



1 [Real Property Lease - Raul and Denise Arriaza and The Olson Family Trust Dated  
2 October 16, 2014 - 1305, 1309 Evans Street - \$456,840 Annual Base Rent]

3 **Resolution authorizing the lease of approximately 12,690 square feet at 1305, 1309**  
4 **Evans Street with 13 parking stalls, with Raul and Denise Arriaza, as to an undivided**  
5 **50% interest and The Olson Family Trust dated October 16, 2014, as to an undivided**  
6 **50% interest, for a five year term commencing upon approval by the Board of**  
7 **Supervisors and Mayor, with one option to extend for five years, at the monthly base**  
8 **rent of \$38,070 for a total annual base rent of \$456,840.**

9  
10 WHEREAS, The Department of Public Health (the "DPH") currently operates its  
11 Children's System of Care Program and Family Mosaic Project at 1305-1309 Evans Avenue  
12 providing valuable services to the community since 2002; and

13 WHEREAS, The Real Estate Division, on behalf of the DPH, has negotiated a new  
14 lease, substantially the form on file with the Clerk of the Board of Supervisors in File No.  
15 180377, which is hereby declared to be a part of this resolution as if set forth fully herein (the  
16 "Lease") to continue the DPH services at the site comprising approximately 12,690 square  
17 feet; and

18 WHEREAS, The term of the lease shall be for five (5) years commencing upon  
19 approval by the Board of Supervisors and Mayor in their respective sole and absolute  
20 discretion; and,

21 WHEREAS, The City shall have one additional five (5) year option term to extend the  
22 lease at 95% of the then prevailing fair market rent, subject to the enactment of a resolution  
23 by the Board of Supervisors and the Mayor, in their respective sole and absolute discretion,  
24 approving and authorizing the same; and

25 WHEREAS, The base monthly rent of \$38,070 is flat for the five year initial term; and

1           WHEREAS, Raul and Denise Arriaza as to an undivided fifty percent (50%) interest  
2 and the Olson Family Trust dated October 16, 2014, as to an undivided fifty percent (50%)  
3 interest ("Landlord") shall be responsible for the cost of all utilities and janitorial services; now,  
4 therefore, be it

5           RESOLVED, That in accordance with the recommendation of the Director of the  
6 Department of Public Health and the Director of Property, the Director of Property is hereby  
7 authorized to take all actions, on behalf of the City and County of San Francisco as Tenant to  
8 enter into the Lease; and, be it

9           FURTHER RESOLVED, The monthly base rent for the initial five year term shall be  
10 \$38,070 (\$3 per square foot); and be it

11          FURTHER RESOLVED, Landlord shall be responsible for the cost of all utilities and  
12 janitorial services; and be it

13          FURTHER RESOLVED, The City shall have one additional option term of five years at  
14 95% of the then prevailing fair market rent subject to the enactment of a resolution by the  
15 Board of Supervisors and the Mayor, in their respective sole and absolute discretion,  
16 approving and authorizing the same; and be it

17          FURTHER RESOLVED, The City agrees to indemnify, defend, and hold harmless  
18 Landlord and its agents from and against any and all claims, costs, and expenses, including  
19 without limitation, reasonable attorney fees, incurred as a result of (a) City's use of the  
20 Premises, (b) any default by the City in the performance of any of its obligations under the  
21 lease, or (c) any acts or omissions of City or its agents, in, on or about the Premises or the  
22 property on which the Premises are located, provided however City shall not be obligated to  
23 indemnify Landlord or its agents to the extent any claim, cost and expense arises out of  
24 active gross negligence or willful misconduct of Landlord or its agents; and be it  
25

1 FURTHER RESOLVED, That any action heretofore taken by any City employee or  
2 official with respect to the exercise of the lease as set forth herein is hereby approved,  
3 confirmed and ratified; and be it

4 FURTHER RESOLVED, The Board of Supervisors approves the lease in substantially  
5 the form in the Board's File and authorizes the Director of Property to take all actions, on  
6 behalf of City, to enter into any amendments or modifications (including without limitation, the  
7 exhibits) to the lease on the terms and conditions herein and form approved by the City  
8 Attorney that the Director of Property determines, in consultation with the City Attorney, are in  
9 the best interest of the City, do not increase the rent or otherwise materially increase the  
10 obligations or liabilities of the City, are necessary or advisable to effectuate the purposes and  
11 intent the lease and this resolution and are in compliance with all applicable laws, including  
12 City's Charter; and be it

13 FURTHER RESOLVED, The City shall occupy the entire Premises for the full term of  
14 the lease unless funds for the City's rental payments are not appropriated in any subsequent  
15 fiscal year at which time City may terminate the lease with reasonable advance written notice  
16 to Landlord; and be it

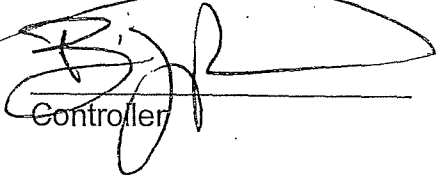
17 FURTHER RESOLVED, Such termination shall then be effective upon surrender of the  
18 Premises, and be it

19 FURTHER RESOLVED, Said lease shall be subject to certification of funds by the  
20 Controller, pursuant to Section 3.105 of the Charter of the City and County of San Francisco;  
21 and be it

22 FURTHER RESOLVED, That within thirty (30) days of the lease agreement being fully  
23 executed by all parties the Director of Property shall provide a copy of the Lease agreement to  
24 the Clerk of the Board to include into the official file.  
25

1 RECOMMENDED:


2 \$76,140 Available  
3 PS Fund ID - 10000  
4 PS Dept ID - 251962  
5 PS Project ID - 10001793  
6 PS Activity ID - 01  
7 PS Authority - 10000

8   
9 \_\_\_\_\_  
10 Controller

11 RECOMMENDED:

12   
13 \_\_\_\_\_  
14 Barbara Garcia, Director  
15 Department of Public Health

16 RECOMMENDED:

17   
18 \_\_\_\_\_  
19 John Updike *ACTING DIRECTOR*  
20 Director of Property  
21 Real Estate Division

<b>Item 3</b> <b>File 18-0377</b>	<b>Department:</b> [Select Board, Commission, or Department]
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## EXECUTIVE SUMMARY

### Legislative Objectives

- The proposed resolution approves a new lease between the Department of Public Health, as tenant, and Raul and Denise Arriaza, as landlord, for approximately 12,690 square feet at 1305 and 1309 Evans Street with thirteen parking stalls. The lease will be for a five year term commencing upon approval by the Board of Supervisors, from approximately June 1, 2018 through May 31, 2023, with one option to extend for five years through May 31, 2028. The annual rent is \$456,840 with no increase during the initial lease term, and includes utilities and services.

### Key Points

- The Department of Public Health operates administrative and clinical counseling offices including services for children, youth, and families at 1305 and 1309 Evans Street in San Francisco. The Department had a prior lease for the property from 2002 to 2007; in the 11 years since the expiration of the lease the Department has occupied the site on a month-to-month lease.

### Fiscal Impact

- Based on the fixed \$36 per square foot per year, or \$456,840 per year for the initial five-year term, the proposed lease would cost a total of \$2,284,200 over the initial five-year term of the lease.

### Policy Consideration

- The rent paid by the Department of Public Health under the month-to-month lease increased by 50 percent, from \$220,806 to \$335,016, on expiration of the original lease in 2007. The rent under the proposed new lease increases by an additional 36 percent from \$335,016 to \$456,840. While the Department has provided an explanation for not entering into a longer-term lease at an earlier date, the Department would likely have paid lower rent by entering into a longer term lease when the original lease expired in 2007 rather than paying the 150 percent rent increase under the month-to-month lease.
- The Real Estate Division began reviewing month-to-month leases where the Department of Public Health was the tenant beginning in 2014. Real Estate and the Department of Public Health have focused mostly on leases in the Civic Center area. According to the Real Estate Division, of the Department of Public Health's 21 leases, three are currently month-to-month leases: 1305 and 1309 Evans Street, and two clinics. Most other clinic leases are short term.

### Recommendations

- Request the Director of Health to present the Department of Public Health's leasing, space, and property use plan (including plans for short term leases) as part of their budget presentation to the Budget and Finance Committee in June 2018.
- Approve the proposed resolution.

## MANDATE STATEMENT

Charter Section 9.118(b) requires Board of Supervisors approval for contracts and other agreements (including lease agreements) entered into by the City, having a term of more than 10 years or expenditures of \$10 million or more; and for amendments to such contracts of \$500,000 or more.

## BACKGROUND

The Department of Public Health operates administrative and clinical counseling offices including services for children, youth, and families at 1305 and 1309 Evans Street in San Francisco. The three programs are Lifting and Empowering Generations of Adults, Children and Youth (LEGACY), Family Mosaic Program, and Education Related Mental Health Services (ERMS). LEGACY assists families in navigating agencies and services. The Family Mosaic Program provides mental health treatment, intensive case management and other service interventions for children with serious emotional problems who are at risk of out-of-home placement or who have already been removed and placed out of their homes. Finally, ERMS supports state legislation to work with San Francisco Unified School District students who have demonstrated behavioral health issues. While LEGACY and the Family Mosaic Program are administered by a combination of Department of Public Health and non-profit providers, ERMS is administered by just the Department of Public Health.

In 2002, the Board of Supervisors approved a five year lease between the Department of Public Health, as tenant, and the property owners at that time<sup>1</sup> for approximately 12,690 square feet of space at 1305 and 1309 Evans Street for a base rent of \$220,806 per year. The lease expired on June 30, 2007. The lease has been in month-to-month status since that time (see Policy Consideration section below).

## DETAILS OF PROPOSED LEGISLATION

The proposed resolution approves a new lease between the Department of Public Health, as tenant, and Raul and Denise Arriaza, as landlord, for approximately 12,690 square feet at 1305 and 1309 Evans Street with thirteen parking stalls. The lease will be for a five year term commencing upon approval by the Board of Supervisors, from approximately June 1, 2018 through May 31, 2023, with one option to extend for five years through May 31, 2028. The annual rent is \$456,840 with no increase during the initial lease term, and includes utilities and services.

Table 1 below summarizes the terms and conditions of the proposed lease extension.

<sup>1</sup> The prior owners were John M. Holland, Guy R. Holland, and Barbara J. Holland, as joint tenants.

