

**OFFICE LEASE**

between

**333 VALENCIA OWNER, L.L.C.,**  
a Delaware limited liability company  
as Landlord

and

**CITY AND COUNTY OF SAN FRANCISCO,**  
as Tenant

For the lease of the 2nd, 3rd & 4th floors at  
333 Valencia Street  
San Francisco, California

\_\_\_\_\_, 2020

**TABLE OF CONTENTS**

Page

LIST OF EXHIBITS

- EXHIBIT A – Floor Plans of Premises
- EXHIBIT B – Notice of Commencement Date
- EXHIBIT C – Rules and Regulations
- EXHIBIT D – Work Letter
- EXHIBIT E – Form of Memorandum of Lease
- EXHIBIT F – Form of Purchase and Sale Agreement
- EXHIBIT G – Form of SNDA
- EXHIBIT H – Standards for Janitorial Service
- EXHIBIT I – Standards for Security Service

## OFFICE LEASE

THIS OFFICE LEASE (this "**Lease**"), dated for reference purposes only as of \_\_\_\_\_, 2020, is by and between 333 VALENCIA OWNER, L.L.C., a Delaware limited liability company ("**Landlord**"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**" or "**Tenant**").

Landlord and City hereby agree as follows:

### 1. BASIC LEASE INFORMATION

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

Lease Reference Date: \_\_\_\_\_, 2020

Landlord: 333 VALENCIA OWNER, L.L.C.

Tenant: CITY AND COUNTY OF SAN FRANCISCO

Building (Section 2.1): 333 Valencia Street, San Francisco, California

Premises (Section 2.1): The entire second, third, and fourth floors

Rentable Area of Premises (Section 2.1): Approximately forty-four thousand two hundred twenty-nine (43,686) rentable square feet subject to final measurement in accordance with BOMA standards pursuant to Section 2.1

Term (Section 3): The Commencement Date is the date Landlord delivers the Premises with the Leasehold Improvements Substantially Completed or deemed Substantially Completed, in accordance with this Lease and the Work Letter attached as Exhibit D (the "**Work Letter**").

The "**Estimated Commencement Date**" is February 16, 2021.

The Expiration Date is the last day of the one hundred eightieth (180<sup>th</sup>) full calendar month after the Commencement Date.

Rent Commencement Date (Section 4.1): The date that is one hundred eighty (180) days after the Commencement Date.

Extension Option ( <u>Section 3.4</u> ):	One additional term of ten (10) years, as provided in <u>Section 3.4</u>
Base Rent ( <u>Section 4.1</u> ):	Annual Base Rent: \$2,182,115.70 (\$49.95 per rentable sq. ft.)  Monthly payments: \$181,843 (\$4.16 per rentable sq. ft.)
Base Rent Adjustment; Adjustment Dates ( <u>Section 4.2</u> ):	Throughout the Term, Base Rent will increase by 3% on each anniversary of the Commencement Date or, where the Commencement Date occurs on a date other than the first day of a calendar month, on the first day of the calendar month in which the Commencement Date occurred (an “ <b>Adjustment Date</b> ”)
Additional Charges ( <u>Section 4.3</u> ):	City will pay City’s Percentage Share of Real Estate Taxes and Operating Costs for the Building.
City’s Percentage Share ( <u>Section 4.4</u> ):	78.45% based upon the square footage of the Premises divided by the square footage of the Building 55,407 sf).
Use ( <u>Section 5.1</u> ):	General Office and Public Facilities use in accordance with all Laws (as defined in <u>Section 10.1</u> ) (the “ <b>Permitted Use</b> ”).
Leasehold Improvements ( <u>Section 6</u> and Work Letter):	Landlord will complete the Base Building Work (as defined in the Work Letter) at Landlord’s sole cost and City Improvements at City’s cost after the application of the Tenant Improvement Allowance provided by Landlord equal to \$60.00 per rentable square foot of Premises, as described in the Work Letter.
Utilities and Services ( <u>Section 9.1, 9.2</u> ):	Landlord will provide Premises’ heating, ventilation, and air conditioning, and Building elevators and water service, as provided in <u>Section 9.1</u> . City will contract and pay for any electricity and any other utility services necessary for City’s uses of the Premises directly with utility providers. Landlord will provide janitorial and security services.
Other Services ( <u>Section 9.2</u> ):	City will pay or cause to be provided any services necessary for City’s uses of the Premises.

Notice Address of Landlord (Section 23.1):

c/o Murray Hill Partners LLC  
5821 Pinewood Road  
Oakland CA 94611  
Attention: Steven Wolmark  
Email: [SWolmark@murrayhillpartners.com](mailto:SWolmark@murrayhillpartners.com)

With a copy to:

Angelo Gordon  
2000 Avenue of the Stars, Suite 1020  
Los Angeles, CA 90067  
Attention: Alexander Chan, Vice President  
Email: [ACHan@angelogordon.com](mailto:ACHan@angelogordon.com)

and by email only to:

Rodriguez Wright LLP  
Stephen M. Wright  
Email: [swright@rodriguezwright.com](mailto:swright@rodriguezwright.com)

Key Contact for Landlord:

Steven Wolmark

Landlord Contact Telephone No.:

510-984-3867

Notice Address for Tenant (Section 23.1):

Real Estate Division  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102  
Attn: Director of Property  
Re: 333 Valencia St.  
Fax No.: (415) 552-9216

with a copy to:

Department of Public Health  
Attention: Director  
101 Grove St.  
San Francisco, CA 94102

and to:

Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4682  
Attn: Real Estate & Finance Team  
Re: 333 Valencia St  
Fax No.: (415) 554-4757

Key Contact for Tenant:

Jeff Sues

Tenant Contact Telephone No.:

415-554-9873

Alternate Contact for Tenant:

Josh Keene

Alternate Contact Telephone No.:

415-554-9859

Brokers (Section 23.8):

Colliers International (John Jensen) on behalf of Landlord

Other Noteworthy Provisions (Section 22):

City has the right to purchase the Building as provided in Section **Error! Reference source not found.**22.

## 2. PREMISES

### 2.1. Lease Premises

Landlord leases to City and City leases from Landlord, subject to the provisions of this Lease, those premises in the building identified in the Basic Lease Information (the “**Building**”) and shown on the floor plans attached as Exhibit A (the “**Premises**”). The Premises contain the rentable area and are located on the floors of the Building specified in the Basic Lease Information. As used in this Lease, the term “**rentable area**” means that measurement of interior floor area computed in accordance with the “Office Buildings: Standard Methods of Measurements” ANSI/BOMA Z65.1, adopted by the Building Owners and Managers Association (BOMA), based on the usable square footage and utilizing a 21% load factor (the “**BOMA Standard**”), as reasonably determined by Landlord’s architect. The Building, the land on which the Building is located, and all other improvements on or appurtenances to the land are referred to collectively as the “**Property**.”

Within thirty (30) days following acceptance of the Premises, City may cause the Premises to be remeasured in accordance with the BOMA standard specified above, to confirm the rentable area of the Premises. If the remeasurement of the Premises shows that the Premises contain more or less than the total rentable square feet specified in the Basic Lease Information, then City will notify Landlord of the results of the remeasurement and the Base Rent and City’s Percentage Share. Landlord and City will enter into an amendment to this Lease confirming the adjustment and any changes necessitated by the change in rentable area. If Landlord disagrees with the remeasurement, then Landlord and City will meet and confer with one another and attempt to agree on the proper measurement of the Premises within thirty (30) days after City’s notice to Landlord of the results of the remeasurement. If, following that period, Landlord and City are still unable to agree, Landlord and City will jointly select an independent consultant, experienced in measurements of leased space under the BOMA Standard, to remeasure the space, and the determination of that consultant will be binding on the parties. Landlord and City will share equally the cost of the consultant.

### 2.2. Common Areas

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

### **2.3. Disability Access**

California Civil Code section 1938 requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist (“CASp”) to determine whether the property meets all applicable construction-related accessibility requirements. City is advised that as of the Reference Date, the Premises have not been inspected by a CASp. The law does not require landlords to have the inspections performed, but Landlord may not prohibit City from obtaining a CASp inspection of the Premises for its occupancy or potential occupancy if requested by City. If City elects to obtain an inspection, City and Landlord will mutually agree on the arrangements for the time and manner of the CASp inspection and City will pay for the CASp inspection fee and the cost of any repairs necessary to correct violations of construction-related accessibility standards will be paid by the party responsible for compliance under Section 10 of this Lease.

## **3. TERM**

### **3.1. Term of Lease**

The Premises are leased for a term commencing on the date that Landlord has delivered the Premises to City with the Leasehold Improvements (as defined below) Substantially Completed (as defined in the Work Letter) in accordance with the Work Letter, which may not occur before the Effective Date, as provided in Section 24.23 (Effective Date) (the “**Term**”). The Term will end on the expiration date specified in the Basic Lease Information, or the date that this Lease is earlier terminated under the provisions of this Lease, unless City extends the Term under Section 3.4 (Extension Option), below.

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

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

### **3.3. Delay in Delivery of Possession**

Landlord will use commercially reasonable efforts to deliver possession of the Premises with all of the Leasehold Improvements Substantially Completed pursuant to the Work Letter on or before the Estimated Commencement Date. If Landlord is unable to deliver possession of the Premises by the Estimated Commencement Date, then, subject to the provisions of this Section below, the validity of this Lease will not be affected by Landlord’s inability to deliver possession except that City’s obligations to pay Base Rent will not commence until the Rent Commencement Date. If the Term commences later or earlier than the Estimated Commencement Date, this Lease will still expire on the Expiration Date, unless sooner terminated under the provisions under this Lease.

If Landlord is unable to deliver possession of the Premises to City as required under this Lease within sixty (60) days after the Estimated Commencement Date (as that 60-day period may be extended due to Unavoidable Delays and Tenant Delays (both as defined in the Work Letter)), then, by written notice to Landlord delivered within ten (10) days following the end of such 60-day period, City may complete the Leasehold Improvements pursuant to the Construction Budget, with Landlord's Oversight Fee (as defined in the Work Letter) paid to City, and Landlord will pay any reasonable costs of causing the Leasehold Improvements to be completed over the approved Construction Budget required due to Landlord's delay in completing same together with liquidated damages required under the Work Letter. Where City does not so elect, Landlord will complete the Tenant Improvements and Landlord will pay liquidated damages in accordance with the Work Letter.

If Landlord is required to complete the Leasehold Improvements but is unable to deliver possession of the Premises to City as required under this Lease within one hundred twenty (120) days after the Estimated Commencement Date (as that 120-day period may be extended due to Unavoidable Delays and Tenant Delays), then, by written notice to Landlord delivered within ten (10) business days following the end of such 120-day period, City may terminate this Lease, and Landlord will pay City's actual out-of-pocket damages caused by Landlord's failure to timely complete the Leasehold Improvements (including, but not limited to, any costs of the Leasehold Improvements paid by City, and holdover rent and any other liabilities incurred by City under its existing lease), after deducting the amount of any liquidated damages previously paid to City pursuant to the Work Letter, and neither Tenant nor Landlord will have any further obligations under this Lease, except for obligations under this Lease that expressly survive termination. If City does not so elect, Landlord will diligently pursue completion of the Leasehold Improvements.

### **3.4. Extension Option**

Landlord grants City the right to extend the Term (the "**Extension Option**") for the additional period specified in the Basic Lease Information (the "**Extended Term**"). The Extended Term will be on all of the terms and conditions contained in this Lease, except that (a) Base Rent will be determined under Section **Error! Reference source not found.4.3** below, (ii) there will be no Base Rent abatement period at the beginning of the Extended Term, (iii) City will accept the Premises in its as-is condition, without any Leasehold Improvements or Alterations being made by Landlord, and (iv) Section **Error! Reference source not found.22** (City's Option to Purchase) will be inapplicable during any Extended Term. City may exercise the Extension Option, if at all, by giving written notice to Landlord no sooner than four hundred fifty-six (456) days and no later than three hundred sixty-five (365) days before expiration of the Term; provided, however, if there is an uncured Event of Default on the date City gives notice exercising the Extension Option or prior to the commencement date of the Extended Term, then Landlord may reject City's exercise by notifying City in writing within ten (10) days after receipt of City's extension notice, and (ii) within ten (10) days following the date on which the Event of Default occurred, as applicable. Landlord acknowledges and agrees that City's notice of its intent to exercise an Extension Option will be subject to the Board of Supervisors and the Mayor enacting a resolution, at their respective sole and absolute discretion, approving and authorizing the extension, within ninety (90) days after the date the notice of exercise is given (unless the parties are proceeding under Section **Error! Reference source not found.4.3**, in which event within ninety (90) days after the date the Director of Property approves the Base Rent under Section 4.3(b)(iv)). If the resolution is not enacted within the



90-day period, then Landlord may reject City's exercise upon written notice to City at any time before Landlord's receipt thereof. If City extends the Term as provided in this Section, then the word "**Term**" will mean and include the Extended Term.

#### **4. RENT**

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

Beginning on the date that is thirty (30) days after the Commencement Date (the "**Rent Commencement Date**"), City will pay to Landlord the annual Base Rent specified in the Basic Lease Information (the "**Base Rent**"). The Base Rent is payable in equal monthly payments on or before the first day of each month, in advance, at the address specified for Landlord in the Basic Lease Information, or other place as Landlord may designate in writing on not less than thirty (30) days' advance notice. City will pay the Base Rent and estimated Operating Costs and Real Estate Taxes (as provided in this Section 4 below) monthly within thirty (30) days after invoice from Landlord and without any deductions or setoff except as otherwise provided in this Lease. If the Rent Commencement Date occurs on a day other than the first day of a calendar month or the Expiration Date occurs on a day other than the last day of a calendar month, then the monthly payment of the Base Rent for the fractional month will be prorated based on a thirty (30)-day month.

##### **4.2. Adjustments in Base Rent**

On each Adjustment Date (as defined in the Basic Lease Information), the Base Rent for the following 12-month period will be adjusted to equal one hundred three percent (103%) of the Base Rent for the 12-month period preceding the Adjustment Date (provided any abatement at the beginning of the Term or due to casualty, condemnation, or otherwise will be deemed to have not been abated for purposes of this Section 4.2).

##### **4.3. Determination of Base Rent for the Extended Term**

(a) At the commencement of the Extended Term, the Base Rent will be adjusted to equal the prevailing market rate for space of comparable size and location to the Premises then being offered for rent in other buildings similar in age, location, and quality to the Premises ("**Comparable Space**") situated within the Reference Area. ; but in no event will the monthly Base Rent be less than one hundred three percent (103%) of the monthly Base Rent for the last full calendar month of the initial Term. The "**Reference Area**" in the area bounded by Guerrero Street and Duboce Avenue, then Duboce Avenue to Valencia Street to McCoppin Street to Otis Street to Mission Street to 7<sup>th</sup> Street to Mississippi Street to Caesar Chavez Street and back to Guerrero Street and Duboce Avenue. As used in this Section, "**prevailing market rate**" means the base rent for Comparable Space in the Reference Area, taking into account (i) any additional rent and all other payments and escalations payable under this Lease, (ii) floor location and size of the premises covered by leases of the Comparable Space, (iii) the duration of Extended Term under this Lease and the term of the leases for Comparable Space, (iv) free rent and any other tenant concessions given under the leases for Comparable Space, (v) tenant improvement allowances and other allowances given under the leases for Comparable Space, and (vi) other relevant factors (as determined by the appraiser, if applicable). In addition, the following must be considered when

determining the prevailing market rate: the rental rate that would be applicable for a lease term commencing on the commencement date of the Extended Term and that would be payable in any arms' length negotiations for the Premises in their then as-is condition, which rental rate will be established by reference to rental terms in leases actually executed for Comparable Space under primary lease (and not sublease), taking into consideration the location of the Building and existing amenities, situated in similar buildings engaged in then-prevailing ordinary rental market practices with respect to tenant concessions (if any) (e.g., not offering promotional deals and other concessions to tenants in an effort to alleviate cash flow problems or in response to a greater than average vacancy rate in a particular building).

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

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

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

(iii) If only one appraisal report is submitted within that 30-day period, then the prevailing market rate determined in that appraisal report will be used to establish the Base Rent for the Extended Term. If both appraisal reports are submitted within the 30-day period, and if the prevailing market rates determined in the two appraisal reports differ by less than ten percent (10%) of the higher of the two, then the average of the two will be the prevailing market rate. If the prevailing market rates in the two appraisal reports differ by more than ten percent (10%) of the higher of the two, then the two appraisers will immediately select a Third Appraiser (defined in subsection (v) below), who will within ten (10) days after their selection determine which of the first two appraisal reports specified a value closest to the actual fair market value. The determination of the Third Appraiser will be limited solely to the issue of deciding which of the value determinations of the first two appraisal reports is closest to the actual fair market value and will be the prevailing market rate.

(iv) If City's Director of Property does not approve the prevailing market rate as determined by the appraisal procedure specified above, the Director of Property may revoke City's exercise of the Extension Option upon written notice delivered to Landlord no later than ten (10) business days following the Third Appraiser's determination. If the City's Director of Property approved the prevailing market rate as determined under this Section, then City will seek any required approval or resolution within ninety (90) days after the date on which the prevailing market rate is determined.

(v) All appraisers must be “MAI” designated members of the Appraisal Institute with not less than ten (10) years’ experience appraising leases of commercial properties similar to the Premises in the Reference Area. The “**Third Appraiser**” means a real estate appraiser meeting all the foregoing requirements who (1) has not worked with either Landlord or City on this Property or otherwise or (2) who has not worked with Landlord on this lease or otherwise and who has not worked with City on this Lease or this Property, but is qualified as an approved vendor by City. The Third Appraiser selected by the first two appraisers will be qualified under clause (2) of the definition above, and Landlord and City will each pay one-half of the cost of the Third Appraiser, unless Landlord requires that the Third Appraiser be qualified under clause (1) of the definition above, in which event Landlord will pay for the cost of the Third Appraiser.

#### **4.4. Additional Charges**

City will pay to Landlord any charges or other amounts required under this Lease as additional rent (“**Additional Charges**”), including the charges for Real Estate Taxes and Operating Costs, as provided below. All Additional Charges are payable to Landlord at the place where the Base Rent is payable. The Base Rent and Additional Charges are sometimes collectively referred to “**Rent**.”

#### **4.5. Definitions**

(a) “**City’s Percentage Share**” means the percentage specified in the Basic Lease Information.

(b) “**Expense Year**” means each calendar year commencing January 1st of each year during the Term, including any partial year in which this Lease commences. By advance written notice to City, Landlord may change the Expense Year to any other twelve (12) consecutive month period and, in the event of a change, City’s Percentage Share of Operating Costs will be equitably adjusted for the Expense Years involved in the change.

(c) “**Operating Costs**” means the total reasonable and customary costs and expenses actually paid or incurred by Landlord in connection with the management, operation, maintenance, and repair of the Building, including: (1) the cost of air conditioning, electricity, steam, water and sewer, heating, mechanical, telephone, ventilating, , and all other utilities, (2) the cost of general maintenance (including maintenance of life safety and elevators), cleaning, pest control, window washing, rubbish removal and service contracts, including all supplies, tools, and equipment for that maintenance, cleaning, and service, (3) the costs incurred by Landlord for all insurance and deductibles pursuant to Section 17.2 (Landlord’s Insurance), (4) wages, salaries, payroll taxes, and other labor costs and employee benefits relating to Landlord’s employees or its Agents (defined in Section 24.5 (Parties and Their Agents, Approvals) below) engaged in the operation, repair, or maintenance, of the Building, allocated in proportion to the percentage of that person’s working time actually spent working in connection with the Building, (5) reasonable management fees, (6) fees, charges, and other costs of all independent contractors engaged by Landlord, allocated in proportion to the percentage of that person’s working time actually spent working in connection with the Building, (7) accounting and legal expenses, (8) depreciation on personal property, including carpeting in public corridors and Common Areas and window coverings provided by Landlord, (9) reserved; (10) costs of capital repairs, capital improvements,

and equipment (A) required by applicable Laws enacted on or after the date of this Lease amortized over the useful life of the improvement and/or equipment, together with interest at the actual interest rate incurred by Landlord in connection those capital repairs, improvements, or equipment, unless caused by Landlord's deliberate or negligent violation of applicable Laws, and except to the extent the improvements are attributable to or are made for the primary benefit of a tenant or occupant other than City, or (B) acquired to cause, in Landlord's good faith judgment, an immediate (i.e., commencing within the first year after completion of the repairs or improvements or installation of equipment) reduction in other Operating Costs, amortized over the useful life of the repairs, improvements, or equipment at an annual rate reasonably calculated to equal the amount of Operating Costs to be saved in each calendar year throughout the Term (as determined at the time Landlord elected to proceed with the capital repair or improvement or acquisition of the capital equipment to reduce Operating Costs), together with interest at the actual interest rate incurred by Landlord; (11) sales, use and excise taxes on goods and services purchased by Landlord in connection with the operation, maintenance, or repair of the Property and Building; and (12) fees and expenses for painting the exterior or the public or Common Areas and the cost of maintaining the sidewalks, landscaping and other areas of the Property (other than parking) that Landlord is required or elects to maintain and repair.

**“Operating Costs”** expressly do not include the following:

(i) Costs of capital repairs and replacements, capital improvements, capital equipment, and capital tools, and rental payments and other related expenses incurred in leasing air conditioning systems, elevators, or other equipment ordinarily considered to be of a capital nature, except as expressly permitted under clause (10) above;

(ii) Rentals and other related expenses for items (except when needed in connection with normal repairs and maintenance of permanent systems) that, if purchased rather than rented, would constitute a capital improvement that is specifically excluded in item 1 above (excluding, however, equipment not affixed to the Building that is used in providing janitorial or similar services);

(iii) Depreciation, amortization, and interest payments (including interest, principal, points, and fees on debt or amortization payment on any mortgages, deeds of trust, or other debt instruments) except to the extent permitted under clause (10) above and except on materials, tools, supplies, and vendor-type equipment purchased by Landlord to enable Landlord to supply services Landlord might otherwise contract for with a third party where the depreciation, amortization, and interest payments would otherwise have been included in the charge for the third party's services, all as determined in accordance with sound real estate accounting principles, consistently applied;

(iv) Costs incurred by Landlord because of fire, windstorm, or other casualty or by the exercise of the right of eminent domain to the extent Landlord is entitled to be compensated through proceeds or insurance or condemnation awards, or would have been reimbursed if Landlord had in force all of the insurance required to be carried by Landlord under this Lease,

(v) Costs incurred by Landlord in the event any portion of the Building is made untenable by fire or other casualty required to be insured against under the terms of the Lease and cost of earthquake repairs in excess of one hundred fifty thousand dollars (\$150,000) per earthquake (for this purpose, an earthquake is defined collectively as the initial earthquake and the aftershocks that relate to the initial earthquake);

(vi) Costs for which the Landlord is entitled to be reimbursed (other than as a reimbursement of Operating Costs) under any warranty, or by any tenant or occupant of the Building, or by insurance by its carrier or any tenant's carrier, or by anyone else;

(vii) Costs, including permit, license, and inspection costs, incurred for the installation of improvements made for other tenants or occupants of the Building or incurred in renovating or otherwise improving, decorating, painting, or redecorating vacant for-lease space for tenants or occupants in the Building;

(viii) Leasing commissions, attorneys' and other professionals' fees, space planning costs, and all other costs and expenses in connection with negotiations with present or prospective tenants or other occupants in the Building or any present or future ground lessors or holders of any mortgages or other encumbrances affecting any of the Building;

(ix) Leasing commissions, attorneys' fees, costs, and disbursements and other expenses incurred in connection with negotiations or disputes with tenants or other occupants or prospective tenant or other occupants, or associated with the enforcement of any leases or costs of the defense of Landlord's title to the Building or the Property;

(x) Expenses in connection with services or other benefits that are not offered to City or for which City is charged directly but that Landlord provides to another tenant or occupant of the Building;

(xi) Costs incurred by Landlord resulting from any dispute under the terms and conditions of any lease, ground lease, mortgage, or deed of trust, or covenants, conditions, or restrictions encumbering the Building or Property, or due to any violation by Landlord or any other tenant or occupant of the Building of applicable Laws;

(xii) Costs incurred in connection with upgrading the Building to comply with disabled access, life, fire and safety codes effective before the date of the Lease, and costs incurred in connection with upgrading the Building to comply with the Americans with Disabilities Act, as amended, and Title 24 of the California Code of Regulations (or its successor), the San Francisco Sprinkler Ordinance and the San Francisco Unreinforced Masonry Building Ordinance, except to the extent of new requirements or interpretations first effective after the date of this Lease;

(xiii) Payments for management or other services in or to the Building, or for supplies or other materials to Landlord's subsidiaries or affiliates, to the extent that the costs of the services, supplies, or materials exceed the costs that would have been paid had the services, supplies, or materials been provided by parties unaffiliated with the Landlord on a competitive basis;

(xiv) Costs for which Landlord has been compensated by a management fee, and any managements fees in excess of management fees normally charged by Landlord of comparable buildings in San Francisco;

(xv) Any ground lease rental or rental under any other underlying leases;

(xvi) Except as specifically permitted under clause (10) above, interest, principal, points, and fees on debts or amortization on any mortgage, deed of trust, or any other debt instrument encumbering any of the Building or the Property;

(xvii) Any compensation paid to clerks, attendants, or other persons in commercial concessions operated by Landlord or in any parking facility at or for the Building;

(xviii) All items and services for which City or any other tenant or occupant of the Building or anyone reimburses Landlord (other than through the tenant's or occupant's proportionate share of Operating Costs), or that Landlord provides selectively to one or more other tenants or occupants without reimbursement, or that are not provided in reasonable proportion to the Premises but that Landlord provides to another tenant or other occupant of the Building;

(xix) Advertising or promotional expenditures, and the costs of acquiring and installing signs in or on any of the Building identifying the owner of the Building or any tenant or occupant of the Building;

(xx) Costs of any electric power used by any tenant in the Building for which the tenant directly contracts with the local public service company or of which any tenant is separately metered or submetered and pays Landlord directly (and if any tenant in the Building contracts directly for electric power service or is separately metered or submetered during any portion of the relevant period, the total electric power costs for the Building must be "grossed up" to reflect what those costs would have been had each tenant in the Building used a commercially reasonable, standard amount of electric power;

(xxi) Services provided, taxes attributable to, and costs incurred to the extent connected with the operation of retail, restaurant, and garage operations in the Building;

(xxii) Costs for which Landlord has been compensated by a management fee, and any management fees in excess of management fees normally charged by Landlord of comparable buildings in San Francisco;

(xxiii) "in-house" legal or accounting fees;

(xxiv) Real Estate Taxes of any kind and any tax penalties incurred as a result of Landlord's negligence or Landlord's inability or unwillingness to make payments when due;

(xxv) Fines, costs, penalties, or interest resulting from the negligence of other tenants or of the Landlord or their Agents;

(xxvi) Costs arising from the presence of Hazardous Material in or about the Building including groundwater or soil conditions;

(xxvii) Costs, fees, dues, contributions, or similar expenses for or related to charitable or political causes or candidates;

(xxviii) Costs as a result of repairs of latent defects in the design or improvements made or installed by Landlord in the Building or in the Building Systems;

(xxix) Costs for sculpture, paintings, or other objects of art;

(xxx) Costs arising from claims, disputes, or potential disputes (including tax disputes where the tenants of the Building would receive benefits if Landlord prevails, except as expressly provided in this subsection (xxx) below, in connection with potential or actual claims, litigation, or arbitrations pertaining to Landlord or the Building, including all attorneys' fees and costs of settlement, judgments, and other similar payments, but the legal and other costs of tax disputes that result in a savings in Real Estate Taxes may be included in Operating Costs as follows:

(A) The costs of such tax disputes may not exceed the amount of the Real Estate Tax savings, and

(B) The amount of such costs included in Operating Costs in any Expense Year may not exceed the amount of the savings in Real Estate Taxes in the correlating Tax Year, but Landlord may carry over any excess costs until Landlord has been reimbursed through Operating Costs all of the costs of such tax dispute that may be reimbursed under this subsection (xxx);

(xxxii) All direct cost of refinancing, selling, exchanging, or otherwise transferring ownership of the Building or the Property or any interest in the Property or portion of it, including broker commissions, attorney's fees, and closing costs;

(xxxiii) Reserves for bad debts, rent loss, capital items, future improvements, repairs, or additions, Real Estate Taxes, or Operating Costs;

(xxxiv) The wages and benefits of any employee who does not devote substantially all of his or her employed time to the Building unless the wages and benefits are prorated to reflect time spent on operating and managing the Building vis-a-vis time spent on matters unrelated to operating and managing the Building;

(xxxv) Landlord's general corporate overhead and general and administrative expenses and all costs associated with the operation of the business of the ownership or entity that constitutes "Landlord," as distinguished from the costs of Building operations, management, maintenance or repair; and

(xxxv) Any other expense that under sound real estate accounting principles would not be considered a maintenance or operating expense by landlord of comparable buildings in San Francisco.

(d) **“Real Estate Taxes”** means all taxes, assessments, and charges levied, assessed, or imposed on or with respect to the Building, or Landlord’s interest in the Building, general or special, ordinary or extraordinary, and foreseeable or unforeseeable. Real Estate Taxes include all general real property taxes and general and special assessments, charges, fees, or assessments for transit, housing, police, fire, or other governmental services, service payments in lieu of taxes that are now or later levied or assessed against Landlord by the federal, state, or local government, district or public corporation, and will also include any other tax, fee, or other excise, however described, that may be levied or assessed as a substitute for, or as an addition to, in whole or in part, any other Real Estate Taxes. Real Estate Taxes will include any increase in any of the foregoing due to reassessment after the construction of improvements to the Property or any “change in ownership” (as defined in the California Revenue and Taxation Code) or with respect to all or any part of the Property or resulting from any other re-assessment of the Property. Real Estate Taxes expressly do not include: (1) franchise, transfer, inheritance, gross receipts, or capital stock taxes, or income taxes of Landlord from all sources unless, due to a change in the method of taxation, any of those taxes are 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, (3) any personal property taxes payable by City or by any other tenant or occupant of the Building, or (4) Commercial Rent Tax for Childcare and Early Education (Prop. C) to the extent such gross receipts received from leases to government entities are exempt from this tax.

(e) **“Tax Year”** means each calendar year during the Term, including any partial year during which this Lease commences; provided that, by notice to City, Landlord may change the Tax Year from time to time to any other twelve (12) consecutive month period and, in the event of that change, City’s Percentage Share of Real Estate Taxes will be equitably adjusted for the Tax Year during the change.

#### **4.6. Calculation of Percentage Share of Operating Costs**

(a) If, during any Expense Year, the Building is less than 100% occupied, then, for purposes of calculating City’s Share of Operating Costs for that Expense Year, the amount of Operating Costs that fluctuate with Building occupancy, including utilities, trash removal, and management fees, will be “grossed-up” to the amount which, in Landlord’s estimation, would have been incurred by Landlord had the Building been 100% occupied for that entire calendar year.

(b) The computation of Operating Costs will be made in accordance with sound real estate accounting principles. With respect to the costs of capital repairs, improvements, or equipment included in Operating Costs under clause (10) of the definition of Operating Costs, those costs will be included in Operating Costs only after the capital Improvement is completed and put into service and will be amortized over the useful life of the capital improvements, together with interest on the unamortized balance at a rate per annum equal to three percent (3%) over the Treasury Rate charged at the time the capital improvement is constructed, but not more than the



maximum rate permitted by law at the time the capital improvement is constructed. Landlord will not collect or be entitled to collect Operating Costs from all of its tenants in the Building an amount that is more than 100% of the Operating Costs actually paid by Landlord in connection with the Building.

(c) Commencing on the Commencement Date, City will pay to Landlord each month, as Additional Charges, one twelfth (1/12) of City's Percentage Share of the Operating Costs for that Expense Year, as provided in this Section. City will make the payments together with Base Rent payments, in advance, in an amount estimated by Landlord in reasonable detail in a writing delivered to City at least four (4) months before the first payment of City's Percentage Share of Operating Costs is due. Landlord will update its estimates of Operating Costs each Expense Year, but no revised estimates will be retroactive. Landlord must make commercially reasonable efforts to provide any revised estimates to City at least four (4) months before the commencement of the Expense Year, but the prior year's estimate will continue to be effective until updated. With reasonable promptness not to exceed ninety (90) days after the expiration of each Expense Year, Landlord will furnish City with a statement ("**Landlord's Expense Statement**"), prepared by an independent certified public accountant, setting forth in reasonable detail the actual Operating Costs for the Expense Year and City's Percentage Share. If City's Percentage Share of the actual Operating Costs for the Expense Year exceeds the estimated Operating Costs paid by City for that Expense Year, City will pay to Landlord (whether or not this Lease has terminated) the difference between the amount of estimated Operating Costs paid by City and City's Percentage Share of the actual Operating Costs within thirty (30) days after the receipt of Landlord's Expense Statement. If the total amount paid by City for its Percentage Share of Operating Costs exceeds City's Operating Costs Share of the actual Operating Costs for the Expense Year, the excess will be credited against the next installments of City's Percentage Share of Operating Costs or refunded to City, at City's option. In no event may Landlord be reimbursed for more than one hundred percent (100%) of the Operating Costs in any Expense Year.

(d) The Operating Costs for (i) elevator maintenance, (ii) window washing on floors 2-4, (iii) window washing on floor 1, (iv) maintenance (including service contracts), repair and replacement of supplemental HVAC units exclusively serving the Premises or exclusively serving other tenants' premises, and (v) janitorial services provided exclusively to the Premises and exclusively to other tenants' premises and (vi) any the costs of maintaining any outdoor areas (including, but not limited to, landscaping, paving, striping, and lighting) not accessible to all tenants will be allocated to reflect that measurably different services, work, or benefits associated with those Operating Costs are being provided to or conferred upon different tenants or groups of tenants. Operating Costs related to security for the Premises as described in Section 9.2 will be allocated to Tenant. The allocations of those Operating Costs by Landlord under this Section are sometimes referred to as "**Cost Pools.**" Specifically, (A) "City's Percentage Share" as to the Cost Pool for elevator maintenance will be a fraction, expressed as a percentage, the numerator of which is the rentable square footage of the Premises and the denominator of which is the total rentable square footage of all tenants of the Building who do not have a separate entrance and use the elevators to access all or a portion of their space; (B) "City's Percentage Share" as to the Cost Pool for window washing on floors 2-4 will be a fraction, expressed as a percentage, the numerator of which is the rentable square footage of the Premises and the denominator of which is the total rentable square footage of all tenants of the Building with premises on floors 2-4; (C) the Cost Pool for Operating Costs related to outdoor areas will be allocated solely to those tenants having

access to those outdoor areas; and (D) the Cost Pool for window washing on floor 1 will be allocated entirely to the floor 1 tenants and City's Percentage Share of those Operating Costs will be zero.

#### **4.7. Calculation and Payment of Percentage Share of Real Estate Taxes**

Commencing on the Commencement Date, City will pay Landlord each month, as Additional Charges, one twelfth (1/12) of City's Percentage Share of the Real Estate Taxes for each Tax Year, as provided in this Section. City will make those payments, in advance, in an amount estimated by Landlord in reasonable detail in a writing delivered to City. Landlord will update its estimates of Real Estate Taxes each Tax Year. Landlord will make commercially reasonable efforts to provide any revised estimates to City at least four (4) months before the commencement of the Tax Year, but the prior year's estimate will continue to be effective until Landlord provides the revised estimates. With reasonable promptness not to exceed thirty (30) days after Landlord has received the tax bills for any Tax Year (or any updated tax bills), or in conjunction with delivery of Landlord's Expense Statement, Landlord will furnish City with a statement ("**Landlord's Tax Statement**") setting forth the actual amount of Real Property Taxes for the Tax Year and City's Percentage Share. If City's Percentage Share of the actual Real Estate Taxes for the Tax Year exceeds the estimated Real Estate Taxes paid by City for that Tax Year, City will pay to Landlord (whether or not this Lease has terminated) City's Percentage Share of the actual Real Estate Taxes within thirty (30) days after the receipt of Landlord's Tax Statement. If the total amount of estimated Real Estate Taxes paid by City for the Tax Year exceeds City's Percentage Share of the actual Real Estate Taxes, the excess will be credited against the next installments of City's Percentage Share of Real Estate Taxes, or at City's option, the excess will be refunded to City. In no event may Landlord be reimbursed for more than one hundred percent (100%) of the Real Estate Taxes in any Tax Year. Accordingly, Landlord will credit to Tenant's Percentage Share of any award or benefit based on a reduction in Real Estate Taxes (whether retroactive, current, or prospective).

#### **4.8. Proration**

If the Commencement Date or Expiration Date occurred on a date other than the first or last day of a Tax Year or Expense Year, then City's Percentage Share of Real Estate Taxes or Operating Costs for the Tax Year or Expense Year in which the Commencement Date or Expiration Date occurs, will be prorated based on a three hundred sixty-five (365)-day year.

#### **4.9. Audits**

City will have the right, upon not less than five (5) business days' notice to Landlord, to audit the books and records related to Operating Costs, Real Estate Taxes and any other amount the City is obligated to pay to Landlord under this Lease. City must notify Landlord in writing of any objection to any charge within three (3) years after receipt of Landlord's Expense Statement or Landlord's Tax Statement, or invoice as applicable, otherwise City will be deemed to have waived any objection and will have no right to audit the books and records related to such charge under this Section. If the audit discloses any discrepancies that would result in a reduction of such amounts, and Landlord agrees with City's determination, then Landlord will within thirty (30) days thereafter refund to City the amount of any overpayment by City (or at City's option, credit

such amount against Base Rent next due). If Landlord disagrees with the results of City's review and the parties cannot otherwise agree, then Landlord's and Tenant's auditor will together select a Neutral Auditor to conduct a review of such books and records, and the determination reached by such Neutral Auditor will be final and conclusive. If the amounts paid by City to Landlord (i) exceed the amounts to which Landlord is entitled under this Lease, then Landlord will within thirty (30) days refund or credit such amount to City as set forth above, or (ii) are less than the amounts to which Landlord is entitled under this Lease, then Tenant will pay the deficiency as Additional Charges within thirty (30) days of the final determination. City will pay the cost of its audit, provided that if any such audit discloses any discrepancies that result in a reduction of five percent (5%) of Operating Costs, Real Estate Taxes or other amounts, as applicable or more for any year, then Landlord will pay the actual costs of the audit. Each party will be responsible for its own review costs. A "**Neutral Auditor**" is a qualified real estate auditor of similar qualifications as City's and Landlord's auditors who (1) has not worked with either Landlord or City on the Premises or otherwise or (2) who has not worked with Landlord on this Lease or other wise and who has not worked with City on this Lease or this Premises, but is qualified as an approved vendor by City. The Neutral Auditor selected by the Landlord's and City's auditors will be qualified under clause (2) of the definition above, and Landlord and City will each pay one-half of the cost of the Neutral Auditor, or if required by Landlord, will be qualified under clause (1) of the definition above, and Landlord will pay for the cost of the Neutral Auditor (except as otherwise provided in this Section).

#### **4.10. Records**

Landlord will maintain at its offices in the Bay Area in a safe, complete, and organized manner all of its records related to this Lease, Real Estate Taxes, Operating Costs, and any other charges paid by City under this Lease, for at least three (3) years following the end of each calendar year in which such cost was incurred. Landlord will maintain the records on a current basis and in sufficient detail to facilitate adequate review and audit. All books and records will be available for inspection, copying, and audit by City and its representatives, at City's expense, subject to the provisions of Section 4.9 (Audits).

#### **4.11. Payments by City**

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

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

Landlord acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the withholding of payments to any vendor that is delinquent in the payment of any amounts that the vendor is required to pay

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

#### **4.13. Additional Services**

City may request that Landlord arrange or provide additional services for the Premises, which Landlord may arrange or provide in its reasonable discretion. If Landlord elects to provide the requested additional services, then City will pay Landlord as Additional Charges the cost of those services, plus a four percent (4%) administrative fee, but Landlord will not contract for or provide any services without City's prior written approval of the total or estimated cost of the additional services. City will pay for the cost of the requested additional services and administrative fee within thirty (30) days after receipt of an invoice; provided, however, that City may elect to provide any deposit or other prepayment that City determines is appropriate given the nature of the requested services. Wherever possible, any additional terms for the additional services will be memorialized by a written agreement, which, upon execution by Landlord and City, will be considered a part of this Lease.

### **5. USE**

#### **5.1. Permitted Use**

City may use the Premises for general office uses and any other uses specified in the Basic Lease Information, and for no other use without Landlord's prior written consent, which may not be unreasonably withheld, conditioned, or delayed.

#### **5.2. Observance of Rules and Regulations**

City will observe the rules and regulations for the Building attached to this Lease as **Exhibit C** (the "**Rules and Regulations**"), but the provisions of this Lease will govern over any conflicting Rules and Regulations. Landlord may make reasonable changes to the Rules and Regulations, but all changes must be applicable to all other office tenants and the changes may not (a) materially reduce Landlord's obligations under the Lease, (b) conflict with the provisions of this Lease, (c) materially increase City's burdens or obligations, (d) impose a charge on City for services that this Lease expressly states are to be provided to City at no charge, or (e) materially adversely affect any permitted use of the Premises. The changes permitted under this Section will be binding on City within a reasonable implementation period after delivery of Landlord's written notice of the changes to City. Landlord will make commercially reasonable efforts to administer the Rules and Regulations in a fair and nondiscriminatory manner and use commercially reasonable efforts to cause other Building tenants to comply with them. Landlord will notify City of any waiver of or special dispensation under the Rules and Regulations granted by Landlord to any other tenant in the Building and on request for a substantially similar situation (in terms of duration, size, number or employees or users impacted, inconvenience to other Building users, costs to Landlord, etc.), City will be entitled to the same waiver or special dispensation.

### **5.3. Interference with Access**

Landlord will provide to City uninterrupted (to the maximum extent possible and subject to the terms of this Lease) access to the Building and the Premises twenty-four (24) hours per day, seven (7) days per week, including during any power outages affecting the Premises or any portion of the Building; but Landlord may, after consultation with City's Administrator (or reasonably endeavoring to consult with the Administrator for an urgent situation), interrupt City's access to the Premises or the Building if there is an immediate threat that will render the Premises, the Common Areas, or any other portion of the Building unsafe for human occupancy. If City's use of any of the Premises is interrupted or access to the Premises materially impaired because the Premises, the Common Areas, or any other portion of the Building is unsafe for human occupancy due to Landlord's failure to comply with its obligations under this Lease or for any other reason other than a default by Tenant of its obligations under this Lease, then Landlord will immediately undertake all commercially reasonable steps to correct the condition. If the condition continues for two (2) business days and materially impairs City's ability to carry on its business in the Premises, then the Rent will be abated based on the extent to which the condition interferes with City's ability to normally and safely carry on its business at the Premises. If the condition continues for sixty (60) consecutive days or more after Landlord is notified that City's use is interrupted or materially impaired then, without limiting any of its other rights under this Lease, at any time after the 60-day period City's use continues to be interrupted or materially impaired, then City may send written notice to Landlord stating that City will terminate this Lease, unless within two (2) business days after Landlord receives City's notice Landlord supplies City with evidence reasonably satisfactory to City that City's normal and safe use will be restored within ninety (90) days after the date City's use was interrupted or materially impaired, and City's full use is actually restored within that 90-day period. If City's use is not actually restored within that 90-day period, then City may terminate this Lease immediately upon written notice to Landlord. Nothing in this Section will limit the parties' rights with respect to any disruption due to casualty under Section 12 (Damage and Destruction).

## **6. LEASEHOLD IMPROVEMENTS**

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

Landlord, through its general contractor reasonably approved by City, will construct the Premises, perform the work, and make the installations in the Premises as provided in the Work Letter attached hereto as **Exhibit D**. Such work and installations are referred to as the "**Leasehold Improvement Work**" and "**Leasehold Improvements**."

### **6.2. Construction of Improvements that Disturb or Remove Exterior Paint**

On any work on the Building, Landlord, on behalf of itself and its successors, assigns, and Agents, will comply with all requirements of the San Francisco Building Code Chapter 34 and all other applicable local, state, and federal laws, including the California and United States Occupational and Health Safety Acts and their implementing regulations, when the work or alteration disturbs or removes exterior or interior lead-based or "presumed" lead-based paint (as defined below). Landlord and its Agents must 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 under San Francisco Building Code Chapter 34 does not constitute notification to City as tenant under this Lease and similarly that notice under this Lease does not constitute notice under San Francisco Building Code Chapter 34. Further, Landlord and its Agents, when disturbing or removing exterior or interior lead-based or presumed lead-based paint, will 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 will comply with the requirements of California Code of Regulations Title 17 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 San Francisco Building Code Chapter 34, demonstrates an absence of lead-based paint on the interior or exterior surfaces of the buildings. Under this Section, lead-based paint is “disturbed or removed” if the work or alteration involves any action that creates friction, pressure, heat, or a chemical reaction on 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 may not make or permit any alterations, installations, additions, or improvements (collectively, “**Alterations**”) to the Premises without first obtaining Landlord’s written consent, which Landlord will not unreasonably withhold, condition, or delay. Installation of furnishings, fixtures, equipment, or decorative improvements that do not affect the Building Systems or structural integrity of the Building, and the repainting and re-carpeting of the Premises (collectively, “**Cosmetic Work**”) do not constitute Alterations and do not require Landlord’s consent; provided that City will notify Landlord of any Cosmetic Work performed by third-party contractors or material suppliers with a cost of more than \$10,000 at least five (5) business days in advance and, upon request, presented with invoices establishing the cost together with unconditional lien waivers from any materialmen or contractors. Any Alterations permitted under this Lease will be made at City’s cost in compliance with applicable Laws (as defined in Section 10.1 (Landlord’s Compliance with Laws)). Without out-of-pocket cost to itself, Landlord will cooperate with City in securing building and other permits and authorizations needed for any permitted Alterations. Landlord will not be entitled to any construction or other administrative fee in connection with any Cosmetic Work; Landlord will receive an administrative fee equal to four percent (4%) of the costs of any Alterations, and City will reimburse Landlord for the reasonable and actual fees and charges paid to third party architects, engineers, and other consultants for review of the proposed Alterations and related plans and specifications, up to a maximum of five percent (5%) of the costs of the Alterations, within thirty (30) days of demand. City will not be required to remove any Alterations on the expiration or sooner termination of this Lease unless Landlord notifies City in writing at the time Landlord approves the Alterations that they must be removed. City is not required to remove any Cosmetic Work.

## 7.2. Title to Improvements

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

## 7.3. City's Personal Property

(a) All furniture, furnishings, equipment, trade fixtures, and articles of movable personal property installed in the Premises by or for City and that can be removed without structural damage to the Premises (collectively, "**City's Personal Property**") are and will remain City's property. Landlord may assist City by facilitating the ordering and installation of City's Personal Property and City will reimburse Landlord for all fees, costs, and expenses within thirty (30) days after receipt of an invoice plus a four percent (4%) administrative fee; provided, however, that City may elect to provide any deposit or other expense required at the time of ordering City's Personal Property. Although Landlord may facilitate ordering and installation of City's Personal Property, all items will remain City's Personal Property and not be considered Leasehold Improvements or constitute any component of the Leasehold Improvements. At any time during the Term, City may remove any of City's Personal Property, and City will repair any damage to the Premises resulting from that removal. On the expiration or earlier termination of this Lease, City will remove the Property from the Premises in accordance with Section 20 (Surrender of Premises).

(b) Landlord acknowledges that some of City's Personal Property may be financed by an equipment lease financing otherwise subjected to a security interest, or owned by an equipment company and leased to City. Landlord recognizes the rights of any supplier, lessor, or lender (collectively, a "**Supplier**") who has an interest in any items of City's Personal Property to enter the Premises and remove such City's Personal Property at any time during the Term upon at least two (2) business days' