

LEASE

THIS LEASE, made this 1<sup>st</sup> day of November, 2018, between the United States of America, acting through the Secretary of Health and Human Services, by the Program Manager, Real Property Management Services, Program Support Center, U.S. Department of Health and Human Services (hereinafter referred to as "Lessor"), under and pursuant to the power and authority delegated by the 40 U.S.C. §550, as amended (hereinafter referred to as "the Act"), and regulations promulgated pursuant thereto at 45 C.F.R. Part 12, and Title V of the McKinney-Vento Homeless Assistance Act (42 U.S.C. §11411), as amended, and regulations promulgated thereto at 45 C.F.R. Part 12a, and the City and County of San Francisco (hereinafter, including its successors or assigns, called the Lessee).

WITNESSETH

WHEREAS, the Lessee has made application for the transfer, by lease, of certain surplus real property consisting of two parcels of land, totaling 1.2 acres, more or less, (hereinafter called the Property), for homeless assistance purposes; and

WHEREAS, the Lessor has determined that said Property is needed and is usable by the Lessee for said purposes and has requested the assignment of the Property for transfer to the Lessee; and

WHEREAS, by letter dated April 26, 2018, the Administrator of General Services has assigned the Property to the Lessor for homeless assistance purposes.

NOW, THEREFORE, the Lessor, for and in consideration of the foregoing and of the observance and performance by the Lessee of the covenants, conditions and restrictions hereinafter contained, hereby leases to the Lessee for a period of 3 years beginning this 1<sup>st</sup> day of November, 2018, renewable with mutual consent for a total lease term not to exceed twenty years, the Property, situate, lying, and being in the City and County of San Francisco, State of California, and more particularly described as follows:

PARCEL I:

BEGINNING at a point on the northwesterly line of Mission Street, distant thereon 325 feet northeasterly from the northeasterly line of 7<sup>th</sup> Street; running thence northeasterly along said line of Mission Street 25 feet; thence at a right angle northwesterly 85 feet; thence at a right angle southwesterly 25 feet; thence at a right angle southeasterly 85 feet to the point of beginning.

BEING part of 100 VARA BLOCK NO. 393.

PARCEL II:

BEGINNING at a point on the southeasterly line of Stevenson Street, distant thereon 350 feet southwesterly from the southwesterly line of 6<sup>th</sup> Street; running thence

southwesterly along said line of Stevenson Street 150 feet; thence at a right angle southeasterly 265 feet; thence at a right angle northeasterly 25 feet; thence at a right angle southeasterly 85 feet to the northwesterly line of Mission Street; thence at a right angle northeasterly along said line of Mission Street 125 feet; thence at a right angle northwesterly 200 feet to the former northwesterly line of Jessie Street, as said Jessie Street existed prior to closing of a portion thereof; thence at a right angle southwesterly along said former northwesterly line of Jessie Street, as it existed prior to the closing of a portion thereof 25 feet; thence at a right angle northwesterly 75 feet; thence at a right angle northeasterly 25 feet; thence at a right angle northwesterly 75 feet to the point of beginning.

BEING a part of 100 Vara Block 393 and a portion of Jessie Street, as it existed prior to closing of a portion thereof.

The Lessee, by acceptance of this Lease, covenants and agrees for itself, its successors and assigns, that the Property is transferred on an "as is, where is," basis, without warranty of any kind, either expressed or implied, including as to the condition of the Property. The Lessee also covenants and agrees for itself, its successors and assigns, that the Lessor has no obligation to provide any additions, improvements, or alterations to the Property.

TO HAVE AND TO HOLD the Property, subject, however, to each of the following conditions subsequent, which shall be binding upon and enforceable against the Lessee, its successors and assigns, as follows:

1. For the period of this lease or any renewal thereof, the Property herein conveyed shall be used continuously for homeless assistance purposes in accordance with the proposed program and plan of the Lessee as set forth in its application to lease dated May 31, 2017 and subsequently amended June 23, 2017 and July 27, 2017 and for no other purpose except such as may be agreed to in writing by the Lessor.
2. The Lessee will not sublease any part of the Property or any interest therein except as the Lessor may authorize in writing. Nor will Lessee permit any person or entity to use any part of the Property or any interest therein except as the Lessor may authorize in writing.
3. Where construction or major renovation is not required or proposed the Property must be placed into use within twelve (12) months from the date of this lease. Where construction or major renovation is contemplated at the time of transfer, the Property must be placed into use within thirty-six (36) months from the date of this lease. Lessee, is required to fully occupy and secure the property as of the date of this lease.
4. One year from the date of this lease and annually thereafter for the period of this lease and any renewal thereof, the



Lessee will file with the Lessor a report on the operation and maintenance of the Property and will furnish, as requested by the Lessor, such pertinent data evidencing continuous use of the Property solely for the authorized purpose.

5. During the period of this lease and any renewal thereof, the Lessee will at all times remain a tax-supported or a private nonprofit organization.
6. That, for the period during which the Property is used for the purpose for which the Federal assistance is hereby extended by the Lessor or for another purpose involving the provision of similar services or benefits, the Lessee hereby agrees that it will comply with the requirements of section 606 of the Act (40 U.S.C. § 476); the Fair Housing Act (42 U.S.C. § 3601-19) and implementing regulations; and as applicable, Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations; Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d to d-4) (Nondiscrimination in Federal Assisted Programs) and implementing regulations; Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681) and implementing regulations; and the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. § 6101-07) and implementing regulations; and the prohibitions against otherwise qualified individuals with handicaps under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) and implementing regulations, and all requirements imposed by or pursuant to the Regulations of the Lessor (45 CFR Parts 12, 12a, 80, 84, and 91) issued pursuant to said Acts and now in effect, to the end that, in accordance with said Acts and Regulations, no person in the United States shall, on the ground of race, color, national origin, sex, age, or handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under the program and plan referred to in condition numbered 1 above.
7. Lessee covenants and agrees that the Property will be used for secular purposes, with no more than a de minimis level of other activity.
8. Lessee covenants and agrees that the Property will be used for homeless assistance purposes throughout the duration of the lease. However, in the event Lessee proposes to use any part of the Property for a nonconforming use, and Lessor approves that nonconforming use in writing, Lessee shall pay Fair Market Rent (FMR) for that portion of the Property.

The Administrator of General Services has determined that current Fair Market Rent for the entire Property is \$41,000 per month. The actual rental

payment will be determined should the Lessee's nonconforming use proposal be approved. Upon execution of a written agreement memorializing the terms of that approval, the initial prorated payment shall be made within thirty (30) calendar days. All subsequent rental payments for the period of nonconforming use shall be made on or before the first day of each month, in such a manner as may be specified by Lessor. Lessor reserves the right to cancel its approval of the nonconforming use upon thirty (30) days written notice.

9. Lessee covenants and agrees that the leasehold interest will not be used as collateral unless prior approval, in writing, is obtained from the Lessor. Lessee further covenants and agrees that it will promptly pay all costs associated with its use of the Property including, but not limited to, maintenance and utilities costs, taxes, assessments, etc. and that it will not cause, either by action or inaction, any liens or other potential encumbrances on title to the Property.

In the event of a breach of any of the conditions subsequent set forth above, or in the event of a breach of any other terms or conditions of this lease, whether caused by legal or other inability of the Lessee to perform any of such terms and conditions as herein set forth, the Lessor will, at its option, have an immediate right of reentry thereon, and to terminate this lease.

The failure of the Lessor to insist, in any one or more instances, upon performance of any of the terms, conditions, or covenants of this lease, shall not be construed as a waiver or relinquishment of the Lessor's right to the future performance of any such terms, conditions, or covenants, and Lessee's obligations with respect to such future performance shall continue in full force and effect.

Lessee, at its own expense, shall so protect, preserve, maintain, and repair the leased property that the same will at all times be kept in as good a condition as when received hereunder; subject, however, to ordinary wear and tear and loss or damage for which the Lessee is not liable hereunder.

