

File No. 190455

Committee Item No. 5

Board Item No. 8

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Sub-Committee

Date May 22, 2019

Board of Supervisors Meeting

Date June 4, 2019

Cmte Board

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Resolution |
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| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form |
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| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Budget |
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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Contract/Agreement |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Form 126 – Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
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OTHER (Use back side if additional space is needed)

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Public Utilities Commission Resolution</u> |
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Completed by: Linda Wong Date May 17, 2019

Completed by: Linda Wong Date May 24, 2019

1 [Real Property Lease Extension - Multiple Ownership - 651 Bryant Street - \$577,920
2 Annual Base Rent]

3 **Resolution authorizing the General Manager of the San Francisco Public Utilities**
4 **Commission to exercise a lease extension for the real property located at 651 Bryant**
5 **Street with William H. Banker, Jr., Successor Trustee of The Banker Trust dated April**
6 **20, 1992, Fillmore C. Marks, Trustee of The Fillmore and Barbara Marks 1992 Trust,**
7 **Fillmore Douglas Marks, William C. Marks, and Bradford F. Marks, tenants in**
8 **common, collectively as landlord, for a ten year extension term, commencing on**
9 **November 1, 2019, through October 31, 2029, for the continued use by the San**
10 **Francisco Public Utilities Commission at the monthly base rent of \$48,160 for a total**
11 **annual base rent of \$577,920.**

12
13 WHEREAS, The City currently leases approximately 14,000 square feet of
14 warehouse and office space on an approximate 19,000 square foot lot at 651 Bryant Street
15 (Premises) from Landlord by a Lease dated May 12, 2009 (Lease) authorized by Board of
16 Supervisors Resolution No. 0315-09, a copy of the Lease is on file with the Clerk of the
17 Board of Supervisors under File No. 190455; and

18 WHEREAS, The Premises are occupied by the San Francisco Public Utilities
19 Commission's (SFPUC) Power Enterprise's Utility Field Services (UFS) Division which
20 provides engineering, technical, and field services in the management, operation,
21 maintenance, replacement and new installations for the City-owned electric distribution
22 systems and approximately 25,000 streetlights in San Francisco; and

23 WHEREAS, SFPUC's UFS Division also operates and maintains facilities for the
24 San Francisco International Airport, the Port of San Francisco and on Treasure Island and
25

1 Yerba Buena Island owned by the Treasure Island Development Authority, plus various
2 redevelopment projects; and

3 WHEREAS, The Premises are adjacent to the City-owned facilities at 639 Bryant
4 Street and are critical to the operation of the SFPUC's UFS Division at both properties.

5 WHEREAS, The Lease expires October 31, 2019; and

6 WHEREAS, The Lease includes an option for one additional ten-year extension
7 period at 95% of fair market rent; and

8 WHEREAS, The Real Estate Division ("RED") on behalf of SFPUC, negotiated the
9 95% of fair market monthly base rent to be \$48,160 or \$3.44 per square foot, increasing
10 annually at 3%, net of utilities and janitorial services for the Premises, for the ten-year
11 extension term; and

12 WHEREAS, On April 23, 2019, at a public meeting of the SFPUC, the Commission
13 adopted Resolution No. 19-0081, a copy of which is on file with the Clerk of the Board of
14 Supervisors under File No. 190455, approving the lease extension for the term and at the rent
15 and on specified business terms which are contained in the Lease; and,

16 WHEREAS, The Lease extension is subject to enactment of a resolution by the
17 Board of Supervisors and Mayor; now, therefore, be it

18 RESOLVED, That in accordance with the recommendation of the San Francisco
19 Public Utilities Commission, the General Manager of the San Francisco Public Utilities
20 Commission is hereby authorized to take all actions on behalf of the City and County of
21 San Francisco, as Tenant, to exercise the ten-year extension term commencing on
22 November 1, 2019; and, be it

23 FURTHER RESOLVED, That commencing on November 1, 2019, the monthly rent
24 for the ten-year extension term shall be \$48,160 (\$3.44 per square foot), increasing
25 annually at 3%; and, be it

1 FURTHER RESOLVED, That the City shall continue to pay for its own utilities and
2 janitorial expenses and increases in typical property operating expenses over a 2019 Base
3 Year; and, be it

4 FURTHER RESOLVED, That any action taken by any City employee or official with
5 respect to the exercise of the extension provision contained in the lease is hereby ratified
6 and affirmed; and, be it

7 FURTHER RESOLVED, That the Board of Supervisors authorizes the General
8 Manager of the SFPUC to enter into any amendments or modifications to the lease (including
9 without limitation, the exhibits and exercising the additional extension option pursuant to the
10 terms of the Lease) that the General Manager of the SFPUC determines, in consultation with
11 the City Attorney, are in the best interest of the City, do not increase the rent or otherwise
12 materially increase the obligations or liabilities of the City, are necessary or advisable to
13 effectuate the purposes of the lease or this Resolution, and are in compliance with all
14 applicable laws, including City's Charter; and, be it

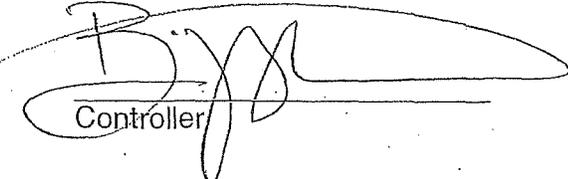
15 FURTHER RESOLVED, That within 30 days of the Lease Extension being fully
16 executed by all parties, the General Manager of the SFPUC shall provide a copy to the
17 Clerk of the Board for inclusion into the official file.

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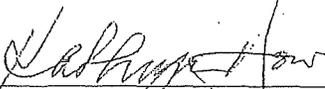
\$385,280 Available
(Monthly rent from November 1, 2019 to June 30, 2020)

Department ID: 298650
PS Project ID: 10029985
Authority ID: 10000
Account ID: 53000
Activity ID: 0006



Controller

RECOMMENDED:



San Francisco Public Utilities Commission
Pursuant to SFPUC Resolution 19-0081

<p>Item 5 File 19-0455</p>	<p>Department: Public Utilities Commission (PUC)</p>
<p>EXECUTIVE SUMMARY</p>	
<p style="text-align: center;">Legislative Objectives</p>	
<ul style="list-style-type: none"> • The proposed resolution would approve a lease extension for the property at 651 Bryant Street, with the San Francisco Public Utilities Commission (SFPUC) as tenant and William H. Banker, Jr. (and others) as landlord, for a term of ten years, from November 2019 through October 2029, and initial annual rent of \$577,920. 	
<p style="text-align: center;">Key Points</p>	
<ul style="list-style-type: none"> • In July 2009, the Board of Supervisors approved a lease for SFPUC, as tenant, at 651 Bryant Street, for a term of ten years, with a ten-year option to extend, and initial annual rent of \$235,200. Under the lease, SFPUC occupies approximately 14,000 square feet of office and warehouse space on an approximately 19,000 square foot lot for the Power Enterprise's Utility Field Services (UFS) division. The site is located adjacent to 645 Bryant Street, which is owned by SFPUC and also occupied by UFS. SFPUC currently pays \$293,724 in annual rent. • The lease expires October 31, 2019, and SFPUC has negotiated with the landlord for initial annual rent of \$577,920, with three percent annual adjustments in the extension term. An appraisal conducted by Colliers International found the proposed rent to be at or below 95 percent of fair market rent, consistent with the provisions of the original lease. While other properties were considered for relocation, the 651 Bryant Street site was determined to be the best site, due to the adjacent SFPUC property, as well as the negotiated rental rate. 	
<p style="text-align: center;">Fiscal Impact</p>	
<ul style="list-style-type: none"> • The proposed lease extension would have initial annual rent of \$577,920 with three percent annual adjustments. Over the ten-year term of the lease extension, SFPUC would pay \$6,625,205 in total rent. 	
<p style="text-align: center;">Recommendation</p>	
<ul style="list-style-type: none"> • Approve the proposed resolution. 	

MANDATE STATEMENT

City Administrative Code 23.27 states that any lease with a term of one year or longer and where the City is the tenant is subject to Board of Supervisors approval by resolution.

BACKGROUND

In July 2009, the Board of Supervisors approved a lease at 651 Bryant Street, with San Francisco Public Utilities Commission (SFPUC) as tenant, for a term of ten years, with a ten-year option to extend, and initial annual rent of \$235,200.¹ Under the lease, SFPUC occupies approximately 14,000 square feet of office and warehouse space on an approximately 19,000 square foot lot.

The space is occupied by SFPUC's Power Enterprise's Utility Field Services (UFS) division, which provides engineering, technical, and field services in the management, operation, maintenance, replacement, and new installations for the City-owned electric distribution systems and 25,000 City streetlights. UFS also operates and maintains facilities for the San Francisco International Airport, Port of San Francisco, and on Treasure Island and Yerba Buena Island, as well as in various redevelopment projects. The site is located next to 645 Bryant Street, an SFPUC-owned site that is also occupied by the UFS division. SFPUC currently pays \$293,724 in annual rent.

The lease expires October 31, 2019 and includes an option to extend for an additional 10 years, through October 2029, with rent set at 95 percent of fair market rent. Real Estate Division staff negotiated the lease terms on behalf of SFPUC for 95 percent of fair market rent to be \$577,920 annually. In April 2019, the SFPUC Commission approved the lease extension.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would authorize the SFPUC General Manager to exercise the option to extend the lease at 651 Bryant Street by 10 years through October 2029, with initial annual rent of \$577,920 and three percent annual adjustments. The proposed resolution would not make any other substantive changes to the lease.

According to Mr. Charlie Dunn, SFPUC Real Estate Services Division, an appraisal conducted by Colliers International found the proposed annual rent to be at or below 95 percent of fair market rent, as stated in the option to extend the lease. The proposed annual rent of \$41.28 per square foot is below the \$45 per square foot Administrative Code threshold requiring an appraisal. According to Mr. Dunn, other properties were considered for relocation, but the 651 Bryant location was determined to be the best site, due to its proximity to the other SFPUC property next door, as well as the negotiated rental rate.

Under the proposed lease extension, SFPUC retains the first right to purchase the property. According to Mr. Dunn, SFPUC would be interested in purchasing the property at some point, although no discussions have occurred with the landlord.

¹ The collective landlords are: William H. Banker, Jr., Successor Trustee of the Banker Trust dated April 20, 1992; Fillmore C. Marks, Trustee of the Fillmore and Barbara Marks 1992 Trust; and Fillmore Douglas Marks, William C. Marks, and Bradford F. Marks, tenants in common.

FISCAL IMPACT

Over the ten-year term of the lease extension, SFPUC would pay \$6,625,205 in total rent. The initial annual rent would be \$577,920, with three percent annual adjustments. The annual rent payments are shown in Table 1 below.

Table 1: Annual Rent Paid by SFPUC

Year	Annual Rent
Year 1 (November 2019 – October 2020)	\$577,920
Year 2 (November 2020 – October 2021)	595,258
Year 3 (November 2021 – October 2022)	613,115
Year 4 (November 2022 – October 2023)	631,509
Year 5 (November 2023 – October 2024)	650,454
Year 6 (November 2024 – October 2025)	669,968
Year 7 (November 2025 – October 2026)	690,067
Year 8 (November 2026 – October 2027)	710,769
Year 9 (November 2027 – October 2028)	732,092
Year 10 (November 2028 – October 2029)	754,055
Total	\$6,625,205

Under the proposed lease extension, SFPUC would pay increases to property expenses (property tax and insurance) above the 2019 base year. According to Mr. Dunn, this amount would be insignificant compared to the base rent.

RECOMMENDATION

Approve the proposed resolution.



**San Francisco
Water Power Sewer**

Services of the San Francisco Public Utilities Commission

Real Estate Services Division
525 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102
T 415.487.5226

March 4, 2019

649-651 Bryant Street Tenancy in Common
GS Management Company
5674 Sonoma Drive
Pleasanton, CA 94566
Attn: William H. Banker, Jr.

RE: Lease dated May 12, 2009 (the "Lease") by and between William H. Banker, Jr., Successor Trustee of The Banker Trust dated April 20, 1992; Fillmore C. Marks, Trustee of The Fillmore and Barbara Marks 1992 Trust; Fillmore Douglas Marks; William C. Marks, and Bradford F. Marks, tenants in common, as landlord (collectively, "Landlord"), and the City and County of San Francisco ("City"), as tenant ("Tenant"). Acknowledgment of Base Rent Determination for Lease Extension at 649-651 Bryant Street, San Francisco, California.

Dear Mr. Banker:

By letter dated December 6, 2018, City exercised its option under the Lease to extend the Lease term for one additional term of ten (10) years pursuant to Section 3.4 [Extension Option] of the Lease. The extended Term commences November 1, 2019 and expires October 31, 2029. Capitalized terms used and not otherwise defined in this letter shall have the same meaning assigned to such terms in the Lease.

Pursuant to the terms of Section 3.5 [Determination of Base Rent for the Extended Term] of the Lease, Landlord and City agreed that, considering all factors, the "prevailing market rate" for annual Base Rent for the first year of the Extended Term shall be \$577,920 (approximately \$41.28 per sq. ft.) and monthly Base Rent payments shall be \$48,160 (approximately \$3.44 per sq. ft.) Based on their assessment of the prevailing market rate, the parties agreed that the Base Rent for each ensuing year in the Extended Term shall increase annually by three percent (3%). The parties also agreed that Base Year for calculation of property taxes during the Extended Term shall be 2019/2020 and the Base Year for calculation of insurance shall be 2019.

Based on such determinations and agreements, the monthly Base Rent payable by Tenant during the Extended Term is shown on the table below:

<u>Year</u>	<u>Date From</u>	<u>Date To</u>	<u>Monthly Rent</u>
1	November 1, 2019	October 31, 2020	\$48,160.00
2	November 1, 2020	October 31, 2021	\$49,604.80

OUR MISSION: To provide our customers with high-quality, efficient and reliable water, power and sewer services in a manner that values environmental and community interests and sustains the resources entrusted to our care.

London N. Breed
Mayor

Vince Courtney
President

Ann Moller Caen
Vice President

Francesca Vietor
Commissioner

Anson Moran
Commissioner

Ike Kwon
Commissioner

Harlan L. Kelly, Jr.
General Manager



649-651 Bryant Street Tenancy in Common
GS Management Company
March 4, 2019
Page 2

3	November 1, 2021	October 31, 2022	\$51,092.94
4	November 1, 2022	October 31, 2023	\$52,625.73
5	November 1, 2023	October 31, 2024	\$54,204.50
6	November 1, 2024	October 31, 2025	\$55,830.64
7	November 1, 2025	October 31, 2026	\$57,505.56
8	November 1, 2026	October 31, 2027	\$59,230.73
9	November 1, 2027	October 31, 2028	\$61,007.65
10	November 1, 2028	October 31, 2029	\$62,837.88

In addition, as provided in Section 23.1(c) [Notices] of the Lease, City and Landlord each desire to update the "Address for Notices and Key Contact" information contained in Section 1 [Basic Lease Information]. Accordingly, the respective addresses and/or contact information for notice under the Lease are updated as follows:

City:

Real Estate Services Division
San Francisco Public Utilities
Commission
525 Golden Gate Avenue, 10th Floor
San Francisco, California 94102
Attn: Real Estate Director
Telephone: (415) 487-5210
E-mail: RES@sfgwater.org

and

City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, California 94102
Telephone: (415) 554-9823
Attn: Andrico Penick, Director of
Property
E-mail: andrico.penick@sfgov.org

with a copy to:

Deputy City Attorney
Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4682
Attn: Real Estate & Finance Team
E mail: richard.handel@sfcityatty.org

Key Contacts for City:

Charlie Dunn
Phone: (415) 554-1874

or

649-651 Bryant Street Tenancy in Common
GS Management Company
March 4, 2019
Page 3

Tony Bardo
Phone: (415) 554-1522

Notice Address of Landlord: 649-651 Bryant Street Tenancy in Common
c/o GS Management Company
5674 Sonoma Drive
Pleasanton, CA 94566
Phone: (925) 734-0280

Key Contacts for Landlord: William H. Banker, Jr.
Phone: (510) 604-6080
or
William C. Marks
Phone: (415) 385-1163

All other terms and conditions of the original Lease shall remain unchanged.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, SELLER ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THE MATTERS STATED IN THIS LETTER UNLESS AND UNTIL AN APPROPRIATE RESOLUTION OF CITY'S PUBLIC UTILITIES COMMISSION (THE "SFPUC") SHALL HAVE BEEN DULY ADOPTED APPROVING THE MATTERS STATED IN THIS LETTER AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED BY THIS LETTER. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY UNDER THIS LETTER ARE CONTINGENT UPON THE DUE ENACTMENT OF SUCH RESOLUTION, AND THE MATTERS STATED IN THIS LETTER SHALL BE NULL AND VOID IF THE SFPUC DOES NOT APPROVE THE MATTERS STATED IN THIS LETTER, AT ITS SOLE DISCRETION. APPROVAL OF ANY OF THE MATTERS CONTEMPLATED BY THIS LETTER BY ANY OTHER 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.

If you have any questions regarding this matter, please contact Charlie Dunn at (415) 554-1874 or Tony Bardo at (415) 544-1522 of SFPUC Real Estate Services. To indicate Landlord's agreement with both matters stated in this letter, please have this letter executed on behalf of Landlord in the space provided below and return it to us. Thereafter, the SFPUC will seek the required approval of the SFPUC. This letter may be executed simultaneously in multiple originals, each of which shall be deemed an original, without the production of the other such originals and facsimile, PDFs, or electronic signatures of this document shall be treated as originals.

649-651 Bryant Street Tenancy in Common
GS Management Company
March 4, 2019
Page 4

We appreciate your cooperation in this matter.

Respectfully,

City:
The City and County of San Francisco,
a municipal corporation,
acting by and through its Public Utilities Commission

By: _____
Harlan L. Kelly, Jr., General Manager
San Francisco Public Utilities Commission

Agreed, and Accepted:

Landlord:

CBC Colorado Springs, LLC, a Colorado limited liability company

By: Carolyn B. Cresswell

Name: Carolyn Banker Cresswell

Title: Manager and Member

Anne Banker Trotter, Trustee of the Banker Trotter Revocable Trust

William H. Banker, Jr. Trustee of the Banker Revocable Trust

Additional Landlord signatures continued on the next page

649-651 Bryant Street Tenancy in Common
GS Management Company
March 4, 2019
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We appreciate your cooperation in this matter.

Respectfully,

City:
The City and County of San Francisco,
a municipal corporation,
acting by and through its Public Utilities Commission

By: _____
Harlan L. Kelly, Jr., General Manager
San Francisco Public Utilities Commission

Agreed, and Accepted:

Landlord:

CBC Colorado Springs, LLC, a Colorado limited liability company

By: _____

Name: _____

Title: _____

Anne Banker Trotter

Anne Banker Trotter, Trustee of the Banker Trotter Revocable Trust

William H. Banker, Jr. Trustee of the Banker Revocable Trust

Additional Landlord signatures continued on the next page

649-651 Bryant Street Tenancy in Common
GS Management Company
March 4, 2019
Page 4

We appreciate your cooperation in this matter.

Respectfully,

City:
The City and County of San Francisco,
a municipal corporation,
acting by and through its Public Utilities Commission

By: Harlan L. Kelly, Jr., General Manager
San Francisco Public Utilities Commission

Agreed, and Accepted:

Landlord:

CBC Colorado Springs, LLC, a Colorado limited liability company

By: _____

Name: _____

Title: _____

Anne Banker Trotter, Trustee of the Banker Trotter Revocable Trust

William H. Banker, Jr.
William H. Banker, Jr. Trustee of the Banker Revocable Trust

Additional Landlord signatures continued on the next page

649-651 Bryant Street Tenancy in Common
GS Management Company
March 4, 2019
Page 5

FDM Ventures, LLC, a California limited liability company, as successor in interest to Fillmore D. Marks

By: Fillmore D. Marks
Name: Fillmore D. Marks
Title: Manager

BFM Ventures, LLC, a California limited liability company, as successor in interest to Bradford F. Marks

By: _____
Name: _____
Title: _____

WCM Ventures, LLC, a California limited liability company, as successor in interest to William C. Marks

By: William C. Marks
Name: William C. Marks
Title: Manager

649-651 Bryant Street Tenancy in Common
GS Management Company
March 4, 2019
Page 5

FDM Ventures, LLC, a California limited liability company, as successor in interest to Fillmore D. Marks

By: _____

Name: _____

Title: _____

BFM Ventures, LLC, a California limited liability company, as successor in interest to Bradford F. Marks

By: Bradford F. Marks

Name: Bradford F. Marks

Title: Manager

WCM Ventures, LLC, a California limited liability company, as successor in interest to William C. Marks

By: _____

Name: _____

Title: _____

LEASE

between

William H Banker, Jr., Successor Trustee
of The Banker Trust dated April 20, 1992;
Fillmore C. Marks, Trustee
of The Fillmore and Barbara Marks 1992 Trust;
Fillmore Douglas Marks; William C. Marks and Bradford F. Marks,
as Landlord

and

CITY AND COUNTY OF SAN FRANCISCO,
as Tenant

For the lease of
649-651 Bryant Street
San Francisco, California

May 12, 2009

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- EXHIBIT B – Appraisal Procedure
- EXHIBIT C – Scope of Work for the Access Control and Alarm Monitoring System
- EXHIBIT D – Standards for Low Emitting Materials for Leasehold Improvements
- EXHIBIT E – Disclosure of Known Conditions on the Property
- EXHIBIT F – Copy of Recorded Agreement Granting Easement
- EXHIBIT G – Acknowledgment of Easement Holder and Easement Holder's Tenant
- EXHIBIT H – Form of Memorandum of Lease
- EXHIBIT I – City's Certificate of Self Insurance

LEASE

THIS LEASE (this "Lease"), dated for reference purposes only as of May 12, 2009, is by and between William H. Banker, Jr., Successor Trustee of The Banker Trust dated April 20, 1992, Fillmore C. Marks, Trustee of The Fillmore and Barbara Marks 1992 Trust, Fillmore Douglas Marks, William C. Marks and Bradford F. Marks, as tenants in common (jointly and severally, "Landlord"), doing business as MARKS PROPERTY MANAGEMENT, 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:	May 12, 2009
Landlord:	William H. Banker, Jr., Successor Trustee of The Banker Trust dated April 20, 1992; Fillmore C. Marks, Trustee of The Fillmore and Barbara Marks 1992 Trust; Fillmore Douglas Marks; William C. Marks and Bradford F. Marks
Tenant:	City and County of San Francisco
Building (<u>Section 2.1</u>):	649-651 Bryant Street, San Francisco, California, a stand-alone building upon a lot area of approximately 19,000 square feet
Property (<u>Section 2.1</u>):	The Building, the parcel of land upon which the Building is located and all other improvements on or appurtenances to such land
Area of Building (<u>Section 2.1</u>):	Approximately 14,000 gross square feet on the ground floor and mezzanine
Estimated Commencement Date (<u>Section 3.1</u>):	<u>July 10</u> , 2009
Initial Term expiration date:	Last day of the tenth (10th) full Lease Year (as defined below under "Base Rent")
Extension Options (<u>Section 3.4</u>):	One (1) additional term of ten (10) years, exercisable by City by notice to Landlord given not less than 270 days in advance, with Base Rent at 95% of prevailing market rent.
Base Rent (<u>Section 4.1</u>):	Annual Base Rent for first Lease Year: \$235,200 (\$16.80 per sq. ft.) Monthly payments: \$19,600 (\$1.40 per sq. ft.)

On the first day of the second Lease Year of the Initial Term, and on the first day of each succeeding Lease Year during the Initial Term, Base Rent shall increase two and one-half percent (2.5%) per year as set forth below:

Lease Year	Annual Base Rent	Annual Square Foot Rental Rate	Monthly Base Rent Payment
2	\$241,080	\$17.22	\$20,090
3	\$247,104	\$17.65	\$20,592
4	\$253,284	\$18.09	\$21,107
5	\$259,620	\$18.54	\$21,635
6	\$266,112	\$19.00	\$22,176
7	\$272,760	\$19.48	\$22,730
8	\$279,576	\$19.97	\$23,298
9	\$286,560	\$20.47	\$23,880
10	\$293,724	\$20.98	\$24,477

The first "Lease Year" shall commence on the Commencement Date and end on the last day of the twelfth (12th) full calendar month thereafter. Each succeeding period of twelve (12) full calendar months during the Term shall comprise a Lease Year, except that the final Lease Year shall end on the date the Lease expires or sooner terminates, regardless of whether it includes twelve (12) full calendar months.

Additional Charges (Section 4.3):

Landlord shall pay for real property taxes and building insurance, except that City shall pay increases in Real Estate Taxes and Building Insurance Expense above the Base Year amounts.

Base Year (Section 4.4):

Calendar year 2009.

Use (Section 5.1):

Warehouse, storage and associated public program use by the San Francisco Public Utility commission ("SFPUC"), and on an incidental basis only office use and other related uses.

Leasehold Improvements (<u>Section 6</u>)	Landlord will provide a new roof, an opening with pass-through clearance approximately sixteen feet, eight inches (16', 8") wide in the brick wall between the storage yard on the adjacent property being used by SFPUC and the parking lot behind the Building, an access control system and the other Leasehold Improvements, as defined in <u>Section 6.1</u> .
Utilities (<u>Section 9.1</u>):	City shall provide utilities at its cost.
Services (<u>Section 9.2</u>):	City shall provide janitorial services and garbage removal at its cost.
Notice Address of Landlord (<u>Section 23.1</u>):	Marks Property Management c/o Banker, Marks and Kirk 1721 Broadway, Suite 202 Oakland, CA 94612 Fax No.: 510-271-7927
Key Contact for Landlord:	Elaine Kirk
Landlord Contact Telephone No.:	510-271-0600
Notice Address for Tenant (<u>Section 23.1</u>):	Real Estate Division 25 Van Ness Avenue, Suite 400 San Francisco, CA 94102 Attn: Amy L. Brown, Director of Property Fax No.: 415-552-9216
with a copy to:	San Francisco Public Utilities Commission, 1145 Market Street, San Francisco, CA 94103 Attn: Robert Reiter Fax No.: 415-487-5200
and to:	Office of the City Attorney City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102-4682 Attn: Carolyn J. Stein Deputy City Attorney Fax No.: 415-554-4755
Key Contact for Tenant:	Sue Black Utility Services Manager, San Francisco Public Utilities Commission 1145 Market Street, 4 th floor San Francisco, CA 94103
Tenant Contact Telephone No.:	415-554-0705 (business hours) 415-331-1034 (non-business hours)
Brokers (<u>Section 23.9</u>):	Michael Taquino, Grubb & Ellis Company

Other Noteworthy Provisions
(Article 22):

Easement Across Parking Lot and
First Right of Refusal to Purchase

2. PROPERTY

Landlord leases to City and City leases from Landlord, subject to the provisions of this Lease, the building identified in the Basic Lease Information (the "Building"), the parcel of land upon which the Building is located and all other improvements on or appurtenances to such land (together with the Building, the "Property"). Throughout the Term, City shall have the exclusive right to use the parking lot and any walkways, driveways and other exterior areas that are part of the Property, subject only to the Easement described in Section 22.1.

3. TERM

3.1 Term of Lease

The Property is 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 Landlord shall have delivered the Property to City with the Leasehold Improvements (as defined below) having been Substantially Completed [as defined in Subsection 6.1(f) (Construction Schedule: Substantial Completion)] by Landlord and accepted by City pursuant to Section 6.1 (Landlord's Obligation to Construct Improvements), and City's Mayor and Board of Supervisors and Public Utilities Commission shall have approved this Lease, in their respective sole and absolute discretion, as further provided in this Lease. If this Lease has not been approved by City's Mayor and Board of Supervisors and Public Utilities Commission by the date that is ninety (90) days after Landlord executes and delivers the Lease to City, Landlord shall have the right, at its option, without any further liability under this Lease, upon written notice to City, given any time thereafter but prior to such approvals having been obtained, to terminate 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 Term beyond the Initial Term pursuant to Section 3.4 (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 expires or sooner 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 A attached hereto, confirming the actual Commencement Date, but Landlord's failure to do so shall not affect the commencement of the Term.

3.3 Delay in Delivery of Possession

Landlord shall use commercially reasonable efforts to deliver possession of the Property with all of the Leasehold Improvement Work Substantially Completed within forty-five (45) days after the Effective Date, as defined in Section 23.31 (Effective Date). However, if Landlord is unable to deliver possession of the Property as provided above, then, subject to the provisions of this Section below, the validity of this Lease shall not be affected by such inability to deliver possession except that City's obligations to pay Base Rent or any other charges shall not commence until such time as Landlord has delivered the Property as required under this Lease. If the Term commences later or earlier than the Estimated Commencement Date, this Lease shall

nevertheless expire on the Expiration Date, unless sooner terminated pursuant to the provisions under this Lease. If Landlord is unable to deliver possession of the Property to City as required hereunder within sixty (60) days after the Effective Date, then City may, at its option, terminate this Lease, without any further liability under this Lease, upon written notice to Landlord.

3.4 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 the Base Rent for the Extended Term shall be adjusted to ninety-five percent (95%) of the prevailing market rent at the beginning of the Extended Term, as determined pursuant to Section 3.5 (Determination of Base Rent for the Extended Term). City may exercise the Extension Option, if at all, by giving written notice to Landlord no later than two hundred and seventy days (270) days prior to expiration of the Initial Term; provided, however, if on the date of Landlord's receipt or deemed receipt of such notice or on the date the Extended Term is scheduled to commence City is in default under this Lease beyond any applicable notice and cure period, Landlord may reject such exercise by delivering written notice thereof to City promptly after such failure to cure.

3.5 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 warehouse properties, with office space, of comparable size and location to the Property, with buildings similar in age, location and quality to the Building, and including adjacent parking, situated within the South of Market Street 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) size of the Building and adjacent parking area 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 Property. 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, without disclosing their appraisals to the third appraiser. The third appraiser will within thirty (30) days of his or her selection make an independent determination of the prevailing market rate without seeing the first two appraisals and submit such determination to Landlord and City. The determination of Landlord's appraiser or City's appraiser, whichever is closer to the third appraiser's determination, shall be deemed 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. If the Director of Property revokes the exercise of the Extension Option by City, Tenant shall pay the cost of Landlord's appraiser and Landlord's one-half of the cost of the third appraiser.

(e) All appraisers specified herein shall be "MAI" designated members of the Appraisal Institute or commercial real estate brokers with not less than five (5) years' experience with leases of commercial properties similar to the Property in the Reference Area. Subject to Section 3.5(d) above, Landlord and City shall each 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. 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 specifically 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 Adjustments in Base Rent

On each date specified in the Basic Lease Information for the adjustment of Base Rent (an "Adjustment Date"), the Base Rent payable under Section 4.1 shall be adjusted to equal the corresponding amount set forth in the Basic Lease Information.

4.3 Additional Charges

Each Tax Year during Term, City shall pay to Landlord as additional rent in accordance with this Article 4, the amount, if any, by which Real Estate Taxes increase over Real Estate Taxes paid by Landlord for the Base Year. Each Expense Year during the Term, City shall pay to Landlord as additional rent the amount, if any, by which Building Insurance Expense paid by Landlord for the Expense Year exceeds the Building Insurance Expense paid by Landlord during the Base Year (such increases, together with the increases in Real Estate Taxes, collectively referred to as "Additional Charges"). All such Additional Charges shall be payable to Landlord at the place where the Base Rent is payable. Landlord shall have the same remedies for a default in the payment of any Additional Charges as for a default in the payment of Base Rent. The Base Rent and Additional Charges are sometimes collectively referred to below as "Rent."

4.4 Definitions

For purposes hereof, the following terms shall have the meanings hereinafter set forth:

(a) "Base Year" means the year specified in the Basic Lease Information.

(b) "Building Insurance Expense" means the premiums paid by Landlord for the property insurance policy described in Section 17.2. Premiums covering multiple years or an annual term that commences after January 1 or ends before December 31 in an Expense Year shall be prorated on the basis of a 365-day year. Further, if Landlord carries a type of coverage in an Expense Year that was not carried in the Base Year, such as earthquake, flood or terrorism coverage, the Base Year Building Insurance Expense shall be deemed increased by the amount such coverage would have cost in the Base Year, if that can be reasonably ascertained from the carrier. If the Base Year cost of such additional coverage cannot be ascertained from the carrier, it shall be deemed to be the cost of such coverage in the Expense Year in which Landlord first purchases the coverage, adjusted to reflect the amount it would have cost in the Base Year assuming the cost of the premium changed during the interval by a percentage equal to the percentage change between the CPI in effect on January 1 of the Base Year and the CPI in effect on January 1 of the Expense Year. "CPI" as used herein means the Consumer Price Index for All Urban Consumers (1982-84 = 100) San Francisco-Oakland-San Jose, California, All Items, published by the Bureau of Labor Statistics of the U.S. Department of Labor or such successor to such index as may be designated by the Bureau.

(c) "Expense Year" means each calendar year during the Term after the Base Year.

(d) "Real Estate Taxes" means all taxes, assessments and charges levied upon or with respect to the Property, or Landlord's interest in the Property. Real Estate Taxes shall include, without limitation, all general real property taxes and general and special assessments, charges, fees, or assessments for transit, housing, police, fire, or other governmental services thereof, service payments in lieu of taxes that are now or hereafter levied or assessed against Landlord by the United States of America, the State of California or any political subdivision thereof, public corporation, district, or any other political or public entity, and shall also include any other tax, fee or other excise, however described, that may be levied or assessed as a substitute for, or as an addition to, in whole or in part, any other Real Estate Taxes. With regard to assessments that property owners have the option of either retiring by payment of a lump sum or alternately paying over a period of years, Landlord shall be deemed to have elected to pay such assessment over the maximum number of years allowable, and only the then current year's payment shall be included as an item of Real Estate Taxes.

Notwithstanding the foregoing, Real Estate Taxes shall exclude (1) franchise, transfer, inheritance, or capital stock taxes or income taxes measured by the net income of Landlord from all sources unless, due to a change in the method of taxation, any of such taxes is levied or assessed against Landlord as a substitute for, or as an addition to, in whole or in part, any other tax that would otherwise constitute a Real Estate Tax, (2) any penalties, fines, interest or charges attributable to the late payment of any taxes, except to the extent attributable to City's failure to pay its portion of Real Estate Taxes when required hereunder, (3) any personal property taxes payable by City hereunder, or (4) any increase in taxes, assessments and charges that would otherwise constitute Real Estate Taxes to the extent the increase is due to a reassessment of the Property upon a "change in ownership" as defined in California Revenue and Taxation Code Section 60 et seq. ("Proposition 13 Increase") (however, increases attributable to annual inflationary increases in assessed value as described in Revenue & Taxation Code Section 51 shall not be considered part of the "Proposition 13 Increase").

(e) "Tax Year" means each calendar year during the Term after the Base Year.

4.5 Payment of Increases in Real Estate Taxes

During the Term, commencing at the beginning of the first Tax Year, City shall pay to Landlord each month, as Additional Charges, one twelfth (1/12) of the amount, if any, by which Real Estate Taxes for the then-current Tax Year exceed Real Estate Taxes for the Base Year. City shall make such payments in advance, in an amount reasonably estimated by Landlord in reasonable detail in a writing delivered to City (the "Estimated Tax Increase"). Upon City's request, Landlord shall provide City with a copy of the tax bills covering the Base Year. With reasonable promptness not to exceed thirty (30) days after Landlord has received the tax bills for any Tax Year, Landlord shall furnish City with a copy of such tax bill accompanied by a statement ("Landlord's Tax Statement") setting forth the amount of Real Estate Taxes for such Tax Year and the amount by which such Real Estate Taxes exceed the Real Estate Taxes for the Base Year (the "Actual Tax Increase"). If the Actual Tax Increase for such Tax Year exceeds the Estimated Tax Increase paid by City for such Tax Year, City shall pay to Landlord (whether or not this Lease has terminated) the difference within thirty (30) days after the receipt of Landlord's Tax Statement. If the total amount of Estimated Tax Increase paid by City for such Tax Year exceeds the Actual Tax Increase for such Tax Year, such excess shall be credited against the next installments of Real Estate Taxes due from City hereunder, or at City's option, such excess shall be refunded to City.

4.6 Payment of Increases in Building Insurance Expense.

During the Term, commencing at the beginning of the first Expense Year, City shall pay to Landlord each month, as Additional Charges, one twelfth (1/12) of the amount, if any, by which Building Insurance Expense for each Expense Year exceeds Building Insurance Expense for the Base Year. City shall make such payments in advance, in an amount reasonably estimated by Landlord in reasonable detail in a writing delivered to City. Upon City's request, Landlord shall provide City with a copy of the premium invoice(s) covering the Base Year. With reasonable promptness not to exceed thirty (30) days after Landlord has received from the insurer the premium invoice(s) for any Expense Year, Landlord shall furnish City with a copy of such invoice accompanied by a statement ("Landlord's Expense Statement") setting forth the amount of Building Insurance Expense for such Expense Year and the amount by which such Building Insurance Expense exceeds the Building Insurance Expense for the Base Year (the "Actual Expense Increase"). If the Actual Expense Increase for such Expense Year exceeds the estimated Building Insurance Expense increases paid by City for such Expense Year, City shall pay to Landlord (whether or not this Lease has terminated) the difference within thirty (30) days after the receipt of the insurer's invoice and Landlord's Expense Statement. If the total amount of estimated Building Insurance Expense increases paid by City for such Tax Year exceeds the Actual Expense Increase for such Expense Year, such excess shall be credited against the next installments of Building Insurance Expense due from City hereunder, or at City's option, such excess shall be refunded to City. With the premium invoices, Landlord shall provide City with such information and documentation, if any, as may be necessary to confirm the Actual Expense Increase in compliance with this Article (such as, without limitation, the basis for Landlord's determination pursuant to Subsection 4.4(b) of the portion of the premium to be included in the Actual Expense Increase for a type of coverage carried in an Expense Year that was not carried in the Base Year).

4.7 Proration

If the Commencement Date or Expiration Date shall occur on a date other than the first or last day of a Tax Year or Expense Year, City's share of Additional Expenses for the Tax Year or Expense Year in which the Commencement Date or Expiration Date occurs, shall be prorated based on a three hundred sixty-five (365)-day year.

4.8 Audits

City shall have the right, upon not less than five (5) business days' notice to Landlord, to audit the books and records of the Building related to Building Insurance Expense and Real Estate Taxes. If such audit discloses any discrepancies that would result in a reduction of City's share of Additional Expenses for any Tax Year or Expense Year, Landlord shall promptly refund to City the amount of any overpayment by City. City shall pay the cost of such audit, provided that if such audit discloses any discrepancies that result in a reduction of City's share of Additional Expenses by at least One Thousand Five Hundred Dollars (\$1,500.00) (such amount to increase by a percentage equal to the percentage increase, if any, of the CPI in effect on January 1 of the Tax Year and Expense Year in question over the CPI that was in effect on January 1, 2009) for any Tax Year or Expense Year, then Landlord shall reimburse City for the costs of such audit, including travel expenses to audit Property records maintained outside the San Francisco Bay Area.

4.9 Records

Landlord shall maintain at the Building or at its offices in the San Francisco Bay Area (unless Landlord sells the Property in which event such records shall be maintained in the continental United States) in a safe, complete and organized manner all of its records pertaining to this Lease and Real Estate Taxes, Building Insurance and any other charges paid by City pursuant hereto, for a period of not less than three (3) years following expiration of the Term. Landlord shall maintain such records on a current basis and in sufficient detail to facilitate adequate audit and review thereof. All such books and records shall be available for inspection, copying and audit by City and its representatives, at City's expense, subject to the provisions of Section 4.8 above.

5. USE

5.1 Permitted Use

City may use the Property for the Use 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 uninterrupted access to the Building and the exterior areas of the Property twenty-four (24) hours per day, seven (7) days per week to the maximum extent reasonably possible, including, without limitation, during any power outages affecting the Property; provided, however, that Landlord may, after consultation with the Tenant Contact described in the Basic Lease Information (or any substitute contact person designated by City), interrupt City's access to the Property or portions thereof in the event of an immediate threat of the Property or portions thereof being rendered unsafe for human occupancy or use. If City's use of any part of the Building or parking lot or access thereto is interrupted as a result of any portion of the Property being rendered unsafe for human use or occupancy due to Landlord's failure to comply with its obligations under this Lease or due to the acts or omissions of the Easement Holder (as defined in Section 22.1) or its Agents or Invitees, then Landlord shall immediately undertake all necessary steps to correct such condition. In the event such condition continues for three (3) business days and impairs City's ability to carry on its business at the Property, the Rent payable hereunder shall thereafter be abated to the extent Landlord's default resulted in an interference with City's ability to carry on its business at the Property. If as a result of any such default by Landlord or act or omission of the Easement Holder, City's ability to carry on its business at the Property is substantially impaired for thirty (30) days or more after City's use is first impaired, then City shall have the right, without limiting any of its other rights under this

Lease (and subject to Section 15.4), 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 Article 12 (Damage and Destruction) hereof.

6. LEASEHOLD IMPROVEMENTS

6.1 Landlord's Obligation to Construct Improvements

(a) Leasehold Improvements

At its sole cost, Landlord, through its contractor or contractors shall perform the following work pursuant to the Construction Documents (as defined in this Section below) and in accordance with the provisions of this Article 6. City shall have the right to approve Landlord's contractors engaged by Landlord for Leasehold Improvement Work after the Effective Date.

(i) Remove all of the prior tenant's improvements (including but not limited to such tenant's rooftop HVAC units, the track lighting, the boiler and the air compressor) and repair, patch and paint over any damage caused by the removal, but excluding the following items which shall not be removed: (A) existing walls, doors and wall coverings that are located in the office and mezzanine; (B) the kitchen area cabinets and sink, (C) one pony wall that parallels the office, and wood shelving along one wall in the warehouse area (unless such items must be removed to facilitate asbestos or lead removal); and (D) any conduit.

(ii) Remove from the interior of the Building all asbestos and asbestos-containing material ("ACM") identified in the Asbestos Survey Report dated September 24, 2008, prepared by Chris Yama for Marks Property Management. Notwithstanding the foregoing, any asbestos or ACM located under the base of interior walls need not be removed as part of the Leasehold Improvement Work provided it is encapsulated in place. If during the Term City proposes to move or remove any such internal wall or proposes any other Alteration that would expose or potentially disturb the remaining internal asbestos or ACM, or would otherwise require removal or remediation of such remaining asbestos or ACM under applicable laws, Landlord agrees that that fact shall not be a reasonable basis for withholding consent to the proposed Alteration, and if the proposed Alteration is permitted under this Lease Landlord, at its sole cost, will cause the asbestos or ACM to be removed by a qualified contractor. City has agreed that Landlord is not required to, and Landlord will not, as part of the Leasehold Improvement Work remove any asbestos located on the exterior of the Building, except that Landlord shall encapsulate the asbestos located on the roof of the Building as part of the Leasehold Improvement Work.

As part of the Leasehold Improvement Work Landlord shall also: (w) remove from the interior of the Building all lead and lead-based paint identified in the report dated September 22, 2008, prepared by ACC Environmental Consultants and addressed to Elaine Kirk of Banker, Marks & Kirk; (x) have final asbestos sampling conducted and documented by a qualified third party; (y) replace removed flooring with sheet vinyl, vinyl tile or carpet in a color acceptable to City (provided City specifies such color in writing within 10 business days following written request by Landlord and provided, further, if the cost of replacement carpeting exceeds the cost of vinyl flooring, Landlord shall notify City of the cost difference when Landlord requests City's color choice, and City shall pay Landlord one-half of the excess cost

within thirty (30) days after receipt of Landlord's demand accompanied by reasonable back-up documentation); and (z) replace all other removed surfaces and items with like or like kind that meet City's requirements, provided City specifies such like kind in writing within 10 business days following written request by Landlord.

(iii) Repair any damage caused by the removal of the prior tenant's improvements and the asbestos and lead removal.

(iv) Provide newly painted interior and exterior walls, ceilings in the office areas, and remaining cabinetry, using low-VOC paint in a color or colors approved by City (provided City specifies such color in writing within 10 business days following written request by Landlord). On the Building exterior, Landlord shall use exterior paint that is resistant to graffiti if such paint is available in low-VOC form.

(v) Clean all restrooms and windows, and deliver floors in clean condition.

(vi) With respect to existing HVAC units (except the prior tenant's units, which have been removed) have all ducts cleaned and filters replaced and place the units in sound working order.

(vii) Construct new opening with pass-through clearance approximately sixteen feet, eight inches (16', 8") wide in the brick wall separating the Property from City's adjacent 639 Bryant Street yard, as more particularly specified in the Plans. Upon termination of Lease, City will close the opening as provided in Section 20.

(viii) Install an access control system as shown on the plans attached as Exhibit C, including one new card access controlled sliding gate across the new opening in the brick wall, a second new card access controlled sliding gate at the Welsh Street entrance, and installation of all safety loops, security cabling, gates, gate operators/motors, associated conduit, junction boxes, raceway systems and 120 VAC outlets as necessary to provide a complete and functional system. The gate operators shall be Model SlideDriver 40 from HySecurity. At City's cost, City shall cause its own contractor to install the cameras, hardware and software associated with the security system for the gates (City's "Alarm Monitoring System Components"). Landlord and City shall closely coordinate the sequencing and scheduling of their respective contractors' work described in this subparagraph and Landlord's work described in the following subparagraph (ix), in order to enable City's contractor to install the Alarm Monitoring System Components at the appropriate time as provided in Section 6.2.

(ix) Fill potholes and cracks, if any, and slurry seal and restripe the parking area, after the sliding gates and associated equipment and conduits have been installed. Also stripe and/or physically delineate the route to be used by the Easement Holder (as defined in Section 22.1) through the parking area.

(x) Modify the ADA accessible ramp located at the rear of the Building to bring it into compliance with applicable disability access laws.

(xi) Install new, insulated white roof, using non-PVC roofing material, including a thermoplastic polyolefin roof membrane.

(xii) [Intentionally left blank]

(xiii) Repair and/or replace door and window hardware, including and not limited to the overhead door and its motor unit. Any replacement item shall be of equal or greater quality than the item replaced.

(xiv) Use low VOC materials for any paints, finishes, adhesives, floor coverings and furniture that may be part of the Leasehold Improvements, in accordance with the standards set forth in attached Exhibit E.

Such work and installations are referred to collectively as the "Leasehold Improvement Work" and "Leasehold Improvements."

(b) Plans and Specifications

Within ten (10) business days after the Effective Date (as defined in Section 23.31), Landlord, at its sole cost and expense shall cause its contractor(s), approved by City, to prepare and submit to City for its approval schematic design plans and specifications ("Plans") for the Leasehold Improvement Work that has not already been completed, based on the description in subsection 6.1(a), the drawings and/or specifications in Exhibits C and D, City's program requirements for use of the Property, and the requirements referred to in subsection 6.1(e).

Such Plans shall be subject to City's approval, which approval shall not be unreasonably withheld. City shall approve or disapprove such Plans within ten (10) business days after the later of submittal to City or the Commencement Date, or the same shall be deemed approved by City. If City disapproves such Plans, or any portion thereof, then City shall specify the revisions that City reasonably requires in order to obtain City's approval. As soon as reasonably possible thereafter, but in no event later than ten (10) days after City's notice, Landlord shall re-submit to City revised Plans incorporating the revisions required by City. Such revisions shall be subject to City's approval, which shall not be unreasonably withheld. City shall approve or disapprove such revised Plans within ten (10) business days after submittal to City, or the same shall be deemed approved by City. The list of Leasehold Improvement Work in subsection 6.1(a), as supplemented and further described in the Plans as approved or deemed approved by City, shall be referred to as the "Construction Documents."

(c) Changes to Approved Construction Documents

(i) **City Change Orders.** If City requests any change, addition or alteration to the Construction Documents relating to the design or specifications of the Leasehold Improvement Work ("City Change Order"), Landlord shall cause its architect, engineer or contractor, as applicable, to prepare plans and specifications with respect to such change, addition or alteration. Within ten (10) business days of City's request, Landlord shall notify City of the cost that would be incurred by reason of such proposed City Change Order and any delay in the anticipated date of Substantial Completion that would result from such City Change Order. If City approves the cost of the City Change Order within five (5) business days of receipt from Landlord, then Landlord's Contractor shall proceed with such City Change Order as soon as reasonably practical thereafter. If City does not approve such cost within the above-mentioned five (5) business day period, construction of the Leasehold Improvement Work shall proceed in accordance with the Construction Documents without the proposed change. City shall be responsible for the increase, if any, in the cost of the Leasehold Improvement Work resulting from the City Change Order, including the reasonable cost actually incurred by Landlord in the preparation of the plans and specifications relating to the City Change Order, as evidenced by

invoices or other substantiation reasonably required by City. City shall pay such cost increase within thirty (30) days after receipt of Landlord's itemized invoice.

(ii) **Landlord Change Orders.** If following City's approval of the Construction Documents, Landlord requests or is required by any third party having jurisdiction to make any change, addition or alteration thereto relating to the design or specifications of the Leasehold Improvement Work ("Landlord Change Order"), Landlord shall provide City with proposed plans and specifications with respect to such change, addition or alteration, together with notice of any delay in the anticipated date of Substantial Completion that would result from such Landlord Change Order. Any such Landlord Change Order shall be subject to City's prior written approval, in accordance with the process described in subsection 6.1(c)(i) above. No approval or deemed approval by City, in its capacity as tenant, of any Landlord Change Order shall be deemed a representation or warranty by City concerning the compliance of the changed work with applicable laws. Landlord shall be solely responsible for the cost of the Landlord Change Order, including, without limitation, the costs of preparing the plans and specifications relating thereto.

(d) **Permits**

Landlord shall secure and pay for any building and other permits and approvals, government fees, licenses and inspections necessary for the proper performance and completion of the Leasehold Improvement Work described in and shown on the Construction Documents, as modified if at all in accordance with subsection 6.1(c). At its sole cost, Landlord shall cause its contractor to perform any retrofitting or upgrading of the Building or its systems triggered by, or required by the permit authorities in connection with, the permit(s) and approvals for the Leasehold Improvement Work. Promptly following the finalization of the Construction Documents, Landlord shall apply for any permits, approvals or licenses necessary to complete such construction and shall provide copies to City promptly following receipt thereof. Notwithstanding the foregoing, but subject to Unavoidable Delays (as defined in Section 23.2), in the event that Landlord, after using diligent, commercially reasonable efforts, is unable to obtain all necessary permits, approvals and licenses required to construct the Leasehold Improvement Work within sixty (60) days after the Effective Date (as defined in Section 23.31), City shall have the right to terminate this Lease upon written notice to Landlord within ten (10) business days of such date. Landlord shall be responsible for arranging for all inspections required by City's Bureau of Building Inspection.

City has adopted a First Source Hiring Ordinance (Board of Supervisors Ordinance No. 264-98) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry level positions. Within thirty (30) days after the City and County of San Francisco adopts a First Source Hiring Implementation and Monitoring Plan in accordance with the First Source Hiring Ordinance, Landlord shall enter into a First Source Hiring Agreement that meets the applicable requirements of Section 83.9 of the First Source Hiring Ordinance in connection with certain building permit applications.

(e) **Construction**

Immediately following approval of this Lease by City's Public Utilities Commission, Board of Supervisors and Mayor, City's approval of the Construction Documents, as modified if at all in accordance with subsection 6.1(c), and Landlord's procurement of all necessary permits and approvals, Landlord shall commence construction and shall cause the Leasehold Improvement Work to be completed in a good and professional manner in accordance with sound construction practice. Landlord shall comply with and give notices required by all laws, rules, regulations, ordinances, building restrictions and lawful orders of public authorities bearing on construction of the Leasehold Improvements. Without limiting the foregoing,

construction of the Leasehold Improvement Work shall comply with all applicable provisions of San Francisco Environment Code Sections 700 to 707 relating to resource-efficient City buildings, the Green Building requirements of Chapter 13C of the San Francisco Building Code (including the use of low-emitting paints, finishes and adhesives), and all applicable disabled access laws, including, without limitation, the most stringent requirements of the Americans With Disabilities Act of 1990, Title 24 of the California Code of Regulations (or its successor) and City's requirements for program accessibility. Landlord shall pay prevailing wages in connection with construction of the Leasehold Improvement Work as further provided in Section 23.25 (Prevailing Wages), below, and shall not use tropical hardwood wood products, or virgin redwood wood products as further provided in Section 23.27 (Tropical Hardwood and Virgin Redwood Ban), below.

(f) Construction Schedule; Substantial Completion

Landlord shall keep City apprised on a regular basis of the status of plan preparation, permit issuance and the progress of construction. From time to time during the design and construction of the Leasehold Improvements, City shall have the right upon reasonable advance oral or written notice to Landlord to enter the Property, including the Building, at reasonable times to inspect the Property, provided such inspections do not unreasonably interfere with the construction of the Leasehold Improvement Work. Landlord or its representative may accompany City during any such inspection. When construction progress so permits, but not less than fifteen (15) days in advance of Substantial Completion of the Leasehold Improvement Work, Landlord shall notify City of the approximate date on which the Leasehold Improvement Work will be Substantially Completed in accordance with the Construction Documents. Landlord shall revise such notice of the approximate Substantial Completion date as appropriate from time to time and shall immediately notify City when the Leasehold Improvement Work is in fact Substantially Completed and the Property is ready for use and occupancy by City. On such date or other mutually agreeable date as soon as reasonably possible thereafter, City and its authorized representatives shall have the right to accompany Landlord or its architect or contractor on an inspection of the Property.

The Leasehold Improvement Work shall be deemed to be "Substantially Completed" and "Substantial Completion" shall be deemed to have occurred for purposes of this Lease when the Leasehold Improvement Work shall have been sufficiently completed in accordance with the Construction Documents (as modified, if at all, in accordance with subsection 6.1(c)) so that City can occupy the Building and conduct its business at the Property for its permitted uses and City, through its Director of Property, shall have approved the Leasehold Improvements. City shall approve the Leasehold Improvements if they have been completed in a good, workmanlike manner and in accordance with the Construction Documents (as modified, if at all, in accordance with subsection 6.1(c)) with the sole exception of minor details to be corrected or completed that would not interfere with City's use. Landlord shall diligently pursue to completion all such details. Notwithstanding the foregoing, City shall have the right to present to Landlord within forty-five (45) days after Substantial Completion, a written punchlist consisting of any items that have not been finished in accordance with the Construction Documents. Landlord shall promptly complete all defective or incomplete items identified in such punchlist, and shall in any event complete all items within thirty (30) days after the delivery of such list. City's failure to include any item on such list shall not alter the Landlord's responsibility hereunder to complete all Leasehold Improvement Work in accordance with the Construction Documents (as modified, if at all, in accordance with subsection 6.1(c)), nor constitute any waiver of any latent defects.

No approval by City or any of its Agents (as defined in Section 23.6) of the Plans, Construction Documents or completion of the Leasehold Improvement Work for purposes of this Lease shall be deemed to constitute approval of any governmental or regulatory authority with

jurisdiction over the Property, and nothing herein shall limit Landlord's obligations to obtain all such approvals.

6.2 Installation of Telecommunications, Alarm Monitoring and Other Equipment

City shall be responsible for installing telecommunications, data, alarm monitoring and computer cabling facilities and equipment needed at the Property, provided that Landlord shall furnish access to City and its consultants and contractors to the main telephone service serving the Building and other parts of the Property for which access is needed for proper installation of such facilities and equipment including, but not limited to, wiring, provided such access does not unreasonably interfere with the construction of the Leasehold Improvements. City shall have the right to enter such portions of the Property at reasonable times during the course of construction of the Leasehold Improvements in order to install such facilities and equipment, provided such access does not unreasonably interfere with the construction of the Leasehold Improvement Work. City and Landlord shall use their good faith efforts to coordinate any such activities to allow the Leasehold Improvements and the installation of such telecommunications, data, computer and alarm monitoring facilities and equipment to be completed in a timely and cost-effective manner.

Notwithstanding the foregoing, Landlord and City shall cooperate and coordinate with one another and cause their respective contractors to cooperate and coordinate with one another in scheduling and performing the installation of the access control improvements described in subparagraph 6.1(a)(viii), the security/alarm monitoring components described in subparagraph 6.1(a)(viii) and the parking lot improvements described in subparagraph 6.1(a)(ix) to ensure that City's contractor has adequate access for the work to be performed in the following order:

(1) First, Landlord's contractor's installation of the sliding gates, card access system and pedestals, and gate controllers.

(2) Next, City's contractor's installation of the Alarm Monitoring System Components using the same conduit trench needed for the Landlord's work in item (i) above. Landlord shall be responsible for ensuring that conditions in the trench are safe for City and its Contractor. Landlord's Contractor shall be responsible for providing temporary vehicle access over trench along Welsh Street for Easement Holder and City's contractors. The Landlord's contractor shall not backfill the trench until City's contractor has completed its conduit and cabling installation work, and has inspected and approved work performed by Landlord's contractor.

(3) Last, Landlord's work filling potholes, and slurry coating and restriping the parking lot.

6.3 Construction of Improvements that Disturb or Remove Exterior Paint

Landlord, on behalf of itself and its successors, assigns and Agents, shall comply with all requirements of the San Francisco Building Code Chapter 34 and all other applicable local, state, and Federal laws, including but not limited to the California and United States Occupational and Health Safety Acts and their implementing regulations, when performing any maintenance, improvement or alteration that disturbs or removes exterior or interior lead-based or "presumed" lead-based paint (as defined below). Landlord and its Agents shall give to City three (3) business days' prior written notice of any disturbance or removal of exterior or interior lead-based or presumed lead-based paint. Landlord acknowledges that the required notification to the Department of Building Inspection regarding the disturbance or removal of exterior lead-based paint pursuant to Chapter 34 of the San Francisco Building Code does not constitute notification to City as Tenant under this Lease and similarly that notice under this Lease does not constitute notice under Chapter 34 of the San Francisco Building Code. Further, Landlord and its Agents,

when disturbing or removing exterior or interior lead-based or presumed lead-based paint, shall not use or cause to be used any of the following methods: (a) acetylene or propane burning and torching; (b) scraping, sanding or grinding without containment barriers or a High Efficiency Particulate Air filter ("HEPA") local vacuum exhaust tool; (c) hydroblasting or high-pressure wash without containment barriers; (d) abrasive blasting or sandblasting without containment barriers or a HEPA vacuum exhaust tool; and (e) heat guns operating above 1,100 degrees Fahrenheit. Landlord covenants and agrees to comply with the requirements of Title 17 of the California Code of Regulations when taking measures that are designed to reduce or eliminate lead hazards. Under this Section, paint on the exterior or interior of buildings built before January 1, 1979 is presumed to be lead-based paint unless a lead-based paint test, as defined by Chapter 34 of the San Francisco Building Code, demonstrates an absence of lead-based paint on the interior or exterior surfaces of such buildings. Under this Section, lead-based paint is "disturbed or removed" if the work of improvement or alteration involves any action that creates friction, pressure, heat or a chemical reaction upon any lead-based or presumed lead-based paint on a surface so as to abrade, loosen, penetrate, cut through or eliminate paint from that surface.

7. ALTERATIONS

7.1 Alterations by City

City shall not make or permit any alterations, installations, additions or improvements (collectively, "Alterations") to the Building 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 Base Building Components (as defined in Section 8.1), and the repainting and recarpeting of the interior of the Building 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. In no event, however, shall City be required to remove standard Alterations of a type and quantity that would be installed by or for a typical tenant using space for general industrial/warehouse purposes with incidental office use.

7.2 Title to Improvements

Except for City's Personal Property (as defined in the next Section) and any items installed by City pursuant to Section 6.1(a)(viii), all appurtenances, fixtures, improvements, equipment, additions and other property permanently installed in or on the Property as of the Commencement Date or during the Term [including without limitation the access control gates and equipment installed by Landlord pursuant to Subsection 6.1(a)(viii)] shall be and remain Landlord's property. City shall surrender the Building in the condition required by Article 20. Except as required by Article 20, City may not remove such property unless Landlord consents thereto. Notwithstanding the foregoing, the card access reader installed by City at the Welsh Street gate entrance (excluding the computer and software used to operate such card reader) (the "Welsh Entrance Card Reader") shall be Landlord's property and shall remain on the Property at the end of the Term.

7.3 City's Personal Property

All furniture, furnishings, equipment, trade fixtures and articles of movable personal property installed in the Building by or for the account of City and that can be removed without

structural damage to the Building (collectively, "City's Personal Property") shall be and remain City's property. City's Personal Property shall include without limitation City's Alarm Monitoring System Components, as defined in Subsection 6.1(a), excluding the Welsh Entrance Card Reader. At any time during the Term or at the expiration or sooner termination thereof, City may remove any of City's Personal Property, provided City shall repair any damage to the Property resulting therefrom. Upon the expiration or earlier termination of this Lease, City shall remove City's Personal Property from the Property and fill in the gap in the wall separating the Property from City's adjacent 639 Bryant Street yard using concrete block construction, in accordance with Section 20 (Surrender of Property), below. Landlord acknowledges that some of City's Personal Property may be financed by equipment lease financing or 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 commercially reasonable document required by any supplier, lessor, or lender (herein, an "Equipment Lessor") in connection with the installation at the Property 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 Equipment Lessor agrees that it (i) will remove City's Personal Property from the Property within thirty (30) days after the Expiration Date or fifteen (15) days after receipt of notice of the earlier termination of this Lease (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), (ii) will repair any damage caused by the removal of City's Personal Property, and (iii) will indemnify Landlord from and against any and all claims arising out of such removal. Subject to the foregoing, Landlord shall recognize the rights of any Equipment Lessor who has an interest in any items of City's Personal Property to enter the Property and remove such personal property at any time during the Term or within thirty (30) days after the Expiration Date or fifteen (15) days after the receipt of notice of the earlier termination of this Lease. If such a document is executed by Landlord during the Term and any items of City's Personal Property that are subject to such document remain on the Property after the Expiration Date or earlier termination of the Lease, City shall continue to pay Base Rent for that 30-day or 15-day removal period.

7.4 Alteration by Landlord

Landlord shall use all commercially reasonable efforts to minimize interference with or disruption to City's use and occupancy of the Property during any alterations, installations, additions or improvements to 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

Subject to ordinary wear and tear and damage by casualty (which shall be controlled by Article 12), Landlord, at its cost, shall repair and maintain in good, safe condition and working order, and replace as necessary, the exterior (subject to City's graffiti control and window repair obligations under Section 8.3) and structural portions of the Building and Property, including the roof, foundation, bearing and exterior walls, subflooring, utility stubs to the Building, concealed pipes and wiring, and fire/life safety system of the Building (collectively, the "Base Building Components"). At its cost, Landlord shall maintain the Building exterior in a clean, safe and attractive condition, including periodic repainting of the exterior walls as reasonably necessary. Landlord shall cause any work performed on the exterior of the Building to be performed in accordance with Section 6.3.

8.2 City's Repairs

Subject to Landlord's obligations and representations under Section 10.1 (Property Condition), any construction warranties or guaranties received in connection with Landlord's completion of the Leasehold Improvement Work, and Landlord's repair and maintenance obligations hereunder, City shall repair and maintain at its cost the interior portions of the Building and shall keep the Property in good working order and in a safe and sanitary condition, except for ordinary wear and tear and damage by casualty (which shall be controlled by Article 12). 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 Base Building Components, 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 not otherwise generally accessible to City and which are necessary to maintain or repair the telecommunications and data and computer cabling facilities and equipment installed by City.

In addition to the foregoing, City shall pay for a maintenance contract to service the heating, ventilating and air conditioning system used by City. City shall maintain the surface of the parking lot with periodic patching and slurry seal as necessary, and shall maintain the two electronically operated gates in good operating condition. However, City shall not, and Landlord shall, be responsible for repairing any damage, other than ordinary wear and tear, caused by the Easement Holder described in Section 22.1 or its Agents or Invitees. Further, notwithstanding the foregoing, if during the Term it becomes reasonably necessary to install a new surface on the parking lot rather than simply filling potholes and applying slurry seal, Landlord shall fund such work, the cost shall be amortized over the useful life of the improvement, and City shall pay to Landlord, each year remaining in the Term, the amortized installment for that period. If despite Landlord's delivering the existing HVAC system in the condition required under Subsection 6.1(a) it becomes necessary to replace the system, Tenant shall do so at its sole cost.

8.3 Graffiti Removal; Window Repair

At its cost, City shall perform graffiti removal and repair windows that become broken during the Term; provided, however, if the exterior surface of the Building has been penetrated or disturbed, or if in order to visually eliminate graffiti sanding or other invasive techniques are reasonably necessary, or if the repair of windows entails disturbing existing lead-based paint, asbestos or ACM, then at its sole cost Landlord shall retain a qualified contractor to perform that work in accordance with applicable Environmental Laws. Landlord shall provide City with ten (10) gallons of the paint Landlord used to paint the exterior of the Building, together with brand and color information sufficient to enable City to purchase matching paint during the Term.

8.4 Liens

City shall keep the Property 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 Property notices permitted or required by law or that are needed for the protection of Landlord or the Property, including 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 Property. If City fails to cause any such lien or notice of lien to be discharged or bonded over within thirty (30) days after receipt of notice from Landlord

of same, and a sale or financing of the Property is then pending or other circumstances exist such that action must be taken forthwith in order to avoid imminent, significant economic harm to Landlord, Landlord, in addition to any other rights or remedies under this Lease, may, but shall not be obligated to, upon five (5) business days' notice to City, discharge the same by either paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings. Within thirty (30) days after receipt of Landlord's demand, City shall reimburse Landlord for any such amount paid by Landlord and all reasonable costs and expenses, including reasonable attorney's fees, incurred by Landlord in connection therewith, together at an annual rate of interest equal to the prime rate announced by the San Francisco office of the Bank of America, N.T. & S.A. (or a successor bank) plus three (3) percentage points, from the date of City's receipt of Landlord's demand to the date of City's payment to Landlord.

9. UTILITIES AND SERVICES

City shall be responsible for procuring, at City's sole expense, all utilities and services for its use of the Property.

10. COMPLIANCE WITH LAWS; PROPERTY CONDITION

10.1 Property Condition and Landlord's Compliance with Laws; Indemnity

On the Term Commencement Date, Landlord shall deliver the Property to City (i) in a clean condition, free of debris; (ii) with all Base Building Components, the parking lot and the HVAC system to be used by City in good condition and good working order; and (iii) with all Leasehold Improvement Work Substantially Completed in accordance with Section 6.1. Except as otherwise disclosed on attached Exhibit E Landlord represents to City as of the date of executing this Lease and as of the Commencement Date as follows: (a) the Building is not an unreinforced masonry building, and Landlord has received no notice or information that it fails to comply with any applicable federal, state, local and administrative laws, rules, regulations, orders or requirements relating to seismic safety (collectively, "Seismic Safety Laws"); (b) Landlord has received no notice or information that the Building, Base Building Components or other portions of the Property fail to comply with any applicable federal, state, local or administrative laws, rules, regulations, orders or requirements relating to fire and life safety (collectively, "Life Safety Laws"); (c) Landlord has received no notice or information that the Building or any of the exterior areas of the Property or the Base Building Components are not in compliance with any other applicable federal, state, local and administrative laws, rules, regulations, orders or requirements; and (d) Landlord has no actual knowledge of any material physical or mechanical defects in the Property, Building, the Base Building Components or the other improvements on the Property that would materially adversely affect City's intended use of the Property.

Except to the extent such compliance is City's responsibility under Section 10.2, Landlord shall at all times during the Term maintain, at its cost, the Property in compliance with applicable present or future federal, state, local and administrative laws, rules, regulations, orders and requirements (collectively, "Laws"), including, without limitation, Seismic Safety Laws, and Life Safety Laws. If Landlord becomes aware that any portion of the Building or Property is not in compliance with Laws, and such compliance is not City's responsibility under Section 10.2, Landlord shall bring the item into compliance within thirty (30) days after receiving notice of such condition.

