

## SECOND AMENDMENT TO LEASE

THIS SECOND AMENDMENT TO LEASE ("Second Amendment"), dated as of March 19, 2018, is made by and between Michael C. Mitchell, ("Landlord") and the City and County of San Francisco, a municipal corporation acting by and through its Airport Commission ("City or Tenant").

### RECITALS:

THIS SECOND AMENDMENT is made with reference to the following facts and circumstances:

- A. Landlord and City entered into that certain Lease dated January 12, 2009, as amended by the First Amendment to Lease dated October 1, 2010, and extended by letter dated October 14, 2014 (the "Existing Lease"). Under the Existing Lease, Landlord leased to City certain Premises, consisting of approximately 6,000 square feet of improvements on approximately 10,500 square feet of land as described in the Lease, and commonly known as 837 Malcom Road, Burlingame, California.
- B. The Term of the Existing Lease is scheduled to expire on April 30, 2018.
- C. Landlord and City desire to extend the Term of the Existing Lease and amend the Lease upon the terms and conditions as hereinafter provided.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Landlord and City agree as follows:

1. Defined Terms. Capitalized terms used in this Second Amendment but not defined herein shall have the meaning ascribed to them in the Existing Lease. "Lease" shall mean the Existing Lease as amended by this Second Amendment.
2. Extension of Term. The Term of the Existing Lease is extended for an additional five-year period, such that the Expiration Date shall be April 30, 2023, unless sooner terminated or extended pursuant to the terms of the Lease.
3. City's Option to Terminate. City shall have the option to terminate the Lease without penalty effective upon or after April 30, 2021, provided that City gives one (1) year's advanced written notice to Landlord.
4. City's Options to Extend the Term. City shall have two (2) options to extend the Term ("Extension Options") for one (1) year each (the "Option Terms"). The Option Term(s) shall be on all of the terms and conditions contained in the Lease, including but not limited to, the annual adjustment of Base Rent by the three percent (3%). City may exercise the Extension Options, if at all, by giving one (1) year's advance written notice to Landlord (the "Extension Notice"); provided, however, if City is in material default under the Lease on the date of giving such notice and fails to cure such default as provided in the Lease, Landlord may reject such exercise by delivering written notice thereof to City promptly after City's failure to cure. Landlord acknowledges and agrees the Extension Notice shall be subject to enactment of a resolution by the Airport Commission and the Board of Supervisors and Mayor, in their

respective sole and absolute discretion, approving and authorizing the same, within ninety (90) days after the date of the Extension Notice. If such approvals and authorizations are not received by Landlord within such ninety (90) day period, at Landlord's option, City's Extension Options shall terminate and City shall have no further option to extend the Term of this Lease.

5. Rent. Commencing on May 1, 2018, and continuing until April 30, 2019, City shall pay \$10,500 monthly in Base Rent for the Premises. Commencing on May 1, 2019, and annually thereafter until the expiration or sooner termination of the Lease, the monthly Base Rent shall be increased by three percent (3%).

6. Base Year. The Base Year for Additional Charges (Property Taxes and Operating Costs) pursuant to Section 4 of the Existing Lease shall be Calendar Year 2018.

7. Extension Alterations. Landlord, through Landlord's architect, engineer and general contractor, agrees to make certain undetermined alterations to the Premises, at City's cost and pursuant to the terms set forth in Exhibit A (Leasehold Improvements) (the "Extension Alterations"). The provisions of Section 6 of the Existing Lease shall not apply to the Extension Alterations.

8. Additional Services. Section 9.2 of the Existing Lease is hereby deleted and modified to read:

#### **9.2 Additional Services**

City reserves the right to request that the Landlord, at City's cost, perform minor Lease related services or incur additional expenses not otherwise described in this Lease from time to time, as reasonably requested by the City and approved by the Real Estate Division, acting through the Director of Property or his or her designee. City shall reimburse Landlord for the pre-approved cost for such expenses as Additional Rent within thirty (30) days after receipt of Landlord's invoice for such service or expense, which cost may include a ten (10%) percent Landlord administrative fee.

9. General Provisions. Section 23 (General Provisions) of the Existing Lease is amended and restated to read in its entirety as set forth in Exhibit B attached.

10. No Further Modification. Except as specified in this Second Amendment, all of the terms, covenants and conditions of the Existing Lease shall remain unmodified and in full force and effect. The Existing Lease as amended by this Second Amendment constitutes the entire agreement of the parties concerning the subject matter hereof, and supersedes any and all previous negotiations, agreements, or understandings regarding the matters contained herein. The execution of this Second Amendment shall not constitute a waiver of relinquishment of any rights that City may have relating to the Existing Lease. Landlord and City hereby ratify and confirm all of the provisions of the Existing Lease as amended by this Second Amendment.

11. Attorneys Fees. In the event a dispute arises concerning this Second Amendment, the party not prevailing in such dispute shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Second Amendment, reasonable fees of attorneys of 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.

12. Applicable Law. This Second Amendment shall be governed by, construed and enforced in accordance with the laws of the State of California.

13. Effective Date. The date on which this Second Amendment shall become effective is the date upon which (a) City's Mayor and Board of Supervisors, in their sole and absolute discretion, adopt and approve a resolution approving this Second Amendment in accordance with all applicable laws, (b) City's Airport Commission, in its sole discretion, adopts a resolution approving this Second Amendment, and (c) this Second Amendment is duly executed and exchanged by the parties hereto.

14. Counterparts. This Second Amendment 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.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS SECOND AMENDMENT, 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 SECOND AMENDMENT AND AUTHORIZING CONSUMMATION OF THE TRANSACTION CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON ADOPTION OF SUCH RESOLUTION, AND THIS SECOND AMENDMENT SHALL BE NULL AND VOID UNLESS CITY'S MAYOR AND BOARD OF SUPERVISORS APPROVE THIS SECOND AMENDMENT, IN THEIR RESPECTIVE SOLE AND ABSOLUTE DISCRETION, AND IN ACCORDANCE WITH ALL APPLICABLE LAWS. APPROVAL OF THIS SECOND AMENDMENT 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]*

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the day and year first above written.

"LANDLORD"

Michael C. Mitchell, an individual

By: Michael C. Mitchell

"CITY"

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: Claudio P. Saban  
Director of Property

**Recommended:**

By: Ivar C. Satero  
Airport Director  
Pursuant to San Francisco Airport Commission Resolution 18-0105

**APPROVED AS TO FORM:**

DENNIS J. HERRERA  
City Attorney

By: Elizabeth A. Dietrich  
Deputy City Attorney

## **Exhibit A to Second Amendment**

### **LEASEHOLD IMPROVEMENTS**

#### **1. Landlord's Obligation to Construct Improvements**

Landlord, through its general contractor (the "General Contractor"), shall perform the work and make the installations in the Premises pursuant to the Construction Plans (as defined in this Section below) approved by City, and in accordance with the provisions of this Exhibit A. Such work and installations are referred to as the "Leasehold Improvement Work" and "Leasehold Improvements." All costs incurred by Landlord in connection with the Leasehold Improvements and in accordance with this Exhibit A to the Lease shall be reimbursed by City.

##### **(a) Plans and Specifications**

Promptly following the mutual execution of the Second Amendment, Landlord shall cause its architect ("Architect") to prepare and submit to City for its approval a space plan for the Leasehold Improvement Work based on City's program requirements for use of the Premises. City shall have ten (10) business days to approve or provide adjustments to the space plan.

Immediately following the City's approval of the space plan (the "Approved Space Plan"), based on the Approved Space Plan and any adjustments authorized by City, Landlord shall cause the Architect and a Leadership in Energy and Environmental Design ("LEED") consultant (if required to meet City's obligations to cause the Leasehold Improvements to comply with the requirements of Sections 700 through 713 of the San Francisco Environment Code), to prepare final plans, specifications and working drawings in form and detail sufficient for purposes of contractor pricing (the "Pricing Plans"). City shall have ten (10) business days to review and either approve of the Pricing Plans (which approval shall not be unreasonably withheld) or provide Landlord with City's adjustments to the Pricing Plans. Provided that the Pricing Plans do not exceed the Maximum Construction Amount (as defined in Section 1(h) below, if the City fails to approve or disapprove the Pricing Plans within such ten-day period the Pricing Plans shall be deemed approved by the City.

Immediately following City's approval (or deemed approval) of the Pricing Plans, based on the approved Pricing Plans and any adjustments authorized by City, Landlord shall cause final plans, specifications and working drawings for the Leasehold Improvements to be prepared, in conformity with the requirements hereof. Landlord shall use commercially reasonable efforts to submit a copy of such final plans, specifications and working drawings in sufficient detail to define the work (the "Construction Drawings") to City within sixty (60) days after the City's approval of such Pricing Plans. The Construction Drawings shall be subject to City's approval, which approval shall not be unreasonably withheld. City shall have ten (10) business days to review and either approve of the Construction Drawings or provide Landlord with the revisions that City reasonably requires in order to obtain City's approval. If the City fails to approve or disapprove the Construction Drawings within such ten-day period, the Construction Drawings shall be deemed approved. As soon as reasonably possible, and no later than ten (10) business days thereafter, Landlord shall submit to City revised Construction Drawings that incorporate the revisions required by City. City shall have five (5) business days to review and approve the revisions to the Construction Drawings (which approval shall not be unreasonably withheld). If the City fails to approve or disapprove the revisions to the Construction Drawings within such five-day period, the revisions to the Construction Drawings shall be deemed approved. The final Construction Drawings approved by City shall be referred to as the "Construction Documents."

**(b) Permits**

Landlord shall secure any building and other permits and approvals, government fees, licenses and inspections necessary for the proper performance and completion of the Leasehold Improvement Work. Promptly following City's approval of the Construction Plans and Construction Budget, as defined in the following subparagraph, Landlord shall apply for any permits, approvals or licenses necessary to complete the construction shown on the Construction Plans and shall provide copies to City promptly following receipt thereof. Landlord shall be responsible for arranging for all inspections required by any governmental agency or department (such as a Department of Building Inspection) with jurisdiction over the construction ("DBI"). Payments for such permits and approvals shall be paid as costs of the Leasehold Improvements.

**(c) City's Approval of Costs**

Upon completion of the Pricing Plans, General Contractor shall prepare a good faith initial construction budget ("ROM") which includes all project hard and soft costs. City shall have the right to request (3) competitive bids from subcontractors from each trade in a revised ROM in connection with all work performed by Landlord or General Contractor hereunder. If necessary, the Construction Plans shall be revised and completed such that the cost of the Leasehold Improvement Work does not exceed the approved ROM.

Prior to commencing construction of the Leasehold Improvement Work, Landlord shall prepare and submit to City, based on the Construction Plans, a good faith budget for the Leasehold Improvement Work, showing all costs to be paid by City, including a contractor contingency of three percent (3%) (the "Construction Budget") or such other contingency reasonably approved by City. Provided the Construction Budget does not exceed the ROM, City shall have five (5) business days to review and approve or disapprove the Construction Budget. If City fails to approve or disapprove the Construction Budget that does not exceed the ROM within such five-day period, the Construction Budget shall be deemed approved.

If such Construction Budget exceeds the ROM, Architect, General Contractor, and City shall at City's option diligently pursue reductions in scope so that the Construction Budget can be equal to or less than the ROM.

If during the course of construction, the Leasehold Improvement Work cannot be completed in conformity with the most recently City approved Construction Budget, Landlord shall immediately submit to City for its approval a revised Construction Budget and shall identify to City changes in line items and the reasons for the changes. City acknowledges that renovation or improvement of existing facilities inherently involves risk of unanticipated costs necessary to obtain a Final Certificate of Occupancy. If further changes are required, Landlord shall seek City's approval, following the same procedures. If costs exceed the approved Construction Budget, the parties agree to meet and confer in good faith to either (i) obtain City approval of any increased costs, with an appropriation for such amount or (ii) revise the Leasehold Improvement Work so that it does not exceed the most recently City approved Construction Budget. City shall have the right to reasonably approve or disapprove any Construction Budget or revised Construction Budgets in its reasonable judgment. No such approval or disapproval shall be unreasonably delayed, but any such revised Construction Budget shall be deemed approved if City does not approve or disapprove the revised Construction Budget within ten (10) business days after request for such approval. The most recent City approved Construction Budget shall supersede all previous City approved Construction Budgets.

