San Francisco  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102

RE: Acknowledgement of Commencement Date, Lease Between  
\_\_\_\_\_ (Landlord), and the CITY AND COUNTY OF  
SAN FRANCISCO (Tenant), for premises known as  
\_\_\_\_\_ located at \_\_\_\_\_

Dear Mr. Penick:

This letter confirms that for all purposes of the Lease, the Commencement Date (as defined in Section 3.2 of the Lease) is \_\_\_\_\_, 20\_\_.

Please acknowledge your acceptance of this letter by signing and returning a copy of this letter.

Very truly yours,

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

Accepted and Agreed:

By: \_\_\_\_\_  
Andrico Q. Penick  
Director of Property

Dated: \_\_\_\_\_

## Exhibit A

1976 Innes Avenue  
APN# 5250/010