**Table 1: Terms and Conditions of Proposed Lease**

	<b>New Lease Terms</b>
<b>Lease Period</b>	Estimated June 1, 2018 through May 31, 2023
<b>Size of property</b>	12,690 square feet
<b>Base rent paid by tenant</b>	\$456,840 per year (\$36 per square foot)
<b>Annual rent adjustments to base rent</b>	None
<b>Options to extend the lease</b>	One (1) 5-year option to extend
<b>Rent increase on extension</b>	95% of prevailing market rate
<b>Tenant Improvement Allowance</b>	Paint, carpet, window coverings and miscellaneous renovations at Landlord sole cost
<b>Utilities and services</b>	Landlord is responsible for utilities and janitorial services

Source: Real Estate Division

The landlord will also provide leasehold improvements at no cost to the City within 90 days of the lease commencement date. These improvements include (1) interior paint, (2) carpet tiles, (3) replacing window coverings, and (4) replacing water stained ceiling tiles.

### **FISCAL IMPACT**

Based on the fixed \$36 per square foot per year, or \$456,840 per year for the initial five-year term, the proposed lease would cost a total of \$2,284,200 over the initial five-year term of the lease.

As shown in Table 1 above, the proposed lease includes one five-year option to extend after 2023, at 95 percent of the then prevailing fair market rent, but no less than \$456,840 annual rent paid during the initial five year lease, subject to approval by the Board of Supervisors.

According to Ms. Claudine Venegas, Senior Real Property Officer of the Real Estate Division, the proposed annual rent rate of \$36 per square foot fixed rate is equal to the City lease of 1315 and 1319 Evans Street, which was recently approved by the Board of Supervisors (File 17-0694). The buildings all occupy the same complex.

According to Mr. David Borgognoni, Manager of the Operations Team for the Department of Public Health, the rent for 1305-1309 Evans Street is included in the Department of Public Health's proposed budget for FY 2018-19 and FY 2019-20.

### **POLICY CONSIDERATION**

The original lease between the Department of Public Health and the prior property owners expired on June 30, 2007. In the nearly 11 years since the expiration of the original lease, the Department of Public Health has occupied the space under Section 23.13 of the original lease, which allowed the City to hold over possession of the premises on a month-to-month basis. The rent, according to the terms of the original lease, is approximately 150 percent of the monthly rent in effect during the last month of the term of the lease, or \$335,016.



According to Mr. Borgognoni, after the lease expired, the Department of Public Health was initially unsuccessful at moving the clinic to another location. During the 2008-09 recession, the Department of Public Health did not attempt to engage in a long-term lease given the uncertainty in funding. From 2010 to 2015, a period of 5 years, the Department of Public Health evaluated advantages of leasing all or some of the space at Evans Street. Since 2015, the Department of Public Health has worked with the Real Estate Division and the landlords to secure a lease.

#### **Cost to the City for Leasing Month-to-Month Rather than Entering into Longer Term Lease**

The rent paid by the Department of Public Health under the month-to-month agreement increased by 50 percent, from \$220,806 to \$335,016 on expiration of the original lease in 2007. The rent under the proposed new lease - into which the Department is entering during a period of high rents in San Francisco - increases by an additional 36 percent from \$335,016 to \$456,840. While the Department has provided an explanation for not entering into a longer-term lease at an earlier date, the Department would likely have paid lower rent by entering into a longer term lease when the original lease expired in 2007 rather than paying the 150 percent rent increase under the month-to-month lease.

According to Ms. Claudia Gorham, Assistant Director of the Real Estate Division, the Real Estate Division began reviewing month-to-month leases where the Department of Public Health was the tenant beginning in 2014. Real Estate and the Department of Public Health have focused mostly on leases in the Civic Center area. According to Ms. Gorham, of the Department's 21 leases, three are currently month-to-month leases: 1305 and 1309 Evans Street, and two clinics. Most other clinic leases are short term.

Because of the Department of Public Health's large number of leased properties, including short term leases, the Board of Supervisors should request the Director of Health to present the Department's leasing, space, and property use plan (including plans for short term leases) as part of their budget presentation to the Budget and Finance Committee in June 2018.

#### **RECOMMENDATIONS**

1. Request the Director of Health to present the Department of Public Health's leasing, space, and property use plan (including plans for short term leases) as part of their budget presentation to the Budget and Finance Committee in June 2018.
2. Approve the proposed resolution.

OFFICE LEASE

between

RAUL AND DENISE ARRIAZA, Husband and Wife, as to an undivided fifty (50%) interest  
and LINDA LEE OLSON and CARL EDWARD OLSON, Trustees of THE OLSON FAMILY  
TRUST dated October 16, 2014 as to an undivided fifty (50%) interest,  
as Landlord

and

CITY AND COUNTY OF SAN FRANCISCO,  
as Tenant

For the lease of  
1305 and 1309 Evans Avenue,  
San Francisco, California

December 12, 2017

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LIST OF EXHIBITS AND SCHEDULES

- EXHIBIT A – Floor Plan of Premises
- EXHIBIT B – Notice of Commencement Date
- EXHIBIT C – Intentionally omitted.
- EXHIBIT D – Standards for Janitorial Service

**OFFICE LEASE**

THIS OFFICE LEASE (this "Lease"), dated for reference purposes only as of December 12, 2017, is by and between RAUL AND DENISE ARRIAZA, Husband and Wife, as to an undivided fifty (50%) interest and LINDA LEE OLSON and CARL EDWARD OLSON, Trustees of THE OLSON FAMILY TRUST dated October 16, 2014 as to an undivided fifty (50%) interest- ("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 shall be deemed to incorporate all of the terms in this Lease pertaining to such item. In the event of any conflict between the information in this Section and any more specific provision of this Lease, the more specific provision shall control.

Lease Reference Date:	March 15, 2018
Landlord:	RAUL AND DENISE ARRIAZA, Husband and Wife, as to an undivided fifty (50%) interest and LINDA LEE OLSON and CARL EDWARD OLSON, Trustees of THE OLSON FAMILY TRUST dated October 16, 2014 as to an undivided fifty (50%) interest
Tenant:	CITY AND COUNTY OF SAN FRANCISCO
Building ( <u>Section 2.1</u> ):	1301 Evans Avenue, San Francisco, California
Premises ( <u>Section 2.1</u> ):	Suites 1305 and 1309 Evans Ave. plus thirteen (13) designated parking stalls located in the rear of the Building and made available to Tenant at no additional charge.
Rentable Area of Premises ( <u>Section 2.1</u> ):	Approximately 12,690 rentable square feet
Term ( <u>Section 3</u> ):	Estimated commencement date: June 1, 2018
	Expiration date: Five years after the commencement date.

Extension Option (Section 3.3): One (1) additional term of five (5) years exercisable by City by notice to Landlord given not less than one hundred eighty (180) days in advance, with rent equal to 95% of the prevailing market rate.

Base Rent (Section 4.1): Annual Base Rent for the five (5) year term: \$456,840 (\$36 per sq. ft.)  
Monthly payments for sixty (60) months: \$38,070 (\$3 per sq. ft.)

Additional Charges (Section 4.3): City shall pay to Landlord any charges or other amounts required to be paid by City to Landlord under this lease as additional rent.

Use (Section 5.1): Administrative and clinical counseling offices, including services for severely mentally ill children, and related purposes for the City's Department of Public Health

Leasehold Improvements (Section 6) Landlord shall provide the tenant improvements described in Section 6 at no cost to City.

Utilities (Section 9.1): Landlord shall provide utilities at its sole cost.

Services (Section 9.2): Landlord shall provide janitorial services at its sole cost.

Notice Address of Landlord (Section 23.1): 4248 23<sup>rd</sup> Street, San Francisco, CA 94114  
Fax No. : 415-647-4908

Key Contact for Landlord: Pablo Tisker



Landlord Contact Telephone No.: (415) 824-8826

Notice Address for Tenant (Section 23.1): Real Estate Division  
 25 Van Ness Avenue, Suite 400  
 San Francisco, California 94102  
 Attn: John Updike,  
 Director of Property  
 Re: 1305+1309 Evans, SF, CA  
 Fax No.: (415) 552-9216

with a copy to: Department of Public Health  
 101 Grove Street, Room 300  
 San Francisco, CA 94103  
 Attn: Director, Public Health  
 Re: 1305+09 Evans, SF, CA  
 Fax No.: (415) 554-2811

and to: Office of the City Attorney  
 City Hall, Room 234  
 1 Dr. Carlton B. Goodlett Place  
 San Francisco, CA 94102-4682  
 Attn: Elizabeth Dietrich  
 Deputy City Attorney  
 Re: 1305+1309 Evans., SF, CA  
 Fax No.: (415) 554-4755

Key Contact for Tenant: David Borgognoni  
 1380 Howard Street, #403  
 San Francisco, CA 94103

Tenant Contact Telephone No.: (415) 255-3405

Alternate Contact for Tenant: None

Alternate Contact Telephone No.: None

Brokers (Section 23.8): None

Other Noteworthy Provisions (Section 22): None

**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 building identified in the Basic Lease Information (the "Building") and shown on the floor plan attached hereto as Exhibit A (the "Premises"), including thirteen (13) parking stalls located in the rear of the Building. The Premises contain the rentable area specified in the Basic Lease Information. The Building, land upon which the Building is located and all other improvements on or appurtenances to such land are referred to collectively as the "Property."

## **2.2 Common Areas**

City shall have the non-exclusive right to use, together with other tenants in the Building, the lobbies, corridors, elevators, stairways and other public areas of the Building and the Property (collectively, the "Common Areas"), and the non-exclusive right of access to and from the Premises by the main entrances to the Building and the Property.

## **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. City is hereby advised that the Premises have not been inspected by a CASp.

# **3. TERM**

## **3.1 Term of Lease**

The Premises are leased for an initial term (the "Initial Term") commencing on the date specified in the Basic Lease Information as the estimated commencement date (the "Estimated Commencement Date"), or such later date as City's Mayor and Board of Supervisors shall have approved the transaction contemplated by this Lease, in their respective sole and absolute discretion, as further provided in this Lease. The Initial Term of this Lease shall end on the expiration date specified in the Basic Lease Information or such earlier date on which this Lease terminates pursuant to the provisions of this Lease, provided that City shall have the right to extend the Initial Term pursuant to Section 3.3, Extension Option, below. The word "Term" as used herein shall refer to the Initial Term and any Extended Term if City exercises the Extension Option as provided below.

## **3.2 Commencement Date and Expiration Date**

The dates on which the Term commences and terminates pursuant hereto are referred to respectively as the "Commencement Date" and the "Expiration Date." If the Commencement Date occurs on a date other than the Estimated Commencement Date, then promptly thereafter Landlord shall deliver to City a notice substantially in the form of Exhibit B attached hereto, confirming the actual Commencement Date, but Landlord's failure to do so shall not affect the commencement of the Term.