**(d) Construction**

Immediately upon City's approval of the Construction Plans and the Construction Budget and Landlord's procurement of all necessary permits and approvals for the Leasehold Improvement Work, Landlord shall cause the General Contractor to commence, the construction of the Leasehold Improvements. Landlord shall require in any contract issued in connection with the Leasehold Improvement Work that General Contractor shall (i) cause the Leasehold Improvement Work to be completed in a good and professional manner in accordance with sound building practice, (ii) 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 Improvement Work (iii) comply strictly with all applicable disabled access laws, including, without limitation, the most stringent requirements of the ADA, Title 24 of the California Code of Regulations (or its successor) and (iv) pay prevailing wages as provided in Section 23.24 (Prevailing Wages) of the Existing Lease, below, and shall not use tropical hardwood wood products, or virgin redwood wood products as provided in Section 23.26 (Tropical Hardwood and Virgin Redwood Ban), of the Existing Lease. Landlord shall use commercially reasonable efforts to enforce such requirements.

**(e) 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. City shall have the right upon reasonable advance oral or written notice to Landlord to enter the Premises at reasonable times to inspect the Leasehold Improvement Work. When construction progress so permits, but not less than fifteen (15) days in advance of Substantial Completion, Landlord shall notify City of the approximate date on which the Leasehold Improvement Work will be Substantially Completed in accordance with the Construction Plans. 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. On the Substantial Completion Date or other mutually agreeable date as soon as practicable thereafter, City and its authorized representatives shall have the right to accompany Landlord or Architect on an inspection of the Leasehold Improvement Work.

"Substantial Completion" or "Substantially Completed" shall be when the Leasehold Improvement Work is sufficiently completed in accordance with the approved Construction Documents and Construction Plans except for finishing details, decorative items, minor omissions, mechanical adjustments, and similar items of the type customarily found on an architectural punch-list, the correction or completion of which items collectively will not substantially interfere with Tenant's occupancy and use of the Premises (such items generally, "Punch-List Items") and Architect has provided an AIA G704 certificate of substantial completion with respect to the Leasehold Improvement Work. Landlord and Tenant shall cooperate to facilitate completion of any Punch-List Items as quickly as possible.

No approval by City or any of its Agents of the Space Plans, Pricing Plans, Construction Drawings, Construction Documents, Construction Plans, 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 Premises, and nothing herein shall limit Landlord's obligations to obtain all such approvals.

**(f) Appointment of Representatives**

City and Landlord shall each designate and maintain at all times during the design and construction period a project representative ("Representative"), and an alternate for such Representative ("Alternate"), each of whom shall be authorized to confer and attend meetings and represent such party on any matter relating to the Leasehold Improvement Work. Landlord

and City shall not make any inquiries of or requests to, and shall not give any instructions or authorizations to, any other employee or agent of the other party. The initial Representatives and Alternates shall be:

City: Representative -- Viviana Soper, (650) 821-4538  
Alternate -- Diane Artz, (650) 821-4520

Landlord: Representative -- Mike Mitchell, (650) 346-4848  
Alternate -- Wayne Impink, (415) 613-9709

Each party may at any time and from time to time change its Representative or Alternate by written notice to the other party. Each party's Representative or Alternate shall be available during ordinary business hours so that questions and problems may be quickly resolved and so that the Leasehold Improvement Work may be completed economically and in accordance with the Construction Schedule. All approvals made by City's Representative or Alternate shall be made in writing.

**(g) Changes to Construction Plans**

If City inquires in writing about any change, addition or alteration relating to the design or specifications of the Leasehold Improvement Work (a "Change Order"), Landlord shall cause its Architect and General Contractor to promptly supply a good faith not to exceed change order cost estimate. In the event that a Change Order would delay Substantial Completion, Landlord shall also provide its good faith estimate of such a delay. Within five (5) business days of receipt of such cost and delay estimates, City shall notify Landlord in writing whether City approves the proposed Change Order and an increase in the Construction Budget (if required). If City timely approves the proposed Change Order, then General Contractor shall proceed with such Change Order as soon as reasonably practical thereafter.

**(h) Payment for Other Leasehold Improvement Work;**

Subject to Landlord's obligations in subparagraph (h) above, Landlord shall pay for the cost of constructing and installing the Leasehold Improvements (as defined below) up to a total sum of Six Hundred Sixty-Nine Thousand Seven Hundred Two Dollars (\$669,702) (the "Maximum Construction Amount"). City shall pay Landlord upon receipt of required documentation in accordance with subparagraph (i) below. Notwithstanding anything to the contrary in this Section 1, City's reimbursement of the Leasehold Improvement Costs in no event shall exceed the Maximum Construction Amount and to the extent it appears that there may be an excess cost, City shall revise the Leasehold Improvement Work to eliminate such excess cost. City shall not be responsible for any supervision or management fee by Landlord, but the Leasehold Improvement Costs may include a commercially reasonable third party project manager fee for a project manager retained by Landlord.

Throughout the course of construction, City shall make equal monthly payments to Landlord based on a payment schedule agreed upon concurrently with the approval of the initial ROM Construction Budget divided by the Construction Schedule. Such payment schedule shall be designed to permit timely payments to the Architect and General Contractor of the costs of constructing the Leasehold Improvement Work based on the approved Construction Budget and Construction Schedule, in conformance with the payment obligations under Landlord's contracts with the Architect and General Contractor and subject to adjustments resulting from any Change Orders. By way of example, if the ROM is \$200,000 and the construction will take 5 months, City shall pay Landlord \$40,000 per month for 5 months beginning upon commencement of the Leasehold Improvements. City's payments of the cost of constructing the Leasehold Improvement Work shall be due as Additional Charges and payment shall be made monthly together with payment of Base Rent hereunder.

**(i) Required Documentation of Costs**

Landlord shall provide City with copies of a final cost reconciliation including (i) all invoices received by Landlord from the Architect and the General Contractor in connection with the preparation of the Construction Plans or the Change Order or performance of the Leasehold Improvement Work, (ii) upon City's request, satisfactory evidence of payment by Landlord of such invoices, and (iii) upon City's request, such documentation as the Architect or the General Contractor may have provided to Landlord pursuant to its contract for the Leasehold Improvement Work. If the costs set forth in such final reconciliation exceed the amounts paid to Landlord pursuant to Subparagraph (h), City shall reimburse Landlord for such additional cost within thirty (30) days following the final reconciliation. If the costs in the final reconciliation show that the amounts paid by the City under Subparagraph (h) exceed the amounts reimbursable by City for the Leasehold Improvements, then Landlord shall pay such excess amount to the City within thirty (30) days following the final reconciliation. City and Landlord agree to meet and confer in good faith, as and when requested by either party, to ensure that City's payment schedule meets the cash flow requirements of the Leasehold Improvement Work, and to review budgets, invoices and progress payments throughout the construction period.

**(j) No Waiver of Conditions.** Each waiver by City of a condition of payment must be expressly made by City in writing. If City makes a payment before fulfillment of one or more required conditions, that payment alone shall not be a waiver of such conditions, and City reserves the right to require its fulfillment before making any subsequent payments. If all conditions are not satisfied, City, acting in its reasonable judgment, may make payment as to certain items or categories of costs and not others.

**(k) City's Cure Right.** If Landlord does not make timely payment to General Contractor, Architect, or any of its subcontractors or material suppliers, City may, but shall not be obligated to, advance City's funds directly to General Contractor or its subcontractors or material suppliers to pay the cost of the Leasehold Improvement Work, and any such advance shall be payable to City by Landlord immediately upon demand, with interest at a rate of the lesser of twelve percent (12%) per annum or the maximum rate permitted by law.

**(l) Restoration of the Premises**

City shall not be required to remove the Leasehold Improvements and to restore the affected area of Premises to its previous condition upon the expiration or sooner termination of the Lease except those improvements specifically identified on the Approved Space Plans .