During the period of this lease or any renewal thereof, Lessee shall have the right to install such of its own machinery and equipment to make such (minor) improvements and additions and to attach such removable fixtures in or upon the leased premises as may be necessary for its use of the leased property pursuant to this lease and in accordance with program(s) of use set forth in its application to lease dated the May 31, 2017 and subsequently amended June 23, 2017 and July 27, 2017 and the further right to remove same at any time prior to the expiration of this lease or any renewal thereof; PROVIDED, that in the event of termination of this lease or any renewal thereof upon less than thirty days notice, Lessee may remove such items within thirty days from the receipt of notice of termination. All property not so removed shall be deemed abandoned by the Lessee and may be used or disposed of by the Government in any manner whatsoever without liability to account to the Lessee therefor, but such abandonment shall in no way reduce any obligation of the Lessee for restoration under the terms of this lease.



It is expressly understood and agreed that Lessee will make no substantial alterations, additions, or betterments to, or installations upon, the leased property except those set forth in the application to lease dated the May 31, 2017 and subsequently amended June 23, 2017 and July 27, 2017 as being necessary to carry out the proposed public health program of use set forth or described in said application and which have received the prior approval of the Lessor; and then, only subject to the terms and conditions of such approval, which may include an obligation of removal and restoration upon the expiration or termination of this lease, including any extension or renewal thereof. Except insofar as said terms and conditions may expressly provide otherwise, all such alterations, additions, betterments, or installations made by the Lessee shall become the property of the Lessor when annexed to the leased property or any part thereof. Parties acknowledge that the Property is in the Area of Potential Effect for the neighboring historic James R. Browning Courthouse. Any proposed alteration must be in compliance with the National Historic Preservation Act and its implementing regulations.

Lessee shall bear all risk of loss of or damage to the leased Property arising from any cause whatsoever, with or without fault of the Lessee; provided, however, that Lessee's liability for any loss or damage from risks expressly required to be insured against under the lease shall not exceed the amount of insurance so required or the amount actually procured and maintained, whichever shall be the greater; provided further that the maintenance of the required insurance shall effect no limitation on Lessee's liability with respect to any loss or damage resulting from the willful misconduct, lack of good faith, or negligence of the Lessee or any of its officers, agents, servants, employees, subtenants, licensees, or invitees.

The Lessor acknowledges that, for such period as the Lessee is in possession of the leased Property pursuant to the terms and conditions of this lease or any renewal thereof, the Lessee is a self-insured municipal entity. There will be no insurance proceeds in event of loss. Nothing herein shall be construed as an obligation upon the Lessor to repair, restore, or replace the leased Property or any part thereof.

The Lessee covenants that it will indemnify and save and keep harmless, the United States of America, its officers, agents, and employees against any and all loss, cost damage, claim, expense or liability whatsoever due to personal injury or death or damage to property of others directly or indirectly arising out of the condition, state of repair, or the use or operation of the Property, including all acts or omissions of its officers, agents, servants, employees, subtenants, licensees, or invitees in the use or occupancy of the Property.

The Lessee, its successor or assigns, shall be solely liable for all costs relating to any damage to the property, personal injury, illness, disability or death, of the Lessee, or the Lessee's successors, assigns, employees, invitees, or any other person, including members of the general public, arising from or incident to the purchase, transportation, handling, storage, use, release, or disposal, or other activity causing or leading to contact of any kind whatsoever with hazardous or toxic substances, during use of the property by said Lessee, its successors or assigns.

The lease is subject to all outstanding easements and rights-of-way for the location of any type of facility or system in, on, under, over, across, or upon the leased Property or any portion thereof, and to the right of the Lessor to grant such additional easements or rights-of-way, in, on, under, over, across, or upon the leased Property as it may be determined to be in



the public interest; PROVIDED that any such additional easement or right-of-way shall be conditioned upon the assumption by the Lessee thereof of liability to the Lessee for such damages as Lessee shall suffer for property destroyed or property rendered unusable on account of Lessee's exercise of its rights thereunder. There is hereby reserved to the holders of such easements and rights-of-way as are presently outstanding or which may hereafter be granted; to any persons officially engaged in the construction, operation, repair, or replacement of facilities or systems located thereon; and to any Federal, State, or local officials engaged in the official inspection thereof, such reasonable rights of ingress and egress over the leased Property as shall be necessary for the performance of their duties with regard to such facilities or systems.