## **3.3 Extension Option**

City shall have the right to extend the Initial Term of this Lease (the "Extension Option") for the additional term specified in the Basic Lease Information (the "Extended Term"). Such Extension Option shall be on all of the terms and conditions contained in this Lease except that Base Rent for the Extension Term shall be adjusted to 95% of the then prevailing market rent as described in Section 4.2 below. City may exercise the Extension Option, if at all, by giving written notice to Landlord no later than one hundred eighty (180) days prior to expiration of the Term to be extended; provided, however, if City is in material default under this Lease on the date of giving such notice and fails to cure such default as provided in this Lease, Landlord may reject such exercise by delivering written notice thereof to City promptly after such failure to cure. Landlord acknowledges and agrees that City's notice of its intent to exercise an Extension Option shall be subject to enactment of a resolution by the Board of Supervisors and the Mayor, in their respective sole and absolute discretion, approving and authorizing the same, within sixty (60) days after the date such notice of exercise is given. If City exercises its Extension Option,

Landlord agrees to replace all floor covering in Suite 1309 at the commencement of the Extended Term with new floor covering reasonably approved by City.

#### **4. RENT**

##### **4.1 Base Rent**

Beginning on the Commencement Date, City shall pay to Landlord during the Term the annual Base Rent specified in the Basic Lease Information (the "Base Rent"). The Base Rent shall be payable in equal consecutive monthly payments on or before the first day of each month, in advance, at the address specified for Landlord in the Basic Lease Information, or such other place as Landlord may designate in writing upon not less than thirty (30) days' advance notice. City shall pay the Base Rent without any prior demand 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 such fractional month shall be prorated based on a thirty (30)-day month.

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

At the commencement of the Extended Term, the Base Rent shall be adjusted to equal ninety-five percent (95%) of the prevailing market rate for space of comparable size and location to the Premises then being offered for rent in other buildings similar in age, location and quality to the Premises situated within the India Basin submarket area of San Francisco ("Reference Area"); provided, however, in no event shall the Base Rent be reduced below the Base Rent for the lease year prior to commencement of such Extended Term. As used herein, the term "prevailing market rate" shall mean the base rental for such comparable space, taking into account (i) any additional rental and all other payments and escalations payable hereunder, (ii) floor location and size of the premises covered by leases of such comparable space, (iii) the duration of the renewal term and the term of such comparable leases, (iv) free rent given under such comparable leases and any other tenant concessions, and (v) building standard tenant improvement allowances and other allowances given under such comparable leases.

Within thirty (30) days following City's exercise of the Extension Option, Landlord shall notify City of Landlord's determination of the prevailing market rate for the Premises. If City disputes Landlord's determination of the prevailing market rate, City shall so notify Landlord within fourteen (14) days following Landlord's notice to City of the prevailing market rate and such dispute shall be resolved as follows:

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

(b) If within this thirty (30)-day period Landlord and City cannot reach agreement as to the prevailing market rate, they shall each select one appraiser to determine the prevailing market rate. Each such appraiser shall arrive at a determination of the prevailing market rate and submit his or her conclusions to Landlord and City within thirty (30) days of the expiration of the thirty (30) day consultation period described in (a) above.

(c) If only one appraisal is submitted within the requisite time period, it shall be deemed to be the prevailing market rate. If both appraisals are submitted within such time period, and if the two appraisals so submitted differ by less than ten percent (10%) of the higher of the two, then the average of the two shall be the prevailing market rate. If the two appraisals differ by more than ten percent (10%) of the higher of the two, then the two appraisers shall immediately select a third appraiser who will within thirty (30) days of his or her selection make

a determination of the prevailing market rate and submit such determination to Landlord and City. This third appraisal will then be averaged with the closer of the two previous appraisals and the result shall be the prevailing market rate.

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

(e) All appraisers specified herein shall be "MAI" designated members of the Appraisal Institute with not less than five (5) years' experience appraising leases of commercial properties similar to the Premises in the India Basin Submarket. Landlord and City shall pay the cost of the appraiser selected by such party and one-half of the cost of the third appraiser plus one-half of any other costs incurred in the arbitration.

#### **4.3 Additional Charges and Services**

City acting through the Director of Property reserves the right to request that Landlord perform at City's cost, lease related services or incur additional expenses not covered under this Lease. If City requests any such additional services, Landlord and City shall agree in writing and in advance of any work, on the charges or amounts City shall reimburse Landlord for Landlord's performance of such work. If the parties do not agree upon such amount in writing, then Landlord shall not be required to perform the requested work. If the parties do agree on the amount in writing, then Landlord shall perform the requested work and City shall reimburse Landlord the agreed upon costs within thirty (30) days of Landlord's completion of the requested work and delivery of an invoice for the completed work, together with reasonable supporting documentation.

### **5. USE**

#### **5.1 Permitted Use**

City may use the Premises for general office uses and such other uses as may be specified in the Basic Lease Information; and for no other use without the prior written consent of Landlord, which shall not be unreasonably withheld or delayed.

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

Landlord shall provide to City access to the Building and the Premises twenty-four (24) hours per day, seven (7) days per week, together with uninterrupted access thereto to the maximum extent possible, including, without limitation, during any power outages affecting the Premises or any portion of the Building; provided, however, that Landlord may, after consultation with the City's Administrator, interrupt City's access to the Premises or the Building in the event of an immediate threat of the Premises, the Common Areas or any other portion of the Building being rendered unsafe for human occupancy. If City's use of any of the Premises or access thereto is interrupted as a result of the Premises, the Common Areas or any other portion of the Building being rendered unsafe for human occupancy due to Landlord's failure to comply with its obligations under this Lease or for any other reason other than City's default hereunder, then Landlord shall immediately undertake all necessary steps to correct such condition. In the event such condition continues for twenty four (24) hours and impairs City's ability to carry on its business in the Premises, the Rent payable hereunder shall be abated based on the extent to which such default interferes with City's ability to carry on its business at the Premises. If any such default by Landlord shall continue for thirty (30) days or more after City's use is interrupted and impairs City's ability to carry on its business in the Premises, then City shall have the right, without limiting any of its other rights under this Lease to 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 of the date City's use was interrupted, and such use is actually restored within such 60-day period. Nothing in this Section shall limit City's rights with respect to any disruption due to casualty pursuant to Section 12 (Damage and Destruction) hereof. (Five-days is consistent with the 2003 lease.)

## **6. LEASEHOLD IMPROVEMENTS**

Within ninety (90) days of the Commencement Date, Landlord shall commence undertaking the following improvements at Landlord's sole cost: (1) paint the interior of the Premises where reasonably necessary with a color reasonably approved by City using a non-VOC paint product, (2) provide new Green Seal carpet tiles in Suite 1305 using a non PVC adhesive, (3) replace all window coverings that are not in good or working condition with new functioning blinds reasonably approved by City, and (4) replace all water stained ceiling tiles (collectively, the "leasehold improvement work"). In order to allow City to remain in the Premises during the leasehold improvement work and to minimize disruption to City's continuing operation in the Premises, Landlord shall stage the leasehold improvement work after City's regular business hours, one room at a time over a period not to exceed one week per room, in accordance with a schedule agreed to by City, and shall complete the leasehold improvement work with reasonable diligence. City will be responsible for moving furniture in and out of the work area as needed.

## **7. ALTERATIONS**

### **7.1 Alterations by City**

City shall not make or permit any alterations, installations, additions or improvements (collectively, "Alterations") to the Premises without first obtaining Landlord's written consent, which Landlord shall not unreasonably withhold or delay. However, the installation of furnishings, fixtures, equipment or decorative improvements, none of which affect the Building Systems or structural integrity of the Building, and the repainting and recarpeting of the Premises shall not constitute Alterations requiring Landlord's consent. Any Alterations permitted hereunder shall be made at City's cost in compliance with applicable Laws (as defined below). Landlord shall, without cost to itself, cooperate with City in securing building and other permits and authorizations needed in connection with any permitted Alterations. Landlord shall not be entitled to any construction or other administrative fee in connection with any Alteration. City shall not be required to remove any Alterations upon the expiration or sooner termination of this Lease unless Landlord notifies City in writing at the time Landlord approves such Alterations that they must be removed at the Expiration Date.

### **7.2 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 shall be and remain Landlord's property. City may not remove such property unless Landlord consents thereto.

### **7.3 City's Personal Property**

All furniture, furnishings, equipment, trade fixtures and articles of movable personal property installed in the Premises by or for the account of City and that can be removed without structural damage to the Premises (collectively, "City's Personal Property") shall be and remain City's property. At any time during the Term or at the expiration thereof, City may remove any of City's Personal Property, provided City shall repair any damage to the Premises resulting therefrom. Upon the expiration or earlier termination of this Lease, City shall remove City's Personal Property from the Premises in accordance with Section 20 (Surrender of Premises),

below. 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. Landlord, upon City's reasonable request, shall execute and deliver any document required by any supplier, lessor, or lender in connection with the installation in the Premises of any items of City's Personal Property, pursuant to which Landlord waives any rights it may have or acquire with respect to City's Personal Property, so long as the supplier, equipment lessor or lender agrees that it (i) will remove the Property from the Premises within

thirty (30) days after the Expiration Date (but if it does not remove City's Personal Property within such time it shall have waived any rights it may have had to City's Personal Property), and (ii) will repair any damage caused by the removal of City's Personal Property. Landlord shall recognize the rights of any supplier, lessor or lender who has an interest in any items of City's Personal Property to enter the Premises and remove such property at any time during the Term or within thirty (30) days after the Expiration Date.

#### **7.4 Alteration by Landlord**

Landlord shall 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, including without limitation any leasehold improvement work for other tenants in the Building. Landlord shall promptly remedy any such interference or disruption upon receiving City's notice thereof.

### **8. REPAIRS AND MAINTENANCE**

#### **8.1 Landlord's Repairs**

Landlord shall repair and maintain, at its cost and in first-class condition, the exterior and structural portions of the Building, including, without limitation, the roof, foundation, bearing and exterior walls and subflooring, and the heating, ventilating, air conditioning, plumbing, electrical, fire protection, life safety, security and other mechanical, electrical and communications systems of the Building (collectively, the "Building Systems") and the Common Areas. Without limiting the foregoing, Landlord shall maintain the Building in a clean, safe and attractive manner, shall provide exterior graffiti removal with reasonable frequency, and shall not permit any other tenants of the Building to disturb or interfere with City's use of the Premises or permit to be done in or about the Building or the Common Areas anything that is illegal, is dangerous to persons or property or constitutes a nuisance.

#### **8.2 City's Repairs**

Subject to Landlord's warranty under Section 10.1 (Premises Condition), any construction warranties or guaranties received in connection with Landlord's completion of the Leasehold Improvements, and Landlord's repair and maintenance obligations hereunder, City shall repair and maintain at its cost the interior portions of the Premises and shall keep the Premises in good working order and in a safe and sanitary condition, except for ordinary wear and tear and damage by casualty. City shall make any such required repairs and replacements that Landlord specifies in writing (i) at City's cost, (ii) by contractors or mechanics selected by City and reasonably approved by Landlord, (iii) so that same shall be at least substantially equal in quality, value and utility to the original work or installation prior to damage thereof, (iv) 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 (v) in compliance with all applicable Laws, including, without limitation, any applicable contracting requirements under City's Charter and Administrative Code. At all times during the Term of this Lease, Landlord shall, upon reasonable notice by City, afford City and its Agents with access to those

portions of the Building which are necessary to maintain or repair the telecommunications and data and computer cabling facilities and equipment installed by City.

### **8.3 Liens**

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

## **9. UTILITIES AND SERVICES**

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

Landlord shall furnish the following utilities and services to the Premises at Landlord's sole cost: (a) heating, air conditioning and ventilation in amounts required for City's comfortable use and occupancy of the Premises, during the period from 8:00 a.m. to 6:00 p.m., Monday through Friday, except holidays generally recognized in San Francisco; (b) electric current in amounts required for normal lighting and for the operation of personal computers and other normal office machines and equipment, on a twenty-four (24) hours-a-day, three hundred sixty-five (365) days-a-year basis ("Daily Basis"); (c) elevator service on a Daily Basis; and (d) water for lavatory, kitchen and drinking purposes on a Daily Basis. During the Term, Landlord shall provide freight elevator service upon City's reasonable request. Without limiting Landlord's obligations hereunder, Landlord shall furnish all utilities and services required under this Lease in a manner consistent with such utilities and services normally provided in other first class buildings similar to the Building in the San Francisco India Basin submarket area.

### **9.2 Services**

#### **(a) Janitorial Service**

Landlord shall provide at its cost janitorial service in accordance with the specifications contained in Exhibit D attached hereto.

### **9.3 Conservation**

Landlord may establish reasonable measures to conserve energy and water, including automatic light shut off after hours and efficient lighting forms, so long as these measures do not unreasonably interfere with City's use of the Premises.

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

In the event of any failure, stoppage or interruption of any utilities or services to be furnished by Landlord hereunder, Landlord shall immediately notify City of such failure, stoppage or interruption, diligently attempt to restore service as promptly as possible and shall keep City apprised of its efforts. In the event Landlord is unable to supply any of the Building's sanitary, electrical, heating, air conditioning, water, elevator, fire protection and security, audio, video or electronic communications, hazard detection and alarm, or other essential services serving the Premises (collectively, "Essential Services") and such inability of Landlord impairs City's ability to carry on its business in the Premises for a period of one (1) or more business days if such failure is in the reasonable control of Landlord or a period of five (5) or more consecutive business days if such failure is not within the reasonable control of Landlord, then the Rent shall be abated based on the extent such inability of Landlord impairs City's ability to

carry on its business in the Premises, or, alternatively at City's election, City shall have the option to provide such services and offset the reasonable cost thereof against the Rent next due under this Lease. Such abatement, or right to provide the services and offset against Rent, shall continue until the Essential Services have been restored so that the lack of any remaining services no longer materially impairs City's ability to carry on its business in the Premises. Landlord shall use its best efforts to restore disrupted Essential Services as soon as possible. However, if such failure to provide any Essential Services continues for any reason for thirty (30) days and such failure interferes with City's ability to carry on its business in the Premises, then City may, without limiting any of its other rights or remedies hereunder or at law or in equity, terminate this Lease upon written notice to Landlord, unless Landlord supplies City with evidence reasonably satisfactory to City that the Essential Services will be restored within sixty (60) days of the date City's use was interrupted, and the Essential Services are actually restored within such 60-day period. City shall not be entitled to any abatement of Rent or right to terminate if Landlord's inability to supply Essential Services to City is due solely to the acts, omissions or negligence of City and its Agents.

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

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

Landlord represents and warrants to City, and covenants with City, as follows: to the best of Landlord's knowledge: (a) the physical structure, fixtures and permanent improvements of the Premises (including, without limitation, the Leasehold Improvements) and all portions of the Property and the Building along the path of travel to the Premises (including, but not limited to, the Building entrances, Common Areas, restrooms, elevators, lobbies, telephone banks and drinking fountains and parking areas) are now, and as of the Commencement Date will be, in compliance with the requirements of the Americans With Disabilities Act of 1990 and Title 24 of the California Code of Regulations and all other applicable federal, state, local and administrative laws, rules, regulations, orders and requirements intended to provide equal accessibility for persons with disabilities (collectively, "Disabilities Laws"); (b) the Building is not an unreinforced masonry building, and is now, and as of the Commencement Date will be, in compliance with all applicable federal, state, local and administrative laws, rules, regulations, orders and requirements relating to seismic safety (collectively, "Seismic Safety Laws"); (c) the Building, the Common Areas and Building Systems serving the Premises are now, and as of the Commencement Date will be, in full compliance with all applicable federal, state, local and administrative laws, rules, regulations, orders and requirements relating to fire and life safety (including, without limitation, the San Francisco High-Rise Sprinkler Ordinance) (collectively, "Life Safety Laws"); (d) the Building, the Common Areas and Building Systems serving the Premises are now, and as of the Commencement Date will be, in compliance with all other applicable federal, state, local and administrative laws, rules, regulations, orders and requirements; and (e) 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. Landlord shall at all times during the Term maintain, at its cost, the Property, Building, Common Areas and the Building Systems serving the Premises in compliance with applicable present or future federal, state, local and administrative laws, rules, regulations, orders and requirements (collectively, "Laws"), including, without limitation, Disabilities Laws, Seismic Safety Laws, and Life Safety Laws. Without limiting Section 16.2 (Landlord's Indemnity), Landlord shall Indemnify City against any and all Claims arising out of any failure of the Property, Building, Common Areas, Building Systems, or any portion thereof, to comply with applicable Laws as provided in this Section or any misrepresentation by Landlord under this Section.



## 10.2 City's Compliance with Laws; Indemnity

City shall use the Premises during the Term in compliance with applicable Laws, except that City shall not be required to make any structural alterations, additions or other modifications in order to comply therewith unless such modifications are necessary solely because of any Alterations to the Premises made by City pursuant to Section 7 hereof and such modifications are not otherwise Landlord's responsibility under this Lease. City shall 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 10.1 above. Without limiting Section 16.1 (City's Indemnity), City shall Indemnify Landlord against any and all Claims arising out of City's failure to comply with all applicable Laws as provided in this Section.

## 10.3 City's Compliance with Insurance Requirements

City shall 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 therein, (b) result in a refusal by fire insurance companies of good standing to insure the Building or any such property in amounts reasonably satisfactory to Landlord or the holder of any mortgage or deed of trust encumbering the Building, (c) cause an increase in the fire insurance premium for the Building unless City agrees to pay such increase, or (d) subject Landlord to any liability or responsibility for injury to any person or property by reason solely of any business operation being conducted by City in the Premises; provided, however, Landlord shall provide City with reasonable prior written notice of any applicable insurance requirements and no such insurance requirements shall materially and adversely interfere with City's normal business in the Premises.

## 11. SUBORDINATION

(a) Without the necessity of any additional document being executed by City for the purpose of effecting a subordination, and subject to subsection (b) below, this Lease shall be subject and subordinate at all times to the following (each an "Encumbrance"): (a) any reciprocal easement agreements, ground leases or other underlying leases that may hereafter be executed affecting Landlord's interest in the Property, or any portion thereof, and (b) the lien of any mortgages or deeds of trust and renewals, modifications, consolidations, replacements and extensions of any of the foregoing that may hereafter be executed by Landlord in any amount for which any part of the Property, any ground lease or underlying lease, or Landlord's interest or estate therein is subject. Notwithstanding the foregoing, if the ground lessor, mortgagee, trustee, or holder of any such mortgage or deed of trust elects to have City's interest in this Lease be superior to any such instrument, then upon notice thereof to City, this Lease shall be deemed superior, whether this Lease was executed before or after the date of said instrument or the recording thereof. At City's request, the holder of the Encumbrance shall enter into a subordination and nondisturbance agreement with City in a form reasonably acceptable to City evidencing such subordination or superiority of this Lease.

(b) In the event 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 in the event any ground lease or underlying lease to which this Lease is subordinate is terminated, this Lease shall not be barred, terminated, cut off, or foreclosed nor shall the rights and possession of City hereunder be disturbed if City shall not then be in default in the payment of rental or other sums due hereunder or otherwise be in default under the terms of this Lease. City shall attorn to and become the tenant of the successor-in-interest to Landlord, provided that

City has received proper written notice of such succession and the name and address of the successor landlord. City's covenant under subsection (a) above to subordinate this Lease to any Encumbrance or other hypothecation hereafter executed is conditioned upon each such senior instrument containing the commitments specified in this subsection (b). The provisions of this Section shall be self-operative and no further instrument shall be required other than as provided in this Section. City agrees, however, to execute upon request by Landlord and in a form reasonably acceptable to City, any additional documents evidencing the priority or subordination of this Lease with respect to any such Encumbrance as provided herein.

## 12. DAMAGE AND DESTRUCTION

If the Premises, the Building or any Building Systems are damaged by fire or other casualty, Landlord shall repair the same without delay (and if Landlord is then carrying insurance on the Leasehold Improvements or if City at its sole option makes funds available to Landlord, Landlord shall also repair the Leasehold Improvements), provided that such repairs can be made under applicable laws within sixty (60) days after Landlord obtains all necessary permits for such repairs but not later than two hundred ten (210) days after the date of such damage (the "Repair Period"). In such event, this Lease shall remain in full force and effect, except that City shall be entitled to an abatement of Rent while such repairs are being made. Such abatement in Rent shall be based upon the extent to which such damage and the making of such repairs interfere with City's business in the Premises. Landlord's repairs shall not include, and the Rent shall 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.

Within twenty (20) days after the date of such damage, Landlord shall notify City whether or not, in Landlord's reasonable judgment made in good faith, such repairs can be made within the Repair Period. If such repairs cannot be made within the Repair Period, then either party hereto may, by written notice to the other given within thirty (30) days after the date of such damage, terminate this Lease as of the date specified in such notice, which date shall be not less than thirty (30) nor more than sixty (60) days after notice is given by Landlord. In case of termination, the Rent shall be reduced by a proportionate amount based upon the extent to which such damage interferes with the conduct of City's business in the Premises, and City shall pay such reduced Rent up to the date of termination. Landlord shall refund to City any Rent previously paid for any period of time subsequent to such date of termination.

Notwithstanding the foregoing, in the event the Premises are damaged or destroyed by reason of flood or earthquake, and such damage or destruction is not fully covered by insurance proceeds payable under the insurance policies Landlord is required to carry hereunder (excluding any deductible, for which Landlord shall be responsible), Landlord may terminate this Lease by written notice to City within thirty (30) days of the date Landlord receives written notice that such damage is not covered by insurance. Such notice from Landlord shall include adequate written evidence of the denial of insurance coverage. If Landlord does not elect to terminate this Lease as provided above, this Lease shall remain in full force and effect, and Landlord shall repair and restore the Premises as provided above.

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

The parties intend that the provisions of this Section govern fully their rights and obligations in the event of damage or destruction, and Landlord and City each hereby 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, statute or ordinance now or hereafter in effect, to the extent such rights are inconsistent with the provisions hereof.

### **13. EMINENT DOMAIN**

#### **13.1 Definitions**

(a) "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.

(b) "Date of Taking" means the earlier of (i) the date upon which title to the portion of the Property taken passes to and vests in the condemnor or (ii) the date on which Tenant is dispossessed.

(c) "Award" means all compensation, sums or anything of value paid, awarded or received for a Taking, whether pursuant to judgment, agreement, settlement or otherwise.

#### **13.2 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 any interest in this Lease, the rights and obligations of the parties hereunder shall be determined pursuant to this Section. City and Landlord intend that the provisions hereof govern fully in the event of a Taking and accordingly, the parties each hereby waive 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 hereafter in effect.

#### **13.3 Total Taking; Automatic Termination**

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

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

(a) If there is a Taking of any portion (but less than all) of the Premises, then this Lease shall 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, (ii) the condition rendering the Premises untenable or unsuitable either is not curable or is curable but Landlord is unwilling or unable to cure such condition, and (iii) City elects to terminate.

(b) In the case of a partial taking of a substantial portion of the Building, and if subsection (a) above does not apply, City and Landlord shall each have the right to terminate this Lease by written notice to the other within thirty (30) days after the Date of Taking, provided that, as a condition to City's right to terminate, the portion of the Building taken shall, 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.

(c) Either party electing to terminate under the provisions of this Section 13.4 shall do so by giving written notice to the other party before or within thirty (30) days after the Date of Taking, and thereafter this Lease shall terminate upon the later of the thirtieth (30<sup>th</sup>) day after such written notice is given or the Date of Taking.

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

Upon termination of this Lease in its entirety pursuant to Section 13.3, or pursuant to an election under Section 13.4 above, then: (a) City's obligation to pay Rent shall continue up until the date of termination and thereafter shall cease, and (b) Landlord shall be entitled to the entire Award in connection therewith, except that City shall 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.

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

If there is a partial Taking of the Premises under circumstances where this Lease is not terminated in its entirety under Section 13.4 above, then this Lease shall terminate as to the portion of the Premises so taken, but shall remain in full force and effect as to the portion not taken, and the rights and obligations of the parties shall be as follows: (a) Rent shall be reduced 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 prior to the Date of Taking, and (b) Landlord shall be entitled to the entire Award in connection therewith, provided that City shall 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.

### **13.7 Temporary Taking**

Notwithstanding anything to contrary in this Section, if a Taking occurs with respect to the Premises for a limited period of time not in excess of sixty (60) consecutive days, this Lease shall remain unaffected thereby, and City shall continue to pay Rent and to perform all of the terms, conditions and covenants of this Lease. In the event of such temporary Taking, City shall be entitled to 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 for the period of the Taking.

## **14. ASSIGNMENT AND SUBLETTING**

Except as provided in this Section below, City shall 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 hereunder 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 shall not be unreasonably withheld or delayed. City shall have the right from time to time, upon notice to but without the consent of Landlord, to 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.

## **15. DEFAULT; REMEDIES**

### **15.1 Events of Default by City**

Any of the following shall constitute an event of default by City hereunder:

(a) City's failure to make any timely payment of Rent and to cure such nonpayment within five (5) business days after receipt of written notice thereof 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 shall have twenty (20) days to cure any such nonpayment after written notice thereof from Landlord;

(b) City's abandons the Premises (within the meaning of California Civil Code Section 1951.3); or

(c) City's failure to perform any other covenant or obligation of City hereunder (not involving the payment of money) and to cure such non-performance within thirty (30) days of the date of receipt of notice thereof from Landlord, provided that if more than thirty (30) days are reasonably required for such cure, no event of default shall occur if City commences such cure within such period and diligently prosecutes such cure to completion.

## 15.2 Landlord's Remedies

Upon the occurrence of any event of default by City that is not cured within the applicable grace period as provided above, Landlord shall have all rights and remedies available pursuant to law or granted hereunder, including the following:

(a) The rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate City's right to possession of the Premises and to recover the worth at the time of award of the amount 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 pursuant to subsection (b) of such 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.

## 15.3 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) City may, at its sole option, cure such default at Landlord's expense if such default continues after ten (10) days from the date City gives notice to Landlord of City's intention to perform such cure. However, in the case of a default which for causes beyond Landlord's control (excluding any financial inability to perform) cannot with due diligence be cured within such ten (10)-day period, such ten (10)-day period shall be extended if Landlord, promptly upon receipt of City's notice, advises City of Landlord's intention to take all steps required to cure such default, and Landlord promptly commences such cure and diligently prosecutes the same to completion. Subject to the other provisions of this Lease relating to abatement of Rent, if Landlord fails to cure any default within the cure period provided above, then, whether or not City elects to cure Landlord's default as provided herein, the Base Rent and any other charges hereunder shall be abated based on the extent to which such default interferes with City's ability to carry on its business at the Premises. Notwithstanding the foregoing, if any such default by Landlord continues for sixty (60) days and impairs City's ability to carry on its business in the Premises, then City shall have the right to terminate this Lease upon written notice to Landlord within thirty (30) days after the expiration of such sixty (60)-day period. City's rights hereunder and Section 5.3 (Interference with Access), and Section 9.4 (Disruption in Essential Services), shall not limit in any way any of its other rights and remedies hereunder or at law or in equity.

## **16. INDEMNITIES**

### **16.1 City's Indemnity**

City shall indemnify, defend and hold harmless ("Indemnify") Landlord and its Agents from and against any and all claims, costs and expenses, including, without limitation, reasonable attorneys' fees (collectively, "Claims"), incurred as a result of (a) City's use of the Premises, (b) any default by City in the performance of any of its material obligations under this Lease, or (c) any negligent acts or omissions of City or its Agents in, on or about the Premises or the Property; provided, however, City shall 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 by reason of any Claim Indemnified by City hereunder, City may, at its sole option, elect to defend such Claim by attorneys in City's Office of the City Attorney, by other attorneys selected by City, or both. City shall have the right to control the defense and to determine the settlement or compromise of any action or proceeding, provided that Landlord shall have the right, but not the obligation, to participate in the defense of any such Claim at its sole cost. City's obligations under this Section shall survive the termination of the Lease.

### **16.2 Landlord's Indemnity**

Landlord shall 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 shall 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 by reason of any Claim Indemnified by Landlord hereunder, Landlord may, at its sole option, elect to defend such Claim by attorneys selected by Landlord. Landlord shall have the right to control the defense and to determine the settlement or compromise of any action or proceeding, provided that City shall have the right, but not the obligation, to participate in the defense of any such Claim at its sole cost. Landlord's obligations under this Section shall survive the termination of this Lease.

## **17. INSURANCE**

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

Landlord acknowledges that City maintains a program of self-insurance and agrees that City shall not be 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.

## **18. ACCESS BY LANDLORD**

Landlord reserves for itself and any designated Agent the right to enter the Premises at all reasonable times and, except in cases of emergency (in which event Landlord shall give any reasonable notice), after giving City at least twenty four (24) hours' advance written or oral notice, for the purpose of (a) inspecting the Premises, (b) supplying any service to be provided by Landlord hereunder, (c) showing the Premises to any prospective purchasers, mortgagees or, during the last six (6) months of the Term of this Lease, tenants, (d) posting notices of non-responsibility, and (e) altering, improving or repairing the Premises and any portion of the Building, and Landlord may for that purpose erect, use and maintain necessary structures in and through the Premises where reasonably required by the character of the work to be performed,

provided that the entrance to the Premises shall not be blocked thereby, and further provided that City's use shall not be interfered with.

## 19. ESTOPPEL CERTIFICATES

Either party, from time to time during the Term upon not less than ten (10) days' prior written notice from the other party, may reasonably request the other party to execute, acknowledge and deliver to such persons or entities designated by such 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, this the 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.

## 20. SURRENDER OF PREMISES

Upon the expiration or sooner termination of this Lease, City shall surrender the Premises to Landlord in good order and condition, reasonable use and wear and damage by fire or other casualty excepted. Within ten (10) days after the Expiration Date, City shall remove from the Premises all of City's Personal Property and any Alterations City desires or is required to remove from the Premises pursuant to the provisions of Section 7.1 (Alterations by City), above. City shall repair or pay the cost of repairing any damage to the Premises or the Building resulting from such removal. Notwithstanding anything to the contrary in this Lease, City shall not be required to demolish or remove from the Premises any of the Leasehold Improvements. City's obligations under this Section shall survive the expiration or earlier termination of this Lease.

## 21. HAZARDOUS MATERIALS

### 21.1 Definitions

As used in this Lease, the following terms shall have the meanings hereinafter set forth:

(a) "Environmental Laws" shall mean any federal, state, local or administrative law, rule, regulation, order or requirement relating to industrial hygiene, environmental conditions or Hazardous Material, whether now in effect or hereafter adopted.

(b) "Hazardous Material" shall mean 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, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to 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 pursuant to Section 25316 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such 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.

(c) "Release" when used with respect to Hazardous Material shall include 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.

## 21.2 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, nor has it been, used for the manufacture, use, storage, discharge, deposit, transportation or disposal of any Hazardous Material, except for the use of such substances in such limited quantities as are customarily used in offices, which limited use has been and is 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 consist of any asbestos-containing materials or building materials that contain any other Hazardous Material, nor do the Premises or the common areas of the Building contain any lead-based paints; (e) there has been and is 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, without limitation, 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 shall 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.

## 21.3 Landlord's Environmental Indemnity

Without limiting Landlord's Indemnity in Section 16.2 (Landlord's Indemnity), above, Landlord shall Indemnify City and its Agents against any and all Claims arising during or after the Term of this Lease (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 such Release.

## 21.4 City's Covenants

Neither City nor its Agents shall cause any Hazardous Material to be brought upon, 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, provided that City may use such substances in such limited amounts as are customarily used in offices so long as such use is in compliance with all applicable Environmental Laws.

## 21.5 City's Environmental Indemnity

If City breaches its obligations contained in the preceding Section 21.4, or if City or its Agents cause the Release of Hazardous Material from, in, on or about the Premises or the Property, then City shall Indemnify Landlord against any and all Claims arising during or after the Term of this Lease as a result of such Release, except to the extent Landlord or its Agents is responsible for the Release. The foregoing Indemnity shall 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 prior to City's occupancy.

## 22. SPECIAL PROVISIONS

None



## 23. GENERAL PROVISIONS

### 23.1 Notices

Except as otherwise specifically provided in this Lease, any notice given under this Lease shall 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 Tenant'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) such other address as either Landlord or City may designate as its new address for such purpose by notice given to the other in accordance with this Section. Any notice hereunder shall be deemed to have been given and received two (2) days after the date when it is mailed if sent by first-class, certified mail, one day after the date when it is mailed if sent by Express Mail, or upon the date personal delivery is made. For convenience of the parties, copies of notices may also be given by telefacsimile to the telefacsimile number set forth in the Basic Lease Information or such other number as may be provided from time to time; however, neither party may give official or binding notice by facsimile.

### 23.2 No Implied Waiver

No failure by either party to insist upon the strict performance of any obligation of the other party under this Lease or to exercise any right, power or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of such term, covenant or condition. No acceptance of full or partial Rent by Landlord while City is in default hereunder shall constitute a waiver of such default by Landlord. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall 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 shall 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

Neither this Lease nor any terms or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the party against which the enforcement of the change, waiver, discharge or termination is sought. No waiver of any breach shall affect or alter this Lease, but each and every term, covenant and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent breach thereof. Whenever this Lease requires or permits the giving by City of its consent or approval, the Director of Property, or his or her designee, shall be authorized to provide such approval, except as otherwise provided by applicable law, including the Charter of the City and County of San Francisco. Any amendments or modifications to this Lease, including, without limitation, amendments to or modifications to the exhibits to this Lease, shall be subject to the mutual written agreement of City and Landlord, and City's agreement may be made upon 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 of this Lease, and (e) any other amendment or modification which materially increases City's liabilities or financial obligations under this Lease shall additionally 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 has been duly authorized and does not violate any provision of any agreement, law or regulation to which Landlord or the Property is subject. If Landlord is a corporation, limited liability company or a partnership, each of the persons executing this Lease on behalf of Landlord does hereby covenant and warrant that Landlord is a duly authorized and existing entity, that Landlord has and is qualified to do business in California, that Landlord has the full right and authority to enter into this Lease, and that each and all of the persons signing on behalf of Landlord are authorized to do so. On City's request, Landlord shall provide City with evidence reasonably satisfactory to City confirming the foregoing representations and warranties.

### **23.5 Parties and Their Agents; Approvals**

If applicable, the word "Landlord" as used in this Lease shall include the plural as well as the singular. As used in this Lease, the term "Agents" when used with respect to either party shall include the agents, employees, officers and contractors of such party, and the term "Invitees" when used with respect to City shall 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 but not limited to the exercise of any option granted to City, shall be made by or through City's Director of Property unless otherwise provided in this Lease, subject to any applicable limitations in the City's Charter.

### **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 such captions shall in no way define or limit the scope or intent of any provision of this Lease. This Lease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intent and purposes of the parties, without any presumption against the party responsible for drafting any part of this Lease. Except as otherwise specifically provided herein, wherever in this Lease Landlord or City is required or requested to give its consent or approval to any matter or action by the other, such consent or approval shall not be unreasonably withheld or delayed and the reasons for disapproval of consent shall be stated in reasonable detail in writing. Provisions in this Lease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or City holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Lease, 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 14 relating to assignment and subletting, the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of Landlord and City and, except as otherwise provided herein, 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 regarding the leasing of the Premises, or any communication in connection therewith, 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

contemplated herein, except for the broker, if any, identified in the Basic Lease Information, whose commission, if any is due, shall be the sole responsibility of Landlord pursuant to a separate written agreement between Landlord and such broker, and City shall have no liability therefor. In the event that any other broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes his claim shall be responsible for such commission or fee and shall indemnify the other party from any and all Claims incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Lease.

### **23.9 Severability**

If any provision of this Lease or the application thereof to any person, entity or circumstance shall be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Lease shall 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 or inequitable under all the circumstances or would frustrate a fundamental purpose of this Lease.

### **23.10 Governing Law**

This Lease shall be construed and enforced in accordance with the laws of the State of California and the City's Charter.

### **23.11 Entire Agreement**

The parties intend that this Lease (including all of the attached exhibits, which are made a part of this Lease) shall be the final expression of their agreement with respect to the subject matter hereof 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 shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts hereof and changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Lease.

### **23.12 Attorneys' Fees**

In the event that either Landlord or City fails to perform any of its obligations under this Lease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Lease, the defaulting party or the non-prevailing party in such dispute, as the case may be, shall pay the prevailing party reasonable attorneys' and experts' fees and costs, and all court costs and other costs of action incurred by the prevailing party in connection with the prosecution or defense of such action and enforcing or establishing its rights hereunder (whether or not such action is prosecuted to a judgment). For purposes of this Lease, reasonable attorneys' fees of the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney. The term "attorneys' fees" shall also include, without limitation, all such fees incurred with respect to appeals, mediations, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees were incurred. The term "costs" shall mean the costs and expenses of counsel to the parties, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, and others not admitted to the bar but performing services under the supervision of an attorney.

### **23.13 Holding Over**

Should City hold over in possession of the Premises after the expiration of the Term with Landlord's consent, such holding over shall not be deemed to extend the Term or renew this Lease, but such tenancy thereafter shall continue as a month-to-month tenancy. Such tenancy shall be on all the terms and conditions set forth in this Lease and at the monthly Base Rent in effect during the last month of the Term of this Lease or such other rental as Landlord and City may mutually agree in writing as a condition to Landlord's consent to such holding over, and City shall continue as a month-to-month tenant until the tenancy shall be terminated by Landlord giving City or City giving Landlord at least thirty (30) days' prior written notice of termination. Should City hold over without Landlord's consent, the rent payable by City during the period of such holding over shall be one hundred ten percent (110%) of the monthly Base Rent in effect during the last month of the Term of this Lease, and such tenancy shall otherwise be on the terms and conditions contained herein.

### **23.14 Cumulative Remedies**

All rights and remedies of either party hereto set forth in this Lease shall be cumulative, except as may otherwise be provided herein.

### **23.15 Time of Essence**

Time is of the essence with respect to all provisions of this Lease in which a definite time for performance is specified.

### **23.16 Survival of Indemnities**

Termination of this Lease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Lease, nor shall it affect any provision of this Lease that expressly states it shall survive termination hereof. Each party hereto specifically acknowledges and agrees that, 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 which actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to the indemnitor by the indemnitee and continues at all times thereafter.

### **23.17 Signs**

City may erect or post signs on or about the Premises subject to Landlord's prior approval. Landlord reserves the right to review the placement, design, and plan for any such sign prior to its erection or posting and agrees that the approval thereof shall not be unreasonably withheld or delayed.

### **23.18 Quiet Enjoyment and Title**

Landlord covenants and represents that it has full right, power and authority to grant the leasehold estate hereunder, and covenants that City, upon paying the Rent hereunder and performing the covenants hereof, shall peaceably and quietly have, hold and enjoy the Premises and all appurtenances during the full Term of this Lease as against all persons or entities claiming by and through Landlord or on account of any action, inaction or agreement of Landlord or its Agents. Without limiting the provisions of Section 16.2 (Landlord's Indemnity), Landlord agrees to 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.

### **23.19 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. Landlord and City agree that City's leasehold estate created hereby includes, without limitation, all rights to receive and enjoy all services, facilities and amenities of the Premises and the Building as provided herein, and that if any of such services, facilities or amenities are terminated, or materially limited or restricted on account of any such case or proceeding, or for any other reason, City shall have the right to (a) contract directly with any third-party provider of such services, facilities or amenities to obtain the same, and (b) offset against the Base Rent or other charges payable hereunder any and all reasonable costs and expenses incurred by City in obtaining such services, facilities or amenities.

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

Landlord shall have the right to transfer its interest in the Property, the Building or this Lease to any other financially responsible person or entity. In the event of any such transfer, Landlord shall be relieved, upon notice to City of the name and address of Landlord's successor, of any obligations accruing hereunder from and after the date of such transfer and upon delivering to City an express assumption by the transferee of all of Landlord's obligations hereunder.

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

Notwithstanding anything to the contrary in this Lease, no elective or appointive board, commission, member, officer, employee or agent of City shall be personally liable to Landlord, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Landlord, its successors and assigns, or for any obligation of City under this Lease.

### **23.22 MacBride Principles - Northern Ireland**

The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Lease. By signing this Lease, Landlord confirms that Landlord has read and understood that the 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.

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

The terms of this Lease shall be governed by and subject to the budgetary and fiscal provisions of the City's Charter. Notwithstanding anything to the contrary contained in this Lease, there shall 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, pursuant to Section 3.105 of the 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 and any other payments required under this Lease 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 shall use its reasonable efforts to give Landlord reasonable advance notice of such termination.

### **23.24 Prevailing Wages for Construction Work**

Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.61. Landlord agrees to 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 (1) pay workers performing such work not less than the Prevailing Rate of Wages, (2) provide the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, and (3) employ Apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, “Prevailing Wage Requirements”). Landlord agrees to cooperate with the City in any action or proceeding against a Contractor or Subcontractor that fails to comply with the Prevailing Wage Requirements.

Landlord shall 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 such Construction Contract shall 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 shall constitute a material breach of this Lease. A Contractor’s or Subcontractor’s failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.61 against the breaching party.

### **23.25 Non Discrimination in City Contracts and Benefits Ordinance**

#### **(a) Covenant Not to Discriminate**

In the performance of this Lease, Landlord agrees not to discriminate against any employee of, any City employee working with Landlord, or 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 such protected classes, or in retaliation for opposition to discrimination against such classes.

#### **(b) Subcontracts**

Landlord shall include in all subcontracts relating to the Premises a non-discrimination clause applicable to such subcontractor in substantially the form of subsection (a) above. In addition, Landlord shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k) and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Landlord’s failure to comply with the obligations in this subsection shall 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 of this Lease, in any of its operations in San Francisco, on real property owned by City, or where the

work is being performed for the 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 such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

**(d) CMD Form**

As a condition to this Lease, Landlord shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form CMD-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Contract Monitoring Division (the "CMD"). Landlord hereby represents that prior to execution of the Lease: **(a)** Landlord executed and submitted to the CMD Form CMD-12B-101 with supporting documentation, and **(b)** the CMD approved such form.

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

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of property to City are incorporated in this Section by reference and made a part of this Lease as though fully set forth herein. Landlord shall comply fully with and be bound by all of the provisions that apply to this Lease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Landlord understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of Fifty Dollars (\$50) for each person for each calendar day during which such 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.

**23.26 Tropical Hardwood and Virgin Redwood Ban**

**(a)** Except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, neither Landlord nor any of its contractors shall provide any items to City in the construction of the Leasehold Improvements or otherwise in the performance of this Lease which are tropical hardwood, tropical hardwood wood products, virgin redwood, or virgin redwood wood products.

**(b)** The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood products.

**(c)** In the event Landlord fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Landlord shall be liable for liquidated damages for each violation in an amount equal to Landlord's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greatest. Landlord acknowledges and agrees that the liquidated damages assessed shall be payable to the City and County of San Francisco upon demand and may be set off against any monies due to Landlord from any contract with the City and County of San Francisco.

**23.27 Bicycle Parking Facilities**

Article 1.5, Section 155.3, of the San Francisco Planning Code (the "Planning Code") requires the provision of bicycle parking at City-leased buildings at no cost to Landlord. During

the Term, City shall have the right to install and maintain, at its sole cost, all Class 1 Bicycle Parking Spaces (as defined in the Planning Code) and all Class 2 Bicycle Parking Spaces (as defined in the Planning Code) in the Building locations required under the Planning Code.

### **23.28 Resource-Efficient City Buildings and Pilot Projects**

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 hereby agrees that it shall comply with all applicable provisions of such code sections.

### **23.29 Counterparts**

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

### **23.30 Effective Date**

The date on which this Lease shall become effective (the "Effective Date") is the date upon which (a) City's Mayor and Board of Supervisors, in their sole and absolute discretion, adopt a resolution approving this Lease in accordance with all applicable laws and (b) this Lease is duly executed by the parties hereto.

### **23.31 Sunshine Ordinance**

In accordance with Section 67.24(e) of the San Francisco Administrative Code, 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 which is covered by this Section will be made available to the public upon request.

### **23.32 Conflicts of Interest**

Through its execution of this Lease, Landlord acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 *et seq.* and Section 1090 *et seq.* of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provisions, and agrees that if Landlord becomes aware of any such fact during the Term of this Lease, Landlord shall immediately notify City.

### **23.33 Notification of Limitations on Contributions**

Through its execution of this Lease, Landlord acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Landlord acknowledges that the foregoing restriction applies only



if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Landlord further acknowledges that the prohibition on contributions applies to each Landlord; each member of Landlord's board of directors, and Landlord's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Landlord; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Landlord. Additionally, Landlord acknowledges that Landlord must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Landlord further agrees to provide to City the name of each person, entity or committee described above.

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

As of July 1, 2003, 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 Section 1304 of the Environment Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, 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" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

### **23.35 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 shall be considered the drafter of this Lease, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Lease.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, LANDLORD ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY HERETO UNLESS AND UNTIL CITY'S BOARD OF SUPERVISORS SHALL HAVE DULY ADOPTED A RESOLUTION APPROVING THIS LEASE AND AUTHORIZING CONSUMMATION OF THE TRANSACTION CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON ADOPTION OF SUCH A RESOLUTION, AND THIS LEASE SHALL BE NULL AND VOID UNLESS CITY'S MAYOR AND BOARD OF SUPERVISORS APPROVE THIS LEASE, IN 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 SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ADOPTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

BALANCE OF THE PAGE LEFT INTENTIONALLY BLANK

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

LANDLORD:

RAUL AND DENISE ARRIAZA, Husband and  
Wife, as to an undivided fifty (50%) interest and  
THE OLSON FAMILY TRUST dated October 16,  
2014 as to an undivided fifty (50%) interest

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

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

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

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

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

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

CITY:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

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


JOHN UPDIKE  
Director of Property

RECOMMENDED:

\_\_\_\_\_  
Director, Department of Public Health

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By:  \_\_\_\_\_  
Elizabeth Dietrich  
Deputy City Attorney

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RAUL AND DENISE ARRIAZA, Husband and  
Wife, as to an undivided fifty (50%) interest and  
THE OLSON FAMILY TRUST dated October 16,  
2014 as to an undivided fifty (50%) interest

By: *Raul Arriaza*

Its: *Partner*

By: *Denise Arriaza*

Its: *Partner*

By: *Raul E. Olson, The Olson Family Trust  
dated October 16, 2014*

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

CITY:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: JOHN UPDIKE  
Director of Property

RECOMMENDED:

Director, Department of Public Health

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: Elizabeth Dietrich  
Deputy City Attorney

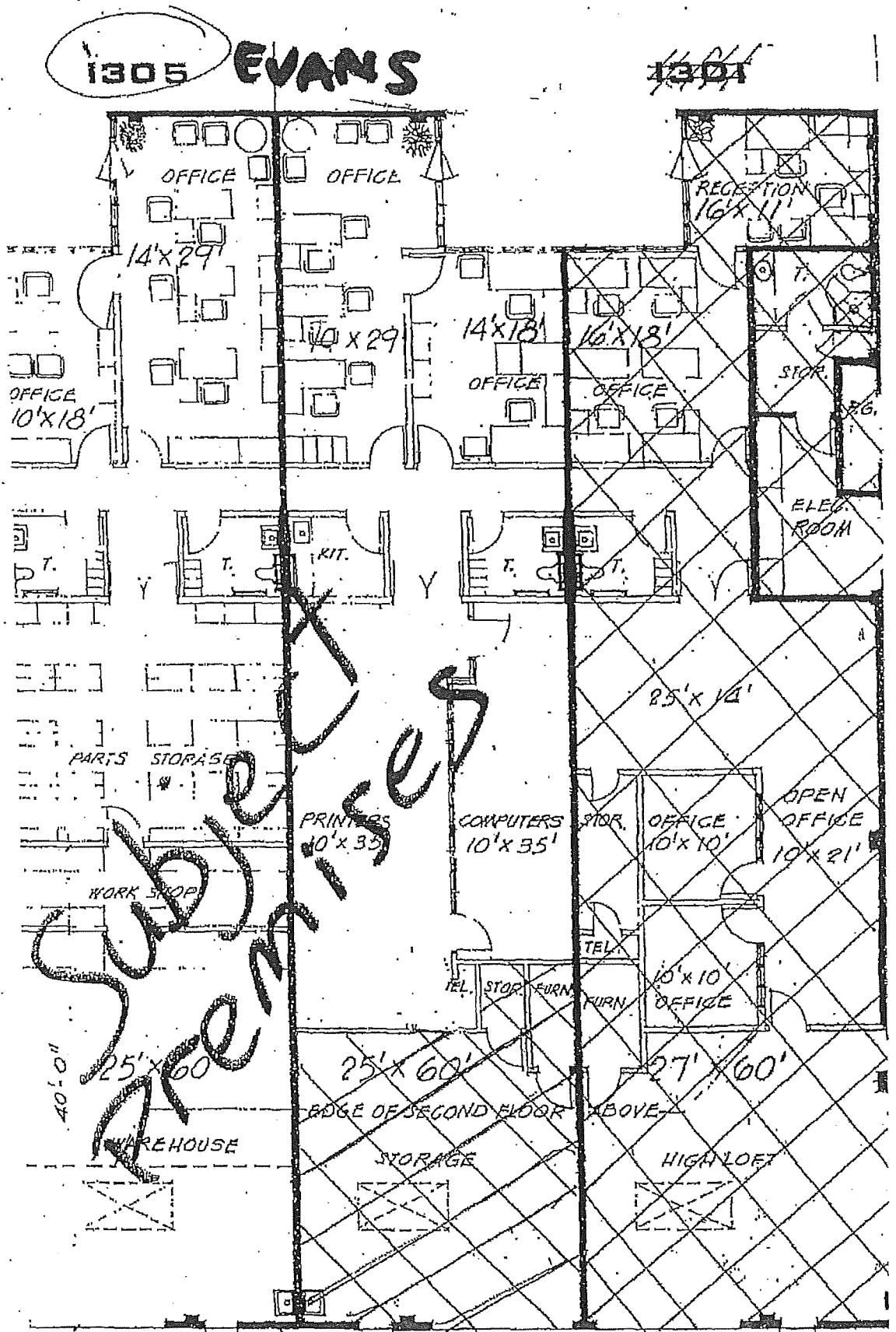
EXHIBIT A

FLOOR PLAN

CONSISTING OF 3 PAGES

1303-1305 EVANS = ground floor lease - [unclear]

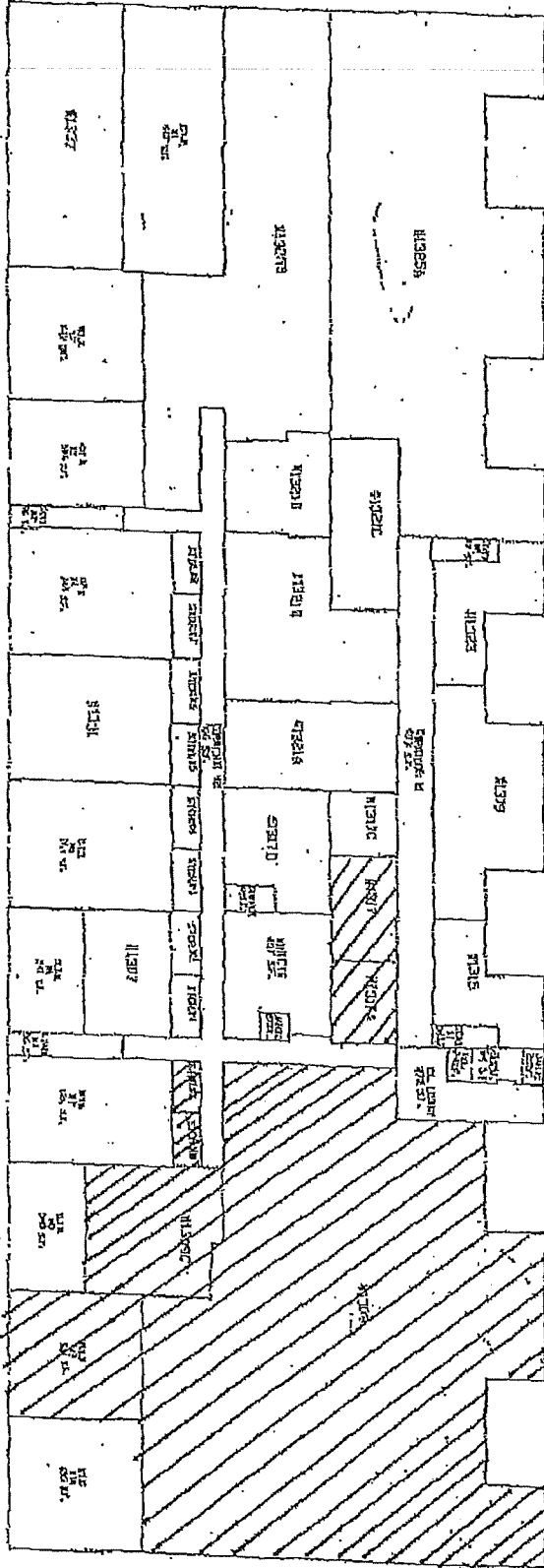
# Exhibit "A"




LEAH RIVER

# INDIA BASIN PLAZA

DATE: JUN 7 21 1997

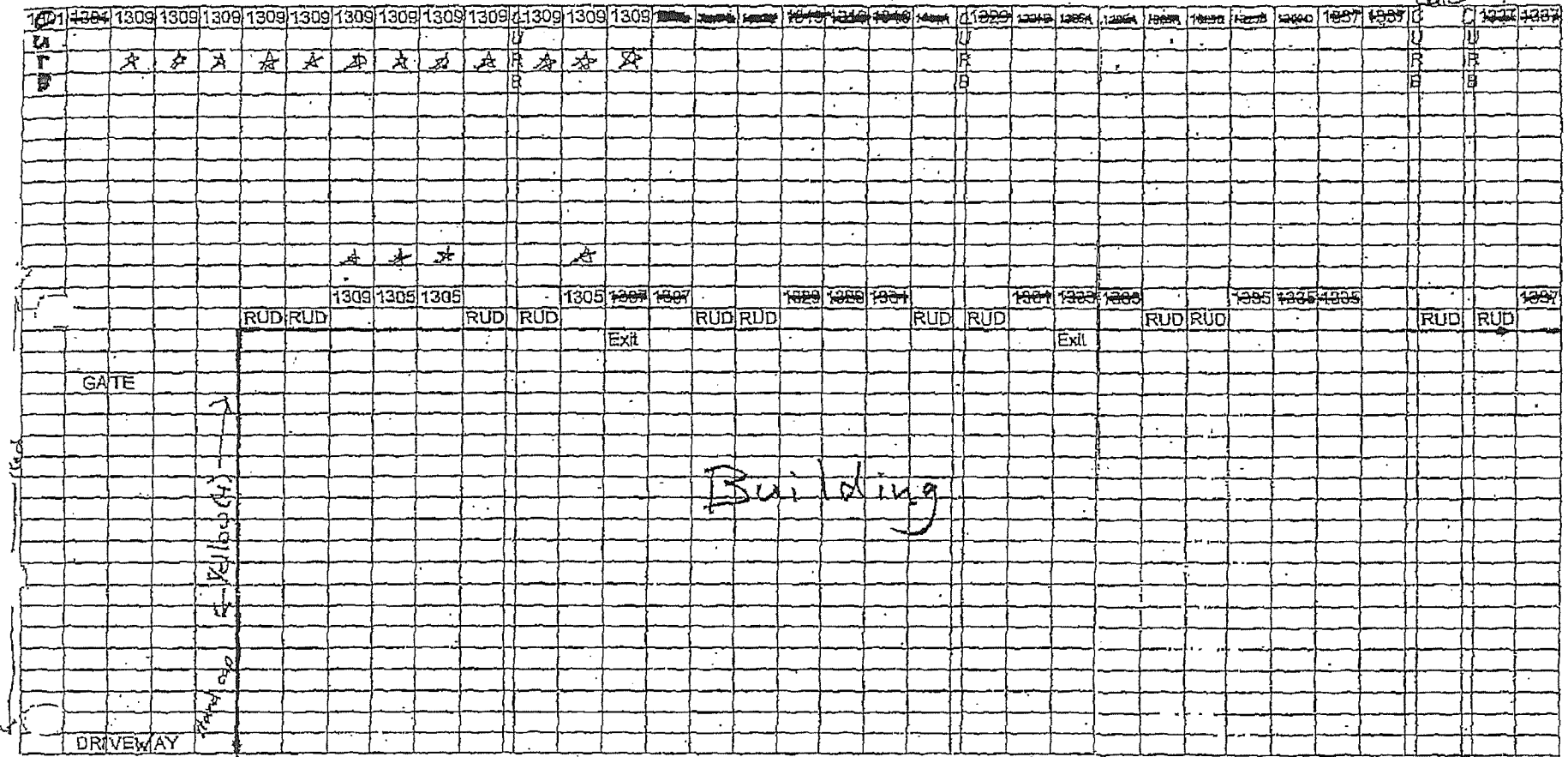


Subject =  Area  
 Premises = **1309 EVANS**

Osborne Associates, Inc.  
 117 West Street, Suite 400  
 New Providence, NJ 07095  
 (201) 261-1000

Exhibit "A-2"

Fairfax Ave



Parking Plan for 1305 + 1309 Evans  
15thhibit "A-3"

Evans Avenue

**EXHIBIT B**

**NOTICE OF COMMENCEMENT DATE**

[Date]

Mr. John Updike  
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 1305 + 1309 Evans located at San Francisco, CA  
\_\_\_\_\_

Dear Mr. Updike:

This letter will confirm 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: \_\_\_\_\_  
John Updike  
Director of Property

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



EXHIBIT C

Intentionally omitted.

EXHIBIT D

STANDARDS FOR JANITORIAL SERVICE

Attached.

STANDARDS FOR JANITORIAL SERVICE

Landlord shall furnish, at its cost, janitorial service to the Premises and Common Areas as follows:

FIVE DAYS PER WEEK  
(EXCEPT HOLIDAYS)

- PREMISES:

Empty wastepaper baskets, trash containers and other receptacles.

Vacuum carpets and rugs (spot clean as required (extra charge). Sweep and dust mop resilient and hard floors. Wet mop spillage.

Dust and wipe clean office furniture, file cabinets, water fountains and coolers, empty waste water. Arrange office furniture.

Dust windowsills and counters.

FIVE DAYS PER WEEK  
(EXCEPT HOLIDAYS)

- COMMON AREAS:

Clean restrooms, sanitize fixtures and floor surfaces. Refill restroom dispensers.

Mop, vacuum, sweep and dust common areas and stairwells as required.

Clean elevators, maintain floor covering.

LOBBIES AND ENTRYWAYS:

Maintain in first class appearance.

SEMI-ANNUALLY -  
WINDOWS:

Wash interior and exterior windows.

ANNUALLY -  
CARPETS:

Shampoo high traffic areas.

OTHER:

---

Landlord shall use a bonded cleaning service.



## San Francisco Department of Public Health

Barbara A. Garcia, MPA  
Director of Health

City and County of San Francisco  
Mark Farrell  
Mayor

February 28, 2018

Honorable Board of Supervisors  
City and County of San Francisco  
City Hall, 1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102

Re: Lease renewal of 1305 + 1309 Evans, San Francisco, CA

Dear Board Members:

Attached for your consideration is a Resolution authorizing the lease renewal on behalf of the Department of Public Health ("DPH") of the premises located at 1305+1309 Evans, San Francisco, CA, comprising of 12,690± square feet with thirteen parking stalls.

Since November, 2002, the DPH has operated administrative and clinical counseling offices including services for children, youth, and families at the premises. Three programs assist families in the southeast portion of San Francisco with behavioral health, foster care, juvenile justice and special education support.

The proposed lease renewal of the premises is for an initial term of five years with an estimated commencement date of May 1, 2018, or upon approval by the Board of Supervisors and Mayor in their respective sole and absolute discretion, whichever occurs later.

In addition, City shall have one additional five-year option period to extend the lease term based on the same terms and conditions, except that the rent shall be adjusted to 95% of the then prevailing fair market rent, but in no event less than the base rent for the lease year prior to commencement of the option term. Said option term is subject to the enactment of a resolution by the Board of Supervisors and Mayor approving and authoring the same.

On behalf of the DPH, the Real Estate Division negotiated a fully serviced lease at the flat, fair market rent of \$38,070 per month (\$3 per square foot) without adjustments during the initial five year term. Additionally, the Landlord is responsible for the costs of all utilities and janitorial service to the premises.



## San Francisco Department of Public Health

Barbara A. Garcia, MPA  
Director of Health

City and County of San Francisco  
Mark Farrell  
Mayor

The DPH recommends approval of the proposed lease renewal.

Funds are available in the following location:

PS Fund ID – 10000  
PS Dept ID – 251962  
PS Project ID – 10001793  
PS Activity ID – 01  
PS Authority - 10000

If you have any questions, please contact David Borgognoni, DPH Operations Team Manager, at 415-255-3405 or Claudine Venegas with the Real Estate Division, at 415-554-9872.

Respectfully,

A handwritten signature in black ink, appearing to be "BA Garcia", written over a faint circular stamp.

Barbara Garcia, Director

cvh:\1305+1309EvansBOScvrltr

Attachments: Resolution, lease (proposed + existing), SFEC Forms 126

cc: John Updike, Director, Claudine Venegas, Real Estate Division

Naomi Kelly, City Administrator, David Borgognoni, DPH






**San Francisco Department of Public Health**

Barbara A. Garcia, MPA  
Director of Health

City and County of San Francisco  
Mark Farrell  
Mayor

February 28, 2018

Honorable Board of Supervisors  
City and County of San Francisco  
City Hall, 1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2018 APR 12 PM 2:17  
BY 

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City and County of San Francisco  
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cvh:\1305+1309EvansBOScvrltr

Attachments: Resolution, lease (proposed + existing), SFEC Forms 126

cc: John Updike, Director, Claudine Venegas, Real Estate Division  
Naomi Kelly, City Administrator, David Borgognoni, DPH



FORM SFEC-126:  
NOTIFICATION OF CONTRACT APPROVAL  
(S.F. Campaign and Governmental Conduct Code § 1.126)

<b>City Elective Officer Information</b> <i>(Please print clearly.)</i>	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors

<b>Contractor Information</b> <i>(Please print clearly.)</i>	
Name of contractor: Raul and Denise Arriaza and The Olson Family Trust	
<i>Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.</i>	
(3) Raul Arriaza, Denise Arriaza, Linda Lee Olson, and Carl Edward Olson	
Contractor address: c/o Bernstein Realty, 4248 23 <sup>rd</sup> Street, San Francisco, CA 94114 ATTN: Pablo Tisker	
Date that contract was approved:	Amount of contract: Initial rent of \$38,070 per month
Describe the nature of the contract that was approved: Five year Lease renewal for 1305-09 Evans, San Francisco, CA 94124, for the Department of Public Health.	
Comments:	

This contract was approved by (check applicable):

the City elective officer(s) identified on this form

a board on which the City elective officer(s) serves: San Francisco Board of Supervisors  
Print Name of Board

the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

<b>Filer Information</b> <i>(Please print clearly.)</i>	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102	E-mail: <u>Board.of.Supervisors@sfgov.org</u>

Signature of City Elective Officer (if submitted by City elective officer)

Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

Date Signed