10.2 City's Compliance with Laws; Indemnity

City shall use the Property during the Term in compliance with applicable Laws, except that City shall not (and Landlord shall) be required to make any structural or capital alterations.

additions or other modifications in order to comply with Laws unless (a) such alterations, additions or other modifications are necessary solely because of the operation of Tenant's specific programs at the Property (as opposed to requirements imposed on all building of the Building's type) or any Alterations to the Property made by City pursuant to Section 7 hereof, and (b) such modifications are not otherwise Landlord's responsibility under this Lease. City shall be responsible for complying with any requirement of the Americans With Disabilities Act of 1990 and Title 24 of the California Code of Regulations and 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") to the extent they relate to the placement of City's furniture or other City Personal Property and/or the operation of any specific programs of City at the Property and/or any Alterations to the Property made by City pursuant to Section 7 hereof. City acknowledges that the Building lacks an elevator to the mezzanine office space and agrees that City will be responsible for making such other Alterations or adjustments in City's use of the Building as may be necessary to comply with Disabilities Laws in the absence of an elevator. Installation of such an elevator shall be City's responsibility only if required by Disability Laws solely as a result of (a) the operation of City's specific programs in the Building, and/or (b) the physical character or location of City's Alterations, if any. Notwithstanding anything to the contrary above in this Section 10.2, installation of an elevator shall be Landlord's responsibility if the requirement is triggered by the monetary value or scope of the Leasehold Improvement Work and/or City's Alterations, if any, and/or mandated by Law for buildings of the Building's type generally.

10.3 City's Compliance with Insurance Requirements

City shall not conduct any use in or about the Building that would: (a) invalidate or be in conflict with any property 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 property 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 Building; 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 Building.

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"): (i) 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 (ii) 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. Provided the holder of the Encumbrance enters into a subordination and non-disturbance agreement in form and substance

reasonably acceptable to City, City agrees to execute such agreement within twenty (20) days following request, and thereby subordinate this Lease to the Encumbrance.

(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 and City shall be recognized as the tenant by the successor in interest to Landlord, 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 such attornment and recognition, or the priority or subordination of this Lease with respect to any such Encumbrance as provided herein.

12. DAMAGE AND DESTRUCTION

If the Property is damaged or destroyed by fire, explosion, flood, earthquake, 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 with reasonable diligence be made under applicable laws within ninety (90) days after Landlord obtains all necessary permits for such repairs but not later than two hundred seventy (270) 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 equitable 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 at the Property. Landlord's repairs shall not include, and the Rent shall not be abated as a result of, any damage by fire or other casualty to City's Personal Property or Alterations.

Within thirty (30) days after the date of such damage, Landlord shall give notice to City ("Repair Period Notice") of 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 City receives Landlord's Repair Period Notice, terminate this Lease as of the date specified in such notice of termination, which date shall be not less than thirty (30) nor more than sixty (60) days after the notice of termination is given to the other party.

Notwithstanding the foregoing, in the event the Property (excluding City's Personal Property or Alterations which shall be solely City's obligation to repair or replace) is damaged or destroyed by reason of flood or earthquake, and such damage or destruction is not fully covered by insurance proceeds payable under Landlord's insurance policies (unless such failure of coverage is a result of Landlord's failure to maintain the insurance policies Landlord is required to carry hereunder), and Landlord elects not to restore the damaged Building, 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. If Landlord elects to terminate this Lease pursuant to this paragraph Landlord's deductible shall be considered part of the insured portion of the damage. Such notice from Landlord shall include adequate written evidence of the denial of insurance coverage. However, if Landlord elects to terminate the Lease

as set forth above, City shall have the right to fund the uninsured portion of such costs. City may exercise such right by providing Landlord with written notice thirty (30) days from the date of receipt of Landlord's notice of termination. If City elects to fund the uninsured damage, City shall make payments for hard construction costs, one time per month upon receipt of invoices for work completed and/or supplies delivered to the site, and such other documentation as City may reasonably request. Payment of the funds shall be made by City upon Landlord's direction through a fully funded construction escrow (based on the estimated repair cost of the uninsured damage) with the title insurance company selected by Landlord pursuant to escrow instructions reasonably approved by City. City shall pay the cost of the escrow. If City does not elect to fund the uninsured portion of the damage, this Lease shall terminate thirty (30) days after the date of Tenant's receipt or deemed receipt of Landlord's notice of termination. 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 damaged Property, as provided above.

Further, notwithstanding the foregoing, if the Property is damaged by fire or other casualty, Landlord shall have the right to terminate this Lease following such casualty if (i) the cost of repair exceeds Five Hundred Thousand Dollars (\$500,000.00), and (ii) Landlord decides to raze the Building rather than repair it. If Landlord elects to terminate this Lease following a casualty pursuant to this paragraph, Landlord shall give Tenant written notice of its election to terminate and raze the Building, with reasonable evidence that the reasonably estimated cost of repairing the Property exceeds \$500,000.00, within forty-five (45) days after Landlord has knowledge of such casualty, and this Lease shall terminate thirty (30) days after the date such notice is delivered to Tenant. However, if Landlord terminates this Lease pursuant to this paragraph and within three (3) years after such termination reconstructs the Building as a warehouse, Tenant shall have the option to lease the new building on the same terms and conditions of this Lease, including Base Rent at a rate equal to the per-square-foot rate that was in effect upon Lease termination, increased by two and one-half percent (2.5%) for each Adjustment Date between the date this Lease terminates and the date the new lease commences, with an equitable adjustment to reflect any change in available parking.

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 may, at its option, terminate this Lease as of the date such damage occurred by giving written notice to City 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.

In case of termination under this Article 12, the Rent shall be equitably abated based upon the extent to which such damage interferes with the conduct of City's business at the Property, 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.

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 Property 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 Property, 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 Property, then this Lease shall terminate in its entirety if: (i) the partial Taking, in City's reasonable judgment, renders the remaining portion of the Property untenantable or unsuitable for continued use by City for its intended, permitted purposes or otherwise materially adversely affects City's normal operations at the Property, (ii) the condition rendering the Property untenantable 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 this Lease.

(b) In the case of a partial taking of a substantial portion of the Building or parking lot, and if subsection (a) above does not apply, Landlord shall have the right to terminate this Lease by written notice to City within thirty (30) days after the Date of Taking.

(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 (i) the thirtieth (30th) day after such written notice is given or (ii) the Date of Taking. At Landlord's request, City shall confirm such termination date in writing.

13.5 Rent; Award

Upon termination of this Lease 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, except that Rent shall be reduced as provided in Section 13.6 below for any period during which this Lease continues in effect after the Date of Taking, and (b) Landlord shall be entitled to the entire Award in connection therewith, and City shall have no claim against Landlord for the value of any unexpired term of this Lease, 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 Property 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 Property 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) Base Rent shall be reduced in proportion to the reduction in utility of the Property for City's intended, permitted purposes, (b) at its cost, Landlord shall restore the remaining Property, excluding City's Personal Property, to an architectural whole, and (c) Landlord shall be entitled to the entire Award in connection therewith, provided that City shall receive any Award made specifically for 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 Property 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, except that during the period of the Taking City shall be entitled to an equitable reduction in Rent for the period of the Taking.

14. ASSIGNMENT AND SUBLETTING

Except as provided in this Article below, City shall not directly or indirectly sell, assign, encumber, pledge or otherwise transfer or hypothecate (each, a "Transfer") all or any part of its interest in or rights with respect to the Property or its leasehold estate hereunder or permit all or any portion of the Property to be occupied by anyone other than itself or sublet all or any portion of the Property, without Landlord's prior written consent in each instance, which shall not be unreasonably withheld, and shall be granted or denied within thirty (30) days of City's request therefor. City shall have the right from time to time, upon notice to but without the consent of Landlord, to assign this Lease to, or sublet to or allow the use and occupancy of all or any of the Property by, any department, commission or agency of the City and County of San Francisco for uses permitted under this Lease (each, a "City Party Transfer"). The term "Transfer" shall not include any City Party Transfer. Any Transfer that constitutes an assignment of all of City's rights hereunder or a subletting of all or any portion of the Property shall be deemed a "Transfer Assignment", and any assignee or sublessee thereunder shall be deemed an "Assignee." Neither the consent by Landlord to any Transfer requiring consent nor the occurrence of any City Party Transfer shall constitute a waiver of the necessity for consent to any subsequent Transfer.

Each request for consent to a Transfer shall be in writing and delivered to Landlord not less than thirty (30) days prior to the anticipated commencement date thereof, accompanied by information relevant to Landlord's determination as to the financial and operational responsibility and appropriateness of the proposed Assignee, including but not limited to the intended use and/or required modification of the Property, if any. City shall provide Landlord with such other or additional information and/or documentation as may be reasonably requested.

by Landlord. No Transfer Assignment, shall be effective without the express written assumption by the applicable Assignee, for the benefit of Landlord, of the obligations of City under this Lease, other than such obligations as are contrary to or inconsistent with provisions of such a Transfer to which Landlord has consented in writing.

If Landlord consents to any Transfer, then fifty percent (50%) of any consideration received by City as a result of any such Transfer (after City first recovers City's reasonable costs related to the Transfer, including reasonable leasing commissions, attorneys fees and amounts that are attributable to the unamortized cost of improvements made to the subject space by City at City's cost, whether denominated rent, or otherwise) that exceeds, in the aggregate, the total sums which City is obligated to pay Landlord under this Lease (prorated as to any sublease, license or concession agreement to reflect obligations allocable to that portion of the Property subject to such sublease, license or concession agreement) shall be payable to Landlord as Additional Charges under this Lease, without affecting or reducing any other obligation of City hereunder. No Transfer shall release City from its obligations hereunder. After a Transfer, City shall remain primarily liable to pay the Rent and to perform all other obligations to be performed by Tenant hereunder. The acceptance of rent by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provision hereof. If any Transferee defaults in the performance of any of the terms hereof, Landlord may proceed directly against City without the necessity of exhausting its remedies against such transferee.

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 abandonment of the Property (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 Property 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 City may, at its sole option, cure such default at Landlord's expense if such failure materially interferes with City's ability to carry on its business from the Property and continues after thirty (30) 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 thirty (30)-day period, such thirty (30)-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. Notwithstanding the foregoing, in an emergency where action must be taken forthwith in order to avoid damage or injury, prevent further damage or injury, or restore electric power or water service to the Property, City may (but shall not be obligated to) take such action forthwith at Landlord's expense, provided City shall exercise this expedited right of self-help carefully and judiciously, it being understood and agreed that wherever reasonably possible Landlord shall be given sufficient opportunity so to do, in order to avoid any conflict with respect to whether self-help should have been availed of, or with respect to the reasonableness of the expenses incurred. Within thirty (30) days after receipt of City's demand including a reasonably detailed description of the costs, Landlord shall reimburse City for the reasonable costs incurred by City in exercising its self-help rights under this paragraph, failing which City may offset such amounts against 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 equitably abated if such default interferes with City's ability to carry on its business at the Property. However, if the default does not pose a health, safety, property damage or security risk and does not impair City's ability to carry on its business from the Property, there shall be no abatement of Rent provided that Landlord cures the default within thirty (30) days after notice from City (or if such default for causes beyond Landlord's control (excluding any financial inability to perform) cannot with due diligence be cured within such thirty (30)-day period, such thirty (30)-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. If any such default by Landlord continues for ninety (90) days and impairs City's ability to carry on its business at the Property, then City shall have the right to terminate this Lease upon written notice to Landlord within thirty (30) days after the expiration of such ninety (90)-day period. City's rights under this Section 15.3 and under Section 3.3 (Delay in Delivery of Possession), and Section 5.3 (Interference with Access), shall not limit in any way any of its other rights and remedies at law, in equity or expressly set forth in this Lease, but shall be subject to Section 15.4.

In the event that Landlord shall be liable to City for any damages sustained by City as a result of Landlord's breach, it is expressly understood and agreed that, if not satisfied by the companies that provide insurance coverage in favor of Landlord, any judgment resulting from any default or other claim arising under this Lease, shall be satisfied out of Landlord's right to receive (including through offset against Rent or against the purchase price should City purchase the Property from Landlord) the income from operation of the Property including, but not limited to, all receipts, rents, profits or other income produced by or resulting from the Property

and out of Landlord's equity interest in the Property (collectively called "Landlord's Interest") and no other real, personal or mixed property of the Landlord wherever situated shall be subject to levy on such judgment obtained against Landlord. If Landlord's Interest is insufficient for the payment of such judgment, City will not institute any further action, suit, claim or demand, in law or in equity, against Landlord for or on account of such deficiency and City hereby waives, to the extent waivable under law, any rights to satisfy said money judgment against Landlord except from Landlord's Interest.

15.4 Consequential Damages

Notwithstanding anything to the contrary set forth in any other provision of this Lease (whether or not this Section 15.4 is mentioned in such other provisions), in no event shall Landlord or the partners or members comprising Landlord, or the partners, members, shareholders, directors, officers, agents or employees of any of the foregoing (collectively, "Landlord Parties"), be liable for any consequential or remote damages under this Lease. However, if any of the Landlord Parties is a contractor of the Landlord, the foregoing waiver shall not apply to such entity or individual in such capacity as a contractor of Landlord.

Notwithstanding anything to the contrary set forth in any other provision of this Lease, in no event shall City or any of its boards, commissions, departments, directors, officers, commissioners, board members, agents or employees (collectively, "City Parties") be liable for any consequential or remote damages under this Lease.

16. INDEMNITIES

16.1 City's Indemnity

This Section 16.1 does not apply to Claims relating to Hazardous Material; such Claims are addressed in Article 21. Subject to Sections 15.4 and 17.3, City shall indemnify, defend and hold harmless ("Indemnify") Landlord, the Landlord Parties and their Agents from and against any and all claims, losses, costs and expenses, including, without limitation, reasonable attorneys' fees (collectively, "Claims") for loss of or damage to property or injury to or death of persons, incurred as a result of (a) City's use of the Property, (b) any default by City in the performance of any of its obligations under this Lease, or (c) any negligent acts or omissions of City or its Agents in, on or about the Building or the Property; provided, however, City shall not be obligated to indemnify Landlord, the Landlord Parties or their Agents to the extent any Claim arises out of the negligence or willful misconduct of Landlord, any of the Landlord Parties or the Easement Holder, as defined in Section 22.1, or the respective Agents or Invitees of Landlord, the Landlord Parties or the Easement Holder. In any action or proceeding brought against Landlord, the Landlord Parties or their Agents by reason of any Claim indemnified against 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 such settlement or compromise results in no cost to Landlord without Landlord's prior approval. 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

This Section 16.2 does not apply to Claims relating to Hazardous Material; such Claims are addressed in Article 21. Subject to Sections 15.4 and 17.3, Landlord shall indemnify City, the City Parties and the Agents of each of them 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, the Landlord Parties or the Agents of any of them in, on or about the Property; provided, however, Landlord shall not be obligated to indemnify City, the City Parties or their respect Agents to the extent any Claim arises out of the negligence or willful misconduct of City or any of the City Parties or their respective Agents or invitees. In any action or proceeding brought against City, any of the City Parties or the Agents of any of them by reason of any Claim Indemnified against 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 such settlement or compromise results in no cost to City without City's prior approval. 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 as described in the certificate attached hereto as Exhibit I, and agrees that as long as such self-insurance program is maintained City shall not be required to carry any insurance with respect to this Lease. On request by Landlord (not more frequently than annually), and upon any material change to City's self-insurance program that would affect the information in the latest certificate provided to Landlord, City shall provide Landlord with a current certificate of its self-insurance program.

In addition, at its sole option, City may elect to purchase insurance to cover City's Personal Property, including rolling stock, and Alterations against loss, damage and destruction in amounts and on terms commercially available to City. If City purchases such coverage, City shall provide Landlord with reasonable evidence of the insurance and the premium, and City shall receive a credit toward Rent equal to the cost of such insurance but not more than the Maximum Insurance Credit, as defined below. At Landlord's option, such credit shall be applied toward Rent in equal monthly installments over the policy period, or paid to City in a lump sum. If the policy period extends beyond the expiration or termination of the Lease, the credit shall be prorated. The "Maximum Insurance Credit" shall be One Thousand Five Hundred Dollars (\$1,500.00) the first Lease Year. On the first day of each subsequent Lease Year during the Term ("Adjustment Date"), the Maximum Insurance Credit shall be increased by a percentage equal to the percentage increase, if any, between the CPI in effect on the first day of the Lease Year just elapsed and the CPI in effect on the Adjustment Date. If the CPI remains unchanged or decreases, there shall be no adjustment of the Maximum Insurance Credit on the Adjustment Date.

17.2 Landlord's Insurance

At all times during the Term, Landlord shall keep the Building (excluding the land upon which it is located and excluding any Tenant Alterations, but including the Leasehold Improvements) insured against loss, damage and destruction by fire, vandalism, malicious mischief, sprinkler damage and other perils customarily covered under a cause of loss-special form property insurance policy in an amount equal to one hundred percent (100%) of the full insurance replacement cost thereof, including debris removal and demolition, and business income insurance.

In addition, Landlord, at no cost to City, shall procure and keep in effect at all times during the Term insurance as follows: (a) Commercial general liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence, including contractual liability, independent contractors, broad-form property damage, personal injury, products and completed operations, and with no exclusion for explosion, collapse and underground (XCU); and

(b) Worker's Compensation Insurance with limits as required by statute and Employer's Liability Limits not less than One Million Dollars (\$1,000,000) each accident. For any period during which Landlord has no employees, Landlord may satisfy the requirements of item (b) of the preceding sentence by certifying in writing to City that Landlord has no employees.

Landlord shall, upon request by City, provide to City a certificate of insurance issued by the insurance carrier, evidencing the insurance required in this Section 17.2. Landlord shall use diligent, reasonable efforts to provide a certificate that expressly provides that the policies are not cancelable or subject to reduction of coverage or otherwise subject to modification except after thirty (30) days prior written notice to City. If despite such efforts Landlord is unable to procure such a certificate, Landlord shall provide notice to City promptly after learning of any cancellation, reduction in coverage or other modification of any of the policies.

17.3 Waiver of Subrogation

Notwithstanding anything to the contrary contained herein, Landlord hereby waives any right of recovery against City for any loss or damage sustained by Landlord with respect to the Building or the Property or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of City. Landlord agrees to obtain a waiver of subrogation endorsement from each insurance carrier issuing policies relative to the Building or the Property; provided, Landlord's failure to do so shall not affect the above waiver.

Notwithstanding anything to the contrary contained herein, City hereby waives any right of recovery against Landlord for any loss or damage sustained by City with respect to City's Personal Property and Alterations, if any, in or on the Property or any portion thereof, whether or not such loss is caused by the fault or negligence of Landlord. City agrees to obtain a waiver of subrogation endorsement from each insurance carrier, if any, issuing policies relative to City's Personal Property and/or Alterations at the Property; provided, City's failure to do so shall not affect the above waiver.

18. ACCESS BY LANDLORD

Landlord reserves for itself and any designated Agent the right to enter the Property at all reasonable times and, except in cases of emergency (in which event Landlord shall give such notice as is reasonable under the circumstances), after giving City at least one (1) full business day's advance written or oral notice, for the purpose of (a) inspecting the Property, (b) supplying any service to be provided by Landlord hereunder, (c) showing the Property 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 Property including any portion of the Building, and Landlord may for that purpose erect, use and maintain necessary structures in and through the Property where reasonably required by the character of the work to be performed, provided that the entrances to the Building and the parking lot shall not be blocked so as to prevent reasonable access to the Building and/or the parking lot as needed for City's uses, and further provided that City's use shall not be materially 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), (e) 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 PROPERTY

Upon the expiration or sooner termination of this Lease, City shall surrender the Property to Landlord in good order and condition, reasonable use and wear, damage by fire or other casualty, and maintenance and repairs that are Landlord's responsibility under this Lease, excepted. Within ten (10) days after the expiration or sooner termination of the Lease, City shall remove from the Property all of City's Personal Property, City's telecommunications, data and computer facilities and any Alterations City desires or is required to remove from the Property pursuant to the provisions of Section 7.1 (Alterations by City), above; provided, however, that City shall continue to pay Rent on a prorated basis during such removal period. City shall repair or pay the cost of repairing any damage to the Property including 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 Property any of the Leasehold Improvements, except that City shall eliminate the gap in the wall between the Property and the adjacent 639 Bryant Street yard using concrete block construction within thirty (30) days after the later of (a) expiration or sooner termination of this Lease, or (b) Landlord's and City's agreement upon the replacement material. 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) "City Hazardous Material" shall mean any Hazardous Material which is brought to the Property by City or any City Party.

(b) "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.

(c) "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.

(d) "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 to City that, to Landlord's actual knowledge and except as otherwise disclosed in Exhibit E, 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 photo laboratories, 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 interior or exterior areas of the Building and Property 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 Article 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 Property for its 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, the City Parties and their respective Agents against any and all Claims arising before, 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, on or under the Building or on, under or about the Property, except (i) a Release of City Hazardous Material caused by City, any City Parties or the respective Agents of City or any City Parties, and (ii) a Release of Hazardous Material that is not City Hazardous Material, to the extent caused by the active negligence of City, any City Parties or the respective Agents of City or any City Parties.

Landlord's obligations under this Section shall survive the expiration or earlier termination of this Lease.

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 Building or exterior areas of the Property, or transported to or from 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 and light industrial warehouses and may use and store equipment, such as light standards, typically used and stored in municipal utility warehouses, so long as such use and equipment are 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, under or about the Building or other portions of the Property, then City shall Indemnify Landlord, the Landlord Parties and their respective Agents against any and all Claims arising during or after the Term of this Lease as a result of such breach or Release, except to the extent Landlord, any of the Landlord Parties, the respective Agents of any of the foregoing, or Easement Holder, its Agents or invitees, or any Third Party (as defined below) is responsible for the Release. The foregoing Indemnity shall not include any Claims resulting from the non-negligent aggravation by City, any City Parties or their respective Agents or Invitees of Hazardous Material conditions in the Building or other parts of the Property, existing prior to City's occupancy or caused by any Third Party during or after City's occupancy. City's obligations under this Section shall survive the expiration or earlier termination of this Lease. As used herein, "Third Party" means anyone who is not: Landlord, any Landlord Parties, Easement Holder, City, any City Parties, or any Agents of any of the foregoing.

22. SPECIAL PROVISIONS

22.1 Easement Across Parking Lot

City acknowledges that Landlord has granted to the owner of the adjacent property (645 Bryant Street) an easement (the "Easement"), sixteen (16) feet in width, across the parking area at the rear of the Building for ingress and egress between 645 Bryant Street and Welsh Street as described in the Agreement Granting Easement attached as Exhibit F. In the event that the Easement Holder's use overburdens the Easement or exceeds its scope, and City is unable to resolve such issue through direct communications with the Easement Holder, City shall have the right to pursue such remedies as may be available to City under the law against the Easement Holder. If the participation of the fee owner of the servient estate is required in order for City to obtain an adequate remedy, Landlord shall take such steps as are reasonably required to enable City to cause the Easement Holder to confine its use to its lawful rights as the holder of the dominant estate. City shall provide the Easement Holder with a card key to the Welsh Street gate and shall also make available to the Easement Holder an override key for operation of the gate in the event of a power outage, provided Landlord or Easement Holder pays the cost of such keys and provided Easement Holder first signs an acknowledgment in the form attached as Exhibit G. If the Easement Holder loses a key, City will provide a replacement key provided City is first paid the cost of the replacement key and any additional cost of changing the lock or access code; City shall not provide to Landlord or Easement Holder any keys to the gate securing the opening in the brick wall.

22.2 First Right of Refusal to Purchase

(a) Family Transfers.

(i) Permitted Family Transfers. One or more transfers of the Property or an interest in the Property to or among any of the following (each such transfer, a "Family Transfer" and each such transferee, a "Permitted Transferee") will not be considered a sale of the Property that would trigger City's rights or Landlord's obligations under Subsection 22.2(b):

(1) a family member of William H. Banker, Jr., Fillmore C. Marks, Fillmore Douglas Marks, William C. Marks or Bradford F. Marks;

(2) a trust of which all of the beneficiaries are family members of William H. Banker, Jr., Fillmore C. Marks, Fillmore Douglas Marks, William C. Marks and/or Bradford F. Marks (a "Family Trust"); or

(3) a limited liability company in which all of the member interests are owned by family members of William H. Banker, Jr., Fillmore C. Marks, Fillmore Douglas Marks, William C. Marks and/or Bradford F. Marks (a "Family LLC").

For this purpose a "family member" shall mean only a sibling, lineal descendant, cousin, or any spouse of any of the foregoing, of William H. Banker, Jr., Fillmore C. Marks, Fillmore Douglas Marks, William C. Marks and Bradford F. Marks. A Family Trust and a Family LLC may each be referred to herein as a "Family Entity."

(ii) **Family Entity Information and Certification.** From time to time, within ten (10) business days after receipt of a request from City, Landlord shall certify in writing the names of the trustee(s) and beneficiaries of any Family Trust owning an interest in the Property and the members of any Family LLC owning an interest in the Property, specifying the family relationships that qualify any such entity as a Family Entity. Landlord shall promptly notify City in writing of any Family Transfer, of any change in the beneficiaries of a Family Trust or dissolution of a Family Trust and of any change in the members of a Family LLC or dissolution or conversion of a Family LLC, providing information in each case sufficient to establish that the transfer is a Family Transfer and that the Family Entity in question continues to qualify as a Family Entity, if that is the case.

(iii) **Family Interest Conversion; Remedy.** The occurrence of an event (including a change in the beneficiaries or members of a Family Trust or Family LLC or a dissolution, conversion, or distribution) that results in a trust or limited liability company that owns an interest in the Property no longer qualifying as a Family Entity or otherwise results in an interest in the Property that was owned by a Family Entity being owned by someone other than a Permitted Transferee, in each case without concurrently transferring such interest in the Property to a Permitted Transferee, shall be referred to herein as a "Family Interest Conversion." Landlord and City acknowledge and agree that in the event of a Family Interest Conversion, the damages to City would be extremely difficult and impracticable to ascertain, and therefore agree to provide City with the following remedy ("City's Remedy"). In the event of a Family Interest Conversion, Landlord shall, at Landlord's election, either:

(A) Make a written offer to sell the Property to City as described below in this Subsection 22.2(a)(iii), at a purchase price equal to the fair market value of the Property, as defined in California Code of Civil Procedure Section 1263.320 ("Fair Market Value"), or

(B) Pay to City liquidated damages equal to five percent (5%) of the Fair Market Value of the interest in the Property that was previously owned by a Family Entity and as a result of the Family Interest Conversion is no longer owned by a Family Entity or Permitted Transferee. Payment of such amount as liquidated damages is not intended as a penalty or forfeiture within the meaning of California Civil Code Section 3275 or 3369, but is intended to constitute liquidated damages to City pursuant to California Civil Code Section 1671.

Landlord shall make its election within ten (10) business days ("Landlord's Election Period") after the Fair Market Value of the Property has been determined by the

following process: For a period of thirty (30) days after either party requests a meeting with the other to determine Fair Market Value following a Family Interest Conversion, the parties shall use diligent, good faith efforts to determine the Fair Market Value by mutual agreement. If the parties are unable to agree within such thirty (30)-day period, then Fair Market Value shall be determined pursuant to the appraisal process set forth in attached Exhibit B.

Landlord shall select alternative (B) above, if at all, by delivering to City within Landlord's Election Period notice of Landlord's election, together with a check in an amount equal to the liquidated damages plus the fees and expenses, if any, paid by City for appraisers pursuant to Exhibit B (collectively, the "Liquidated Damages").

Landlord shall elect alternative (A) above, if at all, by delivering to City within Landlord's Election Period, a Sale Notification, as defined in Section 22.2(b), offering to sell the Property to City at a purchase price equal to the determined Fair Market Value and on the terms and conditions in Subsections 22.2(b)(ii) [Due Diligence] and (iii) [Escrow; Closing] (an "FMV Sale Notification"). City shall have ten (10) days from receipt of the FMV Sale Notification within which to deliver to Landlord notice of acceptance of Landlord's offer. If Landlord selects alternative (A) and City does not accept the offer, City's Remedy shall be deemed satisfied for the specific Family Interest Conversion in question.

If Landlord selects alternative (A) and City accepts the offer, City's staff and Landlord shall use diligent, good faith efforts to negotiate a proposed final form of purchase and sale agreement (the "Proposed Purchase and Sale Agreement"), which shall specify the determined Fair Market Value as the purchase price and incorporate the terms set forth in Subsections 22.2(b)(ii) and (iii), within one hundred twenty (120) days after Landlord delivers the FMV Sale Notification to City. If the Fair Market Value is determined through the process set forth in Exhibit B to be the value determined by City's appraiser, the Proposed Purchase and Sale Agreement shall provide that the fees and expenses paid by City for the appraisers shall be credited toward the purchase price at close of escrow. The parties acknowledge that the Proposed Purchase and Sale Agreement shall be subject to City's Approvals, as defined below. If despite diligent, good faith efforts City's staff and Landlord are unable to agree on the final form of the Proposed Purchase and Sale Agreement within such 120-day period, then either party may, by notice to the other, terminate the negotiations, in which event City's Remedy shall be deemed satisfied for the specific Family Interest Conversion in question.

City's acceptance shall be deemed subject to the approval of City's Public Utilities Commission, Board of Supervisors and Mayor (collectively, "City's Approvals"), which must occur, if at all, within seventy five (75) days of Landlord's execution and delivery to City of the Proposed Purchase and Sale Agreement, the title company being willing to issue ALTA Title Insurance reasonably acceptable to City, and City's successful issuance of debt to fund the purchase. City shall execute the Proposed Purchase and Sale Agreement no later than five (5) business days after obtaining City's Approvals.

If Landlord fails to make its election within Landlord's Election Period, then City shall have the right to make the election by giving notice to Landlord within ten (10) business days ("City's Election Period") after expiration of Landlord's Election Period. If City selects alternative (A) above, Landlord shall be deemed to have given an FMV Sale Notification, and City's notice to Landlord selecting alternative (A) shall be deemed an acceptance of such offer on the terms and subject to the conditions described in the paragraph immediately preceding this

paragraph. City shall have the right to enforce its selected remedy in a court of law or equity and/or, at City's election if alternative (B) is selected and Landlord fails to pay the Liquidated Damages within thirty (30) days after City delivers its notice of election, by offsetting the Liquidated Damages against Rent.

This Subsection 22.2(a)(iii) shall survive and shall apply to any subsequent Family Interest Conversion that may occur during the Term until City's right of first refusal terminates in accordance with the terms of Subsection 22.2(b).

(b) Transfer to Third Parties.

(i) **Sale Notification; City's Offer.** In the event Landlord should decide to sell the Property during the Term of the Lease, Landlord shall first offer the Property to the City at the purchase price that the Property will be offered to the real estate market. Said purchase price shall be contained in a written notice ("Sale Notification") from Landlord to City and said purchase price shall be subject to adjustment as provided below. City shall have ten (10) days from receipt or deemed receipt of the Sale Notification from Landlord to submit (A) an offer to purchase at the price contained in the notice or (B) counter offer at a lesser price and otherwise upon the other business terms contained in Subsections 22.2(b)(ii) and (iii). City's offer to purchase at the price contained in the Sale Notification, all cash to Landlord at close of escrow, shall be deemed an acceptance of Landlord's offer on the terms and conditions in subparagraphs (ii) [Due Diligence] and (iii) [Escrow; Closing] below, subject to the conditions in the grammatical paragraph immediately following this paragraph. City's staff and Landlord shall use diligent, good faith efforts to negotiate a proposed final form of purchase and sale agreement (the "Proposed Final Purchase and Sale Agreement"), which shall incorporate the accepted purchase price and the terms set forth in Subsections 22.2(b)(ii) and (iii), within one hundred twenty (120) days after either City offers to purchase at the price contained in the Sale Notification or Landlord accepts a counter offer by City to purchase the Property at a lesser price. The parties acknowledge that the Proposed Final Purchase and Sale Agreement shall be subject to City's Approvals, as defined below. If despite diligent, good faith efforts City's staff and Landlord are unable to agree on the Proposed Final Purchase and Sale Agreement within that period, then either party may, by notice to the other, terminate the negotiations, in which event this right of first refusal shall terminate and Landlord shall be free to sell the Property to any person whomever and upon any terms whatsoever without any obligation to City.

City's offer to purchase shall be subject to City's Approvals (as defined in Section 22.2(a)), which must occur, if at all, within seventy five (75) days of Landlord's execution and delivery to City of the Proposed Final Purchase and Sale Agreement, the title company being willing to issue ALTA Title Insurance reasonably acceptable to City, and City's successful issuance of debt to fund the purchase. City shall execute the Proposed Final Purchase and Sale Agreement no later than five (5) business days after obtaining City's Approvals.

(ii) **Due Diligence.** Within (3) business days of the execution of a Purchase and Sale Agreement, Landlord shall deliver copies of all reports, appraisals and other documents in Landlord's possession, not previously delivered to City. Landlord shall cooperate with the City in its due diligence investigation.

(iii) Escrow; Closing. Close of escrow shall occur on or before one hundred fifty-five (155) days from the date of City's notice of the approval by City's Board of Supervisors and Mayor of the purchase.

At closing, City shall pay the cost of the extended coverage title insurance policy, real estate transfer taxes (if and to the extent that the transaction is not exempt from transfer taxes) one half the escrow fees, and one half of the other typical closing expenses. Landlord shall pay one half the escrow fees and one half the other typical closing expenses such as notary fees and overnight express charges. Landlord shall deliver the following (among other customary items) through a mutually agreeable escrow company:

(A) a grant deed conveying ALTA insurable title subject only to taxes not yet due and payable, and other exceptions reasonably acceptable to City,

(B) a bill of sale for all personal property owned by Landlord on the Property, and

(C) a written disclosure of all facts actually known by Landlord about the Property (including any and all property inspection reports).

(iv) No Accepted Offer or Counter Offer. If City does not agree to purchase the Property at the purchase price contained in the Sale Notification given pursuant to this Subsection 22.2(b) and does not make any counter offer within the ten (10)-day period, then this right of first refusal shall terminate and Landlord shall be free to sell the Property to any person whomever and upon any terms whatsoever without any obligation to City. If, however, City while not accepting the purchase price set forth in that Sale Notification, has made an all-cash-on-closing counter offer (the "City's Counter Offer") within the ten (10)-day period that has not been accepted by Landlord, then Landlord may sell the Property, free of any claim of City, to any potential buyer who is willing to pay a gross purchase price (an amount determined without regard to any brokerage commission liability, but reduced by any Landlord credits or give backs to the potential buyer for such items as existing building conditions or improvements and reduced by any Transfer Taxes to be paid by Landlord, hereinafter referred to as "Gross Purchase Price") which is not less than the lesser of (i) the amount of City's Counter Offer or (ii) ninety percent (90%) of the purchase price contained in the Sale Notification.

If Landlord is unable to sell the Property for a Gross Purchase Price at least equal to the lesser of (i) the amount of City's Counter Offer or (ii) ninety percent (90%) of the purchase price contained in the Sale Notification, Landlord shall, before selling the Property to a third party, give another Sale Notification with a reduced purchase price and the above procedure for City's first right of refusal shall be repeated.

THIS FIRST RIGHT OF REFUSAL SHALL TERMINATE AND BE OF NO FURTHER EFFECT IF A SALE OF THE PROPERTY TO AN ARMS LENGTH THIRD PARTY IS CONSUMMATED IN ACCORDANCE WITH THE FOREGOING PROVISIONS.

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 correctly addressed notice sent by a method that provides confirmation of delivery shall be deemed to have been given and received upon the first to occur of confirmed delivery, attempted delivery, or refusal of delivery. 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 Force Majeure

The time for performance of an obligation other than the payment of money under this Lease shall be extended for the period during which a party is prevented from performing by strikes, lockout, labor disputes, shortages of material or labor, fire or other casualty, acts of God, or any other cause beyond the reasonable control of the party required to perform ("Unavoidable Delay").

23.3 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.

23.4 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 Property, (b) increasing the Term, (c) increasing the Rent, (d) changing the general use of the Property 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 Public Utilities Commission and, at City's election, City's Board of Supervisors.

23.5 Authority

Landlord represents and warrants to City that 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.

23.6 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 or the Easement Holder (as defined in Section 22.1) shall include the agents, employees, officers and contractors of such party, and the term "Invitees" when used with respect to City or the Easement Holder shall include the respective clients, customers, invitees, guests, licensees, assignees or subtenants of each. All approvals, consents or other determinations permitted or required by City under this Lease shall be made by or through City's Director of Property or the General Manager of SFPUC unless otherwise provided in this Lease, subject to any applicable limitations in the City's Charter and Administrative Code.

23.7 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.

23.8 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.

23.9 Brokers

Neither party has had any contact or dealings regarding the leasing of the Property, 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.

23.10 Severability

If any provision of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, 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.

23.11 Governing Law

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

23.12 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.

23.13 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.

23.14 Holding Over

Should City hold over in possession of the Property after the expiration of the Term with Landlord's written 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.

23.15 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.

23.16 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.

23.17 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.

23.18 Signs

City may erect or post signs on or about the Property 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. Landlord shall have the right to post "For Lease" signs on the Property during the final six (6) months of the Term.

23.19 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 Property 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.

23.20 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 Property 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 contract directly with any third-party provider of such services, facilities or amenities to obtain the same.

23.21 Transfer of Landlord's Interest

Subject to City's rights under Section 22.2, Landlord shall have the right to transfer its interest in the Property or this Lease to any other financially responsible person or entity. In the event of any such transfer, upon notice to City of the name and address of Landlord's successor and delivery to City of an express assumption by the transferee of all of Landlord's obligations hereunder, Landlord shall be relieved of any obligations accruing hereunder from and after the effective date of such transfer and assumption, and City shall look solely to the successor in interest of Landlord for performance of such obligations. This Lease shall not be affected by any such sale or transfer, however, and provided such purchaser or assignee recognizes City as the tenant under this Lease, City shall attorn to the purchaser or assignee, such attornment to be effective and self-operative without the execution of any further instruments on the part of any of the parties to this Lease.

23.22 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.

23.23 MacBride Principles - Northern Ireland

The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Landlord acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

23.24 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.

23.25 Prevailing Wages for Construction Work

Landlord agrees that any person performing labor in the construction of the Leasehold Improvements or other improvements to the Property, which Landlord provides under this Lease, shall be paid not less than the highest prevailing rate of wages as required by Section 6.22(E) of the San Francisco Administrative Code, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco, California. Landlord shall include, in any contract for construction of such Leasehold Improvements or other improvements to the Property, a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Landlord shall require any contractor to provide, and shall deliver to City upon request, certified payroll reports with respect to all persons performing labor in the construction of any Leasehold Improvements or other improvements to the Property.

23.26 Non Discrimination in City Contracts and Benefits Ordinance

(a) Covenant Not to Discriminate

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

(b) Subcontracts

Landlord shall include in all subcontracts relating to the Property 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(e)-(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, in any of its operations in San Francisco or where the work is being performed for the City elsewhere in 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 specified above within the United States, between employees with domestic partners and employees with spouses, and/or between 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 condition set forth in Section 12.B2(b) of the San Francisco Administrative Code.

(d) HRC Form

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

23.27 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.

23.28 Bicycle Storage Facilities

Article 1.5, Section 155.1, of the San Francisco Planning Code (the "Planning Code") requires the provision of bicycle storage at City-leased buildings at no cost to Landlord and if funds are available. In the event public and/or private donations, grants or other funds become available, at any time during the Term of this Lease including any extension thereof, City may, by giving a 60-day advanced written notice to Landlord, install compliant bicycle storage in the Building or on the Property. Landlord, at no cost to Landlord, shall reasonably cooperate with City regarding the location of such spaces in furtherance of the implementation of such requirements of the Planning Code.

23.29 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 707 relating to resource-efficient City buildings and resource-efficient pilot projects. Landlord hereby agrees that it shall comply with all applicable provisions of such code sections.

23.30 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.

23.31 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 and Public Utilities Commission, 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.

23.32 Certification by Landlord

By executing this Lease, Landlord certifies that neither Landlord nor any of its officers or members have been suspended, disciplined or disbarred by, or prohibited from contracting with, any federal, state or local governmental agency. In the event Landlord or any of its officers or members have been so suspended, disbarred, disciplined or prohibited from contracting with any governmental agency, it shall immediately notify the City of same and the reasons therefore together with any relevant facts or information requested by City. Any such suspension, disbarment, discipline or prohibition may result in the termination or suspension of this Lease. Landlord acknowledges that this certification is a material term of this Lease.

23.33 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.

23.34 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.

23.35 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 City for the selling or leasing of any land or building to or from

City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for such contract until the termination of negotiations for such contract or three (3) months has elapsed from the date the contract is approved by the City elective officer, or the board on which that City elective officer serves.

23.36 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.

23.37 Memorandum of Lease

On the Effective Date, Landlord and City shall each execute and acknowledge before a notary public the memorandum of lease in the form attached hereto as Exhibit H (the "Memorandum of Lease"), and Landlord shall cause the Memorandum of Lease to be recorded in the Official Records of the City and County of San Francisco within two (2) business days thereafter. Upon termination of the First Right of Refusal to Purchase set forth in Section 22.2, City shall execute in recordable form such documents as reasonably requested by Landlord to establish that the Property is no longer subject to the right.

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.

[signatures on following page]

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

LANDLORD:

William H Banker Jr

William H Banker, Jr., Trustee of the Banker Trust dated April 20, 1992

Fillmore C. Marks

Fillmore C. Marks, Trustee of the Fillmore and Barbara Marks 1992 Trust

Fillmore Douglas Marks

Fillmore Douglas Marks

William C. Marks

Bradford F. Marks

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By:

AMY L. BROWN
Director of Property

RECOMMENDED:

ED HARRINGTON
General Manager
San Francisco Public Utilities Commission

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By:

Deputy City Attorney

EXHIBIT A

NOTICE OF COMMENCEMENT DATE

[Date]

Ms. Amy L. Brown
Director of Property
Real Estate Division
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102

RE: Acknowledgment of Commencement Date, Lease Between WILLIAM H. BANKER, JR., SUCCESSOR TRUSTEE OF THE BANKER TRUST DATED APRIL 20, 1992, FILLMORE C. MARKS, TRUSTEE OF THE FILLMORE AND BARBARA MARKS 1992 TRUST, FILLMORE DOUGLAS MARKS, WILLIAM C. MARKS AND BRADFORD F. MARKS (collectively, Landlord), and the CITY AND COUNTY OF SAN FRANCISCO (Tenant), for premises known as _____ located at _____

Dear Ms. Brown:

This letter will confirm that for all purposes of the Lease, the Commencement Date (as defined in Section 3.2 of the Lease) is _____, 200__.

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: _____
Amy L. Brown
Director of Property

Dated: _____

EXHIBIT B

Appraisal Procedure [Section 22.2(a)]

(a) **Designation of Arbitrators.** Following a Family Interest Conversion, if the parties are not able to mutually agree on Fair Market Value of the Property within thirty (30) days after City delivers to Landlord a written request for a meeting with Landlord to determine Fair Market Value, then the Fair Market Value shall be determined by arbitrators with the qualifications specified below, selected as follows. Within fifteen (15) days after expiration of such thirty-day period, Landlord and City shall each notify the other party of the name and address of the person designated to act as arbitrator on such party's behalf and the two arbitrators shall within ten (10) days thereafter select a third arbitrator. If they are unable to agree upon such appointment within five (5) business days after expiration of such ten (10) day period, the third arbitrator shall be selected by the parties themselves. If the parties do not agree on the third arbitrator within five (5) business days after expiration of the foregoing five (5) business day period, then either party, on behalf of both, may request appointment of such a qualified person by the then president of the San Francisco Real Estate Board. If either Landlord or City fails to notify the other party of the designation of its arbitrator by the time herein specified, then the sole arbitrator appointed shall act as arbitrator on behalf of both Landlord and City in determining the Fair Market Value.

(b) **Qualifications of Arbitrators.** Each arbitrator must be an MAI real estate appraiser with at least ten (10) years of full-time commercial experience, including at least five (5) years of recent experience appraising light industrial properties located in San Francisco.

(c) **Procedure.** Within thirty (30) days after the designation of arbitrator(s) in accordance with subparagraph (b) above, each arbitrator shall state, in writing, his or her determination of the Fair Market Value, supported by the reasons therefor, and shall make counterpart copies for the other arbitrators and for Landlord and City. If an arbitrator fails to deliver his or her own determination to the other arbitrators within such thirty (30) day period, then the determination of the other arbitrator shall be the Fair Market Value and shall be final and binding upon the parties. If only one arbitrator is designated pursuant to subparagraph (b), then such arbitrator's determination of the Fair Market Value shall be binding. The role of the third arbitrator shall be to select which of the two proposed Fair Market Value most closely approximates his or her determination of Fair Market Value. The third arbitrator shall have no right to propose a middle ground or any modification of either of the two proposed determinations. The determination he or she chooses as that most closely approximating his or her determination of the Fair Market Value shall constitute the decision of the arbitrators and shall be final and binding upon the parties.

(d) **Fees; Expenses.** Each party shall pay the fees and expenses of its respective arbitrator, and each party shall pay fifty percent (50%) of the fees and expenses of the third arbitrator. However, if City accepts Landlord's offer to sell the Property at the Fair Market Value determined pursuant to this Exhibit, then City shall receive a credit toward the purchase price in the amount of such fees and expenses paid by City.

(e) **Successor Arbitrator.** In the event of a failure, refusal or inability of any arbitrator to act, his or her successor shall be appointed by him or her, but in the case of the third arbitrator,

his or her successor shall be appointed in the same manner as that set forth herein with respect to the appointment of the original third arbitrator.

Cdunn



Cdunn

SFPUC Estoppel Certificate 9-9-15 RE 649-651 Bryant Street.pdf

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Xerox® WorkCentre® 5890



San Francisco
Water

Services of the San Francisco Public Utilities Commission

525 Golden Gate Avenue, 13th Floor
San Francisco, CA 94102

September 9, 2015

Tishman Speyer Worldwide, L.L.C.
c/o Tishman Speyer
One Bush Street, Suite 450
San Francisco, California 94104
Attention: Carl D. Shannon

Re: 649-651 Bryant Street, San Francisco, California (the "Property"); Lease dated as of May 12, 2009 (the "Lease"), by and between William H. Banker, Jr. Successor Trustee of the Banker Trust dated April 20, 1992, Fillmore C. Marks, Trustee of the Fillmore and Barbara Marks 1992 Trust, Fillmore Douglas Marks, William C. Marks and Bradford F. Marks (collectively, "Landlord"), as landlord, and the City and County of San Francisco ("Tenant") as tenant.

Dear Mr. Shannon:

The following statements are made with the knowledge that the Landlord and the addressee are relying on them, and the addressee's lenders, successors, and assigns and successor owners of the Property may rely on them:

Tenant, being the tenant under the Lease covering the entire Property ("Leased Premises"), hereby certifies to the addressee that the following statements are true, correct, and complete as of the date of this letter:

1. Tenant is the tenant under the Lease, pursuant to which Landlord leases to Tenant the Leased Premises. The initial term of the Lease commenced on August 10, 2009, and will expire on the last day of the tenth (10th) full Lease Year (as defined in the Lease), exclusive of unexercised renewal options and extension options contained in the Lease. Except as set forth in this Paragraph 1, there have been no amendments, modifications, or revisions to the Lease, and, except for the Lease, there are no other agreements of any kind between Landlord and Tenant regarding the Leased Premises.

2. The Lease has been duly authorized and executed by Tenant and is in full force and effect.

3. Tenant is presently occupying the Leased Premises. The Lease has not been assigned by Tenant and no sublease, concession agreement, or license covering all or any portion of the Leased Premises has been entered into by Tenant.

4. Tenant is currently obligated to pay fixed or base rent under the Lease in the annual amount of \$266,112, payable in monthly installments of \$22,176. Rent has been paid under the Lease through September 30, 2015. Except as specifically stated in the Lease, Tenant is entitled to no rent concessions, free rent, allowances, or other similar compensation in connection with its lease of the Leased Premises.

5. To the best of Tenant's knowledge, without any duty of inquiry, neither Landlord nor Tenant is in default under the Lease beyond any applicable cure period and, no event has occurred which, with the giving of notice or passage of time, or both, could result in such a default.

TENANT

CITY AND COUNTY OF SAN FRANCISCO, a
municipal corporation, through its Public
Utilities Commission

By: _____



Michael Carlin,
Deputy General Manager

EXHIBIT A

NOTICE OF COMMENCEMENT DATE

[Date]

Ms. Amy L. Brown
Director of Property
Real Estate Division
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102

RE: Acknowledgment of Commencement Date, Lease Between WILLIAM H. BANKER, JR., SUCCESSOR TRUSTEE OF THE BANKER TRUST DATED APRIL 20, 1992, WILLMORE C. MARKS, TRUSTEE OF THE WILLMORE AND BARBARA MARKS 1992 TRUST, WILLMORE DOUGLAS MARKS, WILLIAM C. MARKS AND BRADFORD F. MARKS (collectively, Landlord), and the CITY AND COUNTY OF SAN FRANCISCO (Tenant), for premises known as _____ located at _____

Dear Ms. Brown:

This letter will confirm that for all purposes of the Lease, the Commencement Date (as defined in Section 3.2 of the Lease) is _____, 200_____.

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: _____
Amy L. Brown
Director of Property

Dated: _____

07/23/11/07/11

his or her successor shall be appointed in the same manner as that set forth herein with respect to the appointment of the original third arbitrator.

EXHIBIT D
STANDARDS FOR LOW EMITTING MATERIALS
FOR LEASEHOLD IMPROVEMENTS

Revised 11-09-02

VOC Limits* for Adhesives and Sealants (Less Water and Less Exempt Compounds in g/L)		
South Coast Rule #1168 VOC Limits		
Architectural Applications	Current VOC Limit [g/L]	
Indoor Carpet Adhesives	50	
Carpet Pad Adhesives	50	
Outdoor Carpet Adhesives	150	
Wood Flooring Adhesive	100	
Rubber Floor Adhesives	80	
Subfloor Adhesives	50	
Ceramic Tile Adhesives	65	
VCT and Asphalt Tile Adhesives	50	
Dry Wall and Panel Adhesives	50	
Cove Base Adhesives	50	
Multipurpose Construction Adhesives	70	
Structural Glazing Adhesives	100	
Single Ply Roof Membrane Adhesives	250	
Specialty Applications VOC Limits and Effective Dates	Current VOC Limit [g/L]	1/1/2007
PVC Welding	510	
CPVC Welding	490	
ABS Welding	325	
Plastic Cement Welding	250	
Adhesive Primer for Plastic	550	
Computer Diskette Manufacturing	350	
Contact Adhesive	80	
Special Purpose Contact Adhesive	250	
Tire Retread 100	100	
Adhesive Primer for Traffic Marking Tape	150	
Structural Wood Member Adhesive	140	
Sheet Applied Rubber Lining Operations	850	
Top and Trim Adhesive	540	250g
Substrate Specific Applications	Current VOC Limit [g/L]	
Metal to Metal	30	
Plastic Foams	50	
Porous Material (except wood)	50	

of the Welsh Street gate upon the tenant's executing and delivering to SFPUC a copy of this acknowledgment where indicated below.

OWNER:

By: Harry King
Printed Name: HARRY KING
Title: OWNER

TENANT'S ACKNOWLEDGMENT

The undersigned Tenant of ^{645 AS} 639 Bryant Street, San Francisco acknowledges receipt of this Acknowledgment and agrees to abide by the terms and restrictions above, in consideration of the security provided by the Welsh Street gate. For purposes of this Tenant's Acknowledgment, the covenants of Owner in items 1 through 5 shall be deemed to be covenants of Tenant.

TENANT:

By: Harry King
Printed Name: HARRY KING
Title: OWNER

RECORDING REQUESTED BY, AND
WHEN RECORDED, MAIL TO:
City and County of San Francisco
Real Estate Division
25 Van Ness Avenue, Suite 400
San Francisco, California 94102
Attn: Director of Property

FOR RECORDER'S USE ONLY

MEMORANDUM OF LEASE

This Memorandum of Lease ("Memorandum"), dated for reference purposes as of May 12, 2009, is by and between WILLIAM H. BANKER, JR., SUCCESSOR TRUSTEE OF THE BANKER TRUST DATED APRIL 20, 1992, FILLMORE C. MARKS, TRUSTEE OF THE FILLMORE AND BARBARA MARKS 1992 TRUST, FILLMORE DOUGLAS MARKS, WILLIAM C. MARKS AND BRADFORD F. MARKS (collectively, "Landlord"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City").

Recitals

A. Concurrently herewith, Landlord and City have entered into that certain Lease, dated May 12, 2009 (the "Lease"), pursuant to which Landlord leased to City and City leased from Landlord the real property more particularly described in the attached Exhibit A (the "Property"), which is incorporated by this reference.

B. Landlord and City desire to execute this Memorandum to provide constructive notice to all third parties of the Lease and the first right of refusal to purchase the Property granted to City in the Lease; and all of the terms and conditions of the Lease are incorporated herein by reference as if they were fully set forth herein and reference is made to the Lease itself for a complete and definitive statement of the rights and obligations of Landlord and Tenant thereunder.

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Term. Pursuant to the terms of the Lease, Landlord leased the Property to City for a term commencing on the date Landlord delivers possession of the Property to City as set forth in the Lease. The Term of the Lease shall expire on the date that is the last day of the one hundred twentieth (120th) full calendar month after the Commencement Date (as such term is defined in the Lease), subject to an option to extend the Term for an additional ten (10) years (subject to the terms and conditions of the Lease), unless earlier terminated in accordance with the terms of the Lease.

2. Lease Terms. The lease of the Property to City is made pursuant to the Lease. All the provisions of the Lease, including City's first right of refusal to purchase the Property, are

D:\sac\3-11-09\404

State of California }
County of _____ }

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT F

COPY OF RECORDED AGREEMENT GRANTING EASEMENT

(See next page)

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Grantors, with vehicles of any kind or any other for ingress and egress, upon the property of Grantees, the easement and right-of-way being 16 feet in width with the northerly boundary line of said easement or right-of-way commencing at a point on the westerly boundary line of Grantees' property, on the northerly side to the center, and extending easterly to Welsh Street, and running thence diagonally to a point immediately south of the rear end of the building on the Grantees' property.

2. Grantors and Grantees shall jointly have the right to the use of the Welsh Street gate and shall jointly share the cost of the repair and maintenance of the gate as well as the cost of the repair and maintenance of the pavement in the easement area, provided however, that if either the gate or the pavement of the easement area are damaged or destroyed by the conduct or activities of either the Grantees or the Grantees' agents, then the parties responsible for the damage or destruction shall alone be responsible for the repair of the damaged area.

3. The easement and right-of-way here granted shall be appurtenant to and shall run with the land of the Grantees and Grantees as hereinabove described, the Grantors' land being the servient tenement and that of the Grantees being the dominant tenement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement Granting Easement the day and date first above written.

William H. Banker
 William H. Banker
 Grantors

Charles Lee Tilden, Jr.
 Charles Lee Tilden, Jr.
 Trustee of the Charles Lee Tilden, Jr. Trust
 Grantee

VOC Limits for Paints

Green Seal GS-11 Limits for Interior Paints (calculation of VOC shall exclude water and tinting color added at the point of sale)

INTERIOR PAINT	VOC Limit (g/L) minus water
Non-Flat	150
Flat	50
EXTERIOR PAINT	VOC Limit (g/L) minus water
Non-Flat	200
Flat	100
PAINT TYPE	VOC Limit (g/L) minus water
Gloss	250
Semi-Gloss	250
Flat	250

VOC Limits for Coatings

South Coast Rule #1133 Limits for Architectural Coatings

COATING TYPE	Limit*	7/1/2006	7/1/2007	7/1/2008
Bond Breakers	350			
Clear Wood Finishes				
Varnish	350	275		
Sanding Sealers	350	275		
Lacquer	275			
Clear Brushing Lacquer	275			
Concrete-Curing Compounds	350			
Dry-Fog Coatings	400			
Fire-Proofing Exterior Coatings	350			
Fire-Retardant Coatings				
Clear	651			
Pigmented	351			
Flats	100			50
Floor Coatings	100	50		
Graphic Arts (Sign) Coatings	500			
Industrial Maintenance (IM) Coatings	250	100		
High Temperature IM Coatings**	420			

EXHIBIT E

DISCLOSURES CONCERNING KNOWN CONDITIONS OF THE PROPERTY

1. The building lacks an elevator, which could violate disability access laws depending on City's particular use of the Building.
2. The prior tenant was a photo lab, which used chemicals that fall within the definition of Hazardous Material.
3. The Property contains asbestos and asbestos-containing material, as described in the Asbestos Survey Report dated September 24, 2008, prepared by Chris Yania for Marks Property Management (a copy of which has been furnished to City).
4. The Property contains lead, as described in the report dated September 22, 2008, prepared by ACC Environmental Consultants and addressed to Elaine Kirk of Banker, Marks & Kirk (a copy of which has been furnished to City).
5. The wheelchair ramp at the rear of the Building contains a bump which will be addressed as part of the Leasehold Improvement Work.

Page 5 of 7



CITY AND COUNTY OF
SAN FRANCISCO

RISK MANAGEMENT
DIVISION

GAVIN NEWSOM
MAYOR

CITY AND COUNTY OF SAN FRANCISCO SELF-INSURANCE PROGRAM
Effective Date: July 1, 2009 - June 30, 2009

This letter certifies that the City and County of San Francisco is self-insured and self-funded for the following insurance programs which cover the City and County of San Francisco and its officers, employees.

Comprehensive General Liability in the amount of \$1,000,000 per occurrence and \$2,000,000 per aggregate for bodily injury, property damage, and personal injury to third parties for liability arising out of the City's negligence in performance of this agreement.

Workers' Compensation in statutory amounts with Employer's Liability of \$1,000,000 per accident, injury or illness.

Automobile Liability including physical vehicle damage, bodily injury and property damage in the amount of \$1,000,000 per accident/incident.

The City and County of San Francisco's self-insurance program is not commercial insurance and has no legal capacity to name another entity as additional insured.

Should you have any questions, please do not hesitate to contact this office at 415-554-2303.

Sincerely,

Matt Hansen
Director

25 Van Ness Avenue, Room 410, San Francisco, CA 94102
Telephone (415) 554-2300; Fax (415) 554-2367

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 19-0081

WHEREAS, The San Francisco Public Utilities Commission, by Lease dated May 12, 2009 (Lease) by and between William H. Banker, Jr., Successor Trustee of The Banker Trust dated April 20, 1992, Fillmore C. Marks, Trustee of The Fillmore and Barbara Marks 1992 Trust; Fillmore Douglas Marks, William C. Marks, and Bradford F. Marks, tenants in common, as landlord (collectively, Landlord), and the City and County of San Francisco (City), through its SFPUC as tenant (Tenant) leases approximately 14,000 square feet of warehouse and office space on an approximate 19,000 square foot lot commonly known and numbered 651 Bryant Street for use by the SFPUC Power Enterprise Utility Field Services (UFS) Division; and

WHEREAS, This Commission approved the Lease on July 8, 2008, by Resolution No. 08-0121, which had an initial term of 10 years and one option to extend by an additional 10 years, and the Board of Supervisors approved the Lease by Resolution No. 315-09, adopted July 28, 2009; and

WHEREAS, The UFS Division provides engineering, technical, and field services in the management, operation, maintenance, replacement and new installations of the City-owned electric distribution systems and 25,000 streetlights in San Francisco, and also operates and maintains facilities for San Francisco International Airport and the Port of San Francisco and on Treasure Island and Yerba Buena Island owned by the Treasure Island Development Authority, plus various redevelopment projects; and

WHEREAS, The Lease currently expires October 31, 2019; and

WHEREAS, The Lease provides City, through the SFPUC, with one option to extend the Lease term for ten years, to be exercised at the SFPUC's sole discretion and requiring approval by this Commission; and

WHEREAS, By letter dated December 6, 2018, City, through the SFPUC, exercised its option under the Lease to extend the Lease term for one additional term of 10 years pursuant to Section 3.4 [Extension Option] of the Lease; and

WHEREAS, Extension of the Lease term is subject to approval of this Commission, and the Board of Supervisors under Charter Section 9.118; and

WHEREAS, Pursuant to the terms of Section 3.5 [Determination of Base Rent for the Extended Term] of the Lease, Landlord and City agreed that, considering all factors, 95% of the "prevailing market rate" for annual Base Rent for the first year of the Extended Term shall be \$577,920 (approximately \$41.28 per square foot) and monthly Base Rent payments shall be \$48,160 (approximately \$3.44 per square foot), which shall increase annually by three percent (3%), as set forth in the attached Lease extension letter dated March 4, 2019; and

WHEREAS, Funding for the rent payments is available from the from the Power Enterprise Operating COA: 24970/298650/10000/10029985/0006/530000; and.

WHEREAS, This action does not constitute a project under California Environmental Quality Act Guidelines Section 15378 because there would be no physical change in the environment; now, therefore, be it

RESOLVED, That this Commission hereby approves the terms and conditions of the ten-year Lease term extension agreement dated March 4, 2019, a copy of which is incorporated by reference; and be it

FURTHER RESOLVED, That this Commission hereby ratifies, approves, and authorizes all actions heretofore taken by any City official in connection with the Lease extension; and be it

FURTHER RESOLVED, That this Commission hereby authorizes and directs the General Manager of the SFPUC to seek approval by the Board of Supervisors pursuant to Charter Section 9.118 to execute the attached Lease extension agreement; and, be it

FURTHER RESOLVED, That this Commission hereby authorizes the SFPUC General Manager to enter into any amendments or modifications to this Lease and Lease extension, including without limitation, the exhibits, that the General Manager determines, in consultation with the City Attorney, are in the best interest of the City, do not materially increase the obligations or liabilities of the City, are necessary or advisable to effectuate the purposes and intent of the Lease or this resolution, and are in compliance with all applicable laws, including the City Charter.

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of April 23, 2019.



Secretary, Public Utilities Commission



April 26, 2019

Honorable Board of Supervisors
City and County of San Francisco
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102

Re: Proposed lease extension at 651 Bryant Street for the SFPUC

Dear Board Members:

Attached for your consideration is a Resolution authorizing the proposed ten year lease extension of an existing lease at 651 Bryant Street, San Francisco, California for the continued use by San Francisco Public Utilities Commission's (SFPUC) Power Enterprise's Utility Field Services (UFS) Division.

The SFPUC's UFS division provides engineering, technical, and field services in the management, operation, maintenance, replacement and new installations for the City-owned electric distribution systems and approximately 25,000 streetlights in San Francisco and also operates and maintains facilities for the San Francisco International Airport, the Port of San Francisco and on Treasure Island and Yerba Buena Island owned by the Treasure Island Development Authority.

The Leased Premises comprise approximately 14,000 rentable square feet of warehouse and office improvements on approximately 19,000 square feet of land. The Premises serves as an extension of and are located adjacent to UFS's main facility at the City owned property at 639 Bryant Street.

The SFPUC currently pays Base Rent of \$24,477 (\$1.75/s.f.) monthly plus its own utilities and janitorial costs and typical property expenses above a 2009 Base Year.

The Lease provides for a first right to purchase the property which would continue during the proposed Extension Term. City's potential purchase is subject to the further approval of the Public Utilities Commission, Board of Supervisors and the Mayor.

- London N. Breed**
Mayor
- Ann Moller Caen**
President
- Francesca Viator**
Vice President
- Anson Moran**
Commissioner
- Sophie Maxwell**
Commissioner
- Tim Paulson**
Commissioner
- Harlan L. Kelly, Jr.**
General Manager

OUR MISSION: To provide our customers with high-quality, efficient and reliable water, power and sewer services in a manner that values environmental and community interests and sustains the resources entrusted to our care.



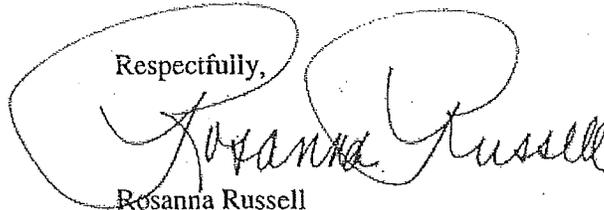
The Lease expires October 31, 2019 and includes one further option to extend the term at 95% of fair market rent, subject to Board approval. The proposed lease extension is for a term of ten (10) years commencing November 1, 2019.

The City and Landlord have negotiated 95% of fair market rent, considering all factors, to be \$48,160 or \$3.44 per square foot monthly with three percent (3%) annual adjustments during the term of the lease. Attached is a Before and After Table.

The San Francisco Public Utilities Commission by Resolution No. 19-0081 and the Real Estate Division recommend approval of the proposed lease extension.

If you have any questions in this regard, please contact Charlie Dunn of SFPUC staff at 554-1874.

Respectfully,

A handwritten signature in cursive script that reads "Rosanna Russell". The signature is written in black ink and is enclosed within a large, hand-drawn oval shape.

Rosanna Russell
Director,
SFPUC Real Estate Services

Attachments

cc: Harlan Kelly, Jr., General Manager, SFPUC

Attachment 1

Summary of current and proposed terms

	Current Lease	Proposed Extension
Premises Square Feet	19,000 SF	No Change
Monthly Base Rent	\$24,477	\$48,160
Annual Rent Increases	2.5%	3%
Operating Expenses	City pays for its own utilities and janitorial	No Change
Property Expenses	Increases above a 2009 Base Year	Increases above a 2019 Base Year
Term	Through October 31, 2019	Through October 31, 2029
Option(s) to Extend	(1) 10 year	None
Purchase	First right to purchase	No Change



**San Francisco
Water Power Sewer**

Services of the San Francisco Public Utilities Commission

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

2019 APR 29 AM 10:19

#Y _____ *jh*

525 Golden Gate Avenue, 13th Floor
San Francisco, CA 94102
T 415.554.3155
F 415.554.3161
TTY 415.554.3488

TO: Angela Calvillo, Clerk of the Board
FROM: Christopher Whitmore, Policy and Government Affairs
DATE: April 29, 2019
SUBJECT: Real Property Lease Extension – Multiple Ownership – 651 Bryant Street - \$577,920 Annual Base Rent

Please see the attached resolution authorizing the General Manager of the San Francisco Public Utilities Commission to exercise a Lease Extension for the real property located at 651 Bryant Street with William H. Banker, Jr., Successor Trustee of The Banker Trust dated April 20, 1992, Fillmore C. Marks, Trustee of The Fillmore and Barbara Marks.1992 Trust, Fillmore Douglas Marks, William C. Marks, and Bradford F. Marks, tenants in common, collectively as Landlord, for a ten-year extension term, commencing on November 1, 2019 and terminating on October 31, 2029, for the continued use by the San Francisco Public Utilities Commission at the monthly base rent of \$48,160 for a total annual base rent of \$577,920.

The following is a list of accompanying documents (2 sets):

1. Board of Supervisors Resolution
2. Letter to the Board of Supervisors
3. 2009 Lease
4. Bryant Lease Extension
5. SFPUC Reso. 19-0081
6. Form SFEC - 126

Please contact Christopher Whitmore at (415) 934-3906 if you need any additional information on these items.

London N. Breed
Mayor

Ann Moller Caen
President

Francesca Vietor
Vice President

Anson Moran
Commissioner

Sophie Maxwell
Commissioner

Tim Paulson
Commissioner

Harlan L. Kelly, Jr.
General Manager



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

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

Contractor Information <i>(Please print clearly.)</i>	
Name of contractor: William H. Banker, Jr., Successor Trustee of The Banker Trust dated April 20, 1992, Fillmore C. Marks, Trustee of The Fillmore and Barbara Marks 1992 Trust, Fillmore Douglas Marks, William C. Marks, and Bradford F. Marks, tenants in common, collectively as landlord	
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.	
1. None 2. None 3. None except as noted above 4. None 5. None	
Contractor address: 651 Bryant Street Tenancy in Common, 5674 Sonoma Drive, Pleasanton, CA 94566	
Date that contract was approved:	Amount of contract: \$6,471,761.63 over 10 years
Describe the nature of the contract that was approved: Renewal of an existing lease at 651 Bryant Street	
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, Relocation Appeals Board, and Local Workforce Investment Board) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

Filer Information <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: Board.of.Supervisors@sfgov.org

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