During the period of this lease or any renewal thereof, the Lessor shall have access to the leased Property at all reasonable times for any purposes not inconsistent with the quiet use and enjoyment thereof by the Lessee, including, but not limited to, the purpose of inspection.

This lease may be renewed by mutual agreement upon written application by the Lessee, at least sixty days before the end of the period of this lease or any renewal thereof.

The Lessee, by acceptance of this lease, covenants and agrees for itself, its successors and assigns that, upon the expiration of this lease, any extension thereof or the prior termination of this lease or extension thereof by either party, Lessee shall quietly and peacefully remove itself and its property from the leased Property and surrender possession thereof to the Lessor; Provided, in the event the Lessor shall terminate this lease upon less than thirty days notice, Lessee shall be allowed a reasonable period of time, as determined by the Lessor, but in no event to exceed thirty days from the receipt of notice of termination, in which to remove all of its property from and terminate its operations on the leased Property. During such period prior to surrender, all obligations of the Lessee under this lease shall remain in full force and effect, and the Lessee will continue to provide protection and maintenance of the leased Property until such time as actual possession is taken by the Lessor, including the period of any notice of cancellation. Such protection and maintenance shall, at a minimum, conform to the standards prescribed by the General Services Administration in its regulations, FMR (41 CFR §102-75.965-98) in effect as of the date of this lease and a copy of which is attached hereto and made a part hereof as Exhibit "A."

The Lessee shall comply with all applicable Federal, State, municipal, and local laws, rules, orders, ordinances and regulations, except for local zoning regulations, in the occupation, use, and operation of the Property.

No member of or delegate to the Congress or resident Commissioner shall be admitted to any share or part of this lease contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to the contract of lease if made with a Corporation for its general benefit.

The Lessee warrants that it has not employed or retained any person or agency to solicit or secure this contract upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee excepting bona fide employees or bona fide commercial agencies maintained by the Lessee for the purpose of securing business. Breach or violation of this warranty shall give the Lessor the right to annul the contract without

liability or, in its discretion, to recover from the Lessee the amount of such commission, percentage, brokerage, or contingent fee in addition to the consideration herein set forth, if any.

The Lessee is hereby informed and does acknowledge that the building on the Property and existing on the date of this lease was constructed prior to 1978 and, as with all such Property, a lead-based paint hazard may be present. The Lessee shall not permit the use of any such structures for residential habitation unless the Lessee has eliminated the hazards of lead-based paint by treating any defective lead-based paint surface in accordance with all applicable laws and regulations. According to the Consumer Product Safety Commission and the President's Council of Environmental Quality, lead is a special hazard to small children. The Property is being sold "as is" and the Lessee shall be responsible for any and all liabilities, damages, loss, expenses or judgments arising out of or related to health problems which are the result or exposure to lead-based paint where the exposure occurred after the Property was conveyed to the Lessee.

Asbestos containing materials (ACM) are present in the building. Lessee covenants and agrees, on behalf of themselves, their successors and assigns, that in their use and occupancy of the Property, or any part thereof, they will comply with all Federal, state and local laws relating to asbestos. Lessor assumes no liability for damages for personal injury, illness, disability or death, to the Lessee, or the Lessee's successors, assigns employees, invitees, or to any other person subject to the control or direction of Lessee, its successors or assigns, or to any person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kid whatsoever with asbestos on the Property described in this lease, whether the Lessee, its successors or assigns has or have properly warned or failed to properly warn the individual(s) injured. GSA Fire Safety & Environmental Survey Report dated January 18, 1995 is available to Lessee.

The Lessee is notified that the United States has determined that a radon hazard potentially exists in subject building(s) on the Property and from the Property itself. Results of previous studies performed by the United States are available to the Lessee. Radon is a naturally occurring radioactive gas emanating from the ground that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time, and which falls with the CERCLA "Limitations on Response" standards at 42 U.S.C. 9604 (a)(3). Additional information regarding radon and radon testing may be obtained from the EPA and county and state health units.

Information provided to the Lessee with respect to the Property is based on the best information available to the U.S. General Services Administration and is believed to be correct, but any error or omission, including but not limited to the omission of any information available to the agency having custody over the Property and/or any other Federal agency, will not constitute grounds for liability for damages by the Government for personal injury, illness, disability, or death, to the Lessee, its successors, assigns, employees, invitees, or any other person subject to the Lessee's control or direction.

Lessee covenants and agrees, on behalf of themselves, their successors and assigns, that in their use and occupancy of the Property, or any part thereof, they are responsible for compliance with all Federal, state and local laws relating to PCB and mercury; and that, by

virtue of this lease, Lessor assumes no liability for damages for personal injury, illness, disability or death, to the Lessee, or to Lessee's successors, assigns, employees, invitees, or to any other person subject to the control or direction of Lessee, its successors or assigns, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with PCB and mercury on the Property described in this lease, whether the Lessee, its successors or assigns has or have properly warned or failed properly to warn the individual(s) injured.

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names as of the date first above written.

UNITED STATES OF AMERICA  
Acting by and through the Secretary  
of Health and Human Services

By: \_\_\_\_\_  
Theresa Ritta, Program Manager  
Federal Real Property Assistance Program  
Real Property Management Services  
Program Support Center

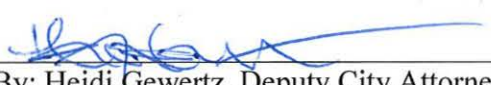
ACCEPTED:

\_\_\_\_\_  
LESSEE: City and County of San Francisco

By:   
Andrico Q. Penick, Director of Real Estate

Date: 10/31/18

APPROVED AS TO FORM:  
CITY ATTORNEY

  
By: Heidi Gewertz, Deputy City Attorney  
Date: 10/31/18



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

State of California )  
County of San Francisco )

On November 1, 2018, before me, Jennifer M. Collins,  
Notary Public, personally appeared Andrico Q Penick, who  
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument  
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature:   
Jennifer M. Collins



(Seal)

virtue of this lease, Lessor assumes no liability for damages for personal injury, illness, disability or death, to the Lessee, or to Lessee's successors, assigns, employees, invitees, or to any other person subject to the control or direction of Lessee, its successors or assigns, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with PCB and mercury on the Property described in this lease, whether the Lessee, its successors or assigns has or have properly warned or failed properly to warn the individual(s) injured.

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names as of the date first above written.

UNITED STATES OF AMERICA  
Acting by and through the Secretary  
of Health and Human Services

By: Theresa Ritta  
Theresa Ritta, Program Manager  
Federal Real Property Assistance Program  
Real Property Management Services  
Program Support Center

ACCEPTED:

\_\_\_\_\_  
LESSEE: City and County of San Francisco

By: \_\_\_\_\_  
Andrico Q. Penick, Director of Real Estate

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



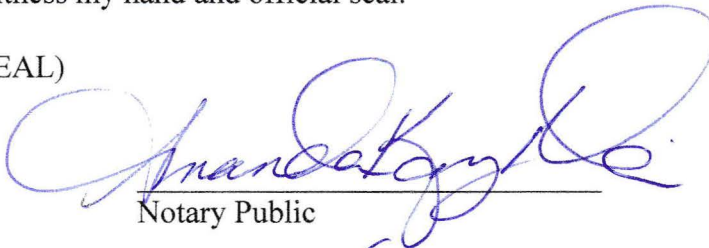
ACKNOWLEDGMENT

STATE OF MARYLAND    )  
COUNTY OF FREDERICK ) SS

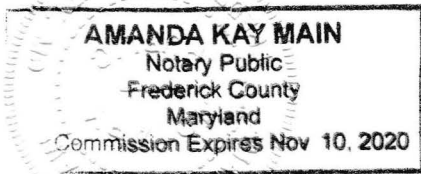
On this 1<sup>st</sup> day of November 2018, before me the undersigned officer, personally appeared Theresa Ritta, known to me to be the Program Manager, Real Property Management Services, Program Support Center, Department of Health and Human Services, and known to me to be the person who executed the foregoing instrument on behalf of the Secretary of Health and Human Services, for the United States of America, and acknowledged to me that she subscribed to the said instrument in the name of the Secretary of Health and Human Services and on behalf of the United States of America.

Witness my hand and official seal.

(SEAL)

  
Notary Public

My commission expires Nov 10 2020



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