## Exhibit B to Second Amendment

### 23. GENERAL PROVISIONS

#### 23.1 Notices

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

#### 23.2 No Implied Waiver

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

#### 23.3 Amendments

Neither this Lease nor any terms or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the party against which the enforcement of the change, waiver, discharge or termination is sought. No waiver of any breach shall affect or alter this Lease, but each and every term, covenant and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent breach thereof. Whenever this Lease requires or permits the giving by City of its consent or approval, the Director of Property, or his or her designee, shall be authorized to provide such approval, except as otherwise provided by applicable law, including the Charter of the City and County of San Francisco. Any amendments or modifications to this Lease, including, without limitation, amendments to or modifications to the exhibits to this Lease, shall be subject to the mutual written agreement of City and Landlord, and City's agreement may be made upon the sole approval of the Director of Property, or his or her designee; provided, however, material amendments or modifications to this Lease (a) changing the legal description of the Premises, (b) increasing the Term, (c) increasing the Rent, (d) changing the general use of the Premises from the use authorized under Section 5.1 (Permitted Use) of this Lease, and (e) any other amendment or modification which materially increases City's liabilities or financial obligations under this Lease shall additionally require the approval of City's Board of Supervisors.

#### **23.4 Authority**

Landlord represents and warrants to City that it is the sole owner of the Property and the execution and delivery of this Lease by Landlord does not violate any provision of any agreement, law or regulation to which Landlord or the Property is subject. If Landlord is a corporation, limited liability company or a partnership, each of the persons executing this Lease on behalf of Landlord does hereby covenant and warrant that Landlord is a duly authorized and existing entity, that Landlord has and is qualified to do business in California, that Landlord has the full right and authority to enter into this Lease, and that each and all of the persons signing on behalf of Landlord are authorized to do so. On City's request, Landlord shall provide City with evidence reasonably satisfactory to City confirming the foregoing representations and warranties.

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

If applicable, the word "Landlord" as used in this Lease shall include the plural as well as the singular. As used in this Lease, the term "Agents" when used with respect to either party shall include the agents, employees, officers and contractors of such party, and the term "Invitees" when used with respect to City shall include the clients, customers, invitees, guests, licensees, assignees or subtenants of City. All approvals, consents or other determinations permitted or required by City under this Lease, including but not limited to the exercise of any option granted to City, shall be made by or through City's Director of Property unless otherwise provided in this Lease, subject to any applicable limitations in the City's Charter.

#### **23.6 Interpretation of Lease**

The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Lease. This Lease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intent and purposes of the parties, without any presumption against the party responsible for drafting any part of this Lease. Except as otherwise specifically provided herein, wherever in this Lease Landlord or City is required or requested to give its consent or approval to any matter or action by the other, such consent or approval shall not be unreasonably withheld or delayed and the reasons for disapproval of consent shall be stated in reasonable detail in writing. Provisions in this Lease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or City holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Lease, whether or not language of non-limitation, such as "without limitation" or similar words, are used.

#### **23.7 Successors and Assigns**

Subject to the provisions of Section 14 (Assignment and Subletting) relating to assignment and subletting, the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of Landlord and City and, except as otherwise provided herein, their personal representatives and successors and assigns. There are no third-party beneficiaries to this Lease.

#### **23.8 Brokers**

Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the lease contemplated herein, except for the broker, if any, identified in the Basic Lease Information, whose commission, if any is due, shall be the sole responsibility of Landlord pursuant to a separate written agreement between Landlord and such broker, and City shall have no liability

therefor. In the event that any other broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes his claim shall be responsible for such commission or fee and shall Indemnify the other party from any and all Claims incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Lease.

### **23.9 Severability**

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

### **23.10 Governing Law**

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

### **23.11 Entire Agreement**

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

### **23.12 Attorneys' Fees**

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

### **23.13 Holding Over**

Should City hold over in possession of the Premises after the expiration of the Term with Landlord's consent, such holding over shall not be deemed to extend the Term or renew this Lease, but such tenancy thereafter shall continue as a month-to-month tenancy. Such tenancy

shall be on all the terms and conditions set forth in this Lease and at the monthly Base Rent in effect during the last month of the Term of this Lease or such other rental as Landlord and City may mutually agree in writing as a condition to Landlord's consent to such holding over, and City shall continue as a month-to-month tenant until the tenancy shall be terminated by Landlord giving City or City giving Landlord at least thirty (30) days' prior written notice of termination. Should City hold over without Landlord's consent, the rent payable by City during the period of such holding over shall be one hundred ten percent (110%) of the monthly Base Rent in effect during the last month of the Term of this Lease, and such tenancy shall otherwise be on the terms and conditions contained herein.

#### **23.14 Cumulative Remedies**

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

#### **23.15 Time of Essence**

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

#### **23.16 Survival of Indemnities**

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

#### **23.17 Signs**

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

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

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

#### **23.19 Bankruptcy**

Landlord represents and warrants to City that Landlord has neither filed nor been the subject of any filing of a petition under the federal bankruptcy law or any federal or state insolvency laws or laws for composition of indebtedness or for the reorganization of debtors, and, to the best of Landlord's knowledge, no such filing is threatened. Landlord and City agree that City's leasehold estate created hereby includes, without limitation, all rights to receive and enjoy all services, facilities and amenities of the Premises and the Building as provided herein, and that if

any of such services, facilities or amenities are terminated, or materially limited or restricted on account of any such case or proceeding, or for any other reason, City shall have the right to (a) contract directly with any third-party provider of such services, facilities or amenities to obtain the same, and (b) offset against the Base Rent or other charges payable hereunder any and all reasonable costs and expenses incurred by City in obtaining such services, facilities or amenities.

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

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

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

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

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

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

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

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

### **23.24 Prevailing Wages and Working Conditions**

Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.61. Landlord agrees to require its Contractors and Subcontractors performing (i) labor in the construction of a "public work" as defined in California Labor Code Section 1720 *et seq.* (which includes certain construction, alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling if paid for in whole or part out of public funds), or (ii) Covered Construction at the Premises to (1) pay workers performing such work not less than the Prevailing Rate of Wages, (2) provide the same hours, working conditions and benefits as in each case are provided for similar work performed

in San Francisco County, and (3) employ Apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, "Prevailing Wage Requirements"). Landlord agrees to cooperate with the City in any action or proceeding against a Contractor or Subcontractor that fails to comply with the Prevailing Wage Requirements.

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

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

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

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

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

Landlord shall include in all subcontracts relating to the Premises a non-discrimination clause applicable to such subcontractor in substantially the form of subsection (a) above. In addition, Landlord shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k) and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Landlord's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

#### **(c) Non-Discrimination in Benefits**

Landlord does not as of the date of this Lease and will not during the term of this Lease, in any of its operations in San Francisco, on real property owned by City, or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

**(d) CMD Form**

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

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

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

**23.26 Tropical Hardwood and Virgin Redwood Ban**

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

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

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

**23.27 Bicycle Parking Facilities**

Article 1.5, Section 155.3, of the San Francisco Planning Code (the "Planning Code") requires the provision of bicycle parking at City-leased buildings at no cost to Landlord. During the Term, City shall have the right to install and maintain, at its sole cost, all Class 1 Bicycle Parking Spaces (as defined in the Planning Code) and all Class 2 Bicycle Parking Spaces (as defined in the Planning Code) in the Building locations required under the Planning Code.

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

Landlord acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 713 relating to green building requirements for the design, construction and operation of City buildings. Landlord, at no cost to Landlord, hereby agrees that it shall reasonably cooperate with City in the compliance with all applicable provisions of such code sections.

### **23.29 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.

### **23.30 Conflicts of Interest**

Through its execution of this Lease, Landlord acknowledges that it is familiar with the provisions of 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.

### **23.31 Notification of Limitations on Contributions**

Through its execution of this Lease, Landlord acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Landlord acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Landlord further acknowledges that the prohibition on contributions applies to each Landlord; each member of Landlord's board of directors, and Landlord's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Landlord; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Landlord. Additionally, Landlord acknowledges that Landlord must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Landlord further agrees to provide to City the name of each person, entity or committee described above.

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

Landlord may not purchase preservative-treated wood products containing arsenic in the performance of this Lease unless an exemption from the requirements of Environment Code, Chapter 13 is obtained from the Department of Environment under 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.

### **23.33 Cooperative Drafting**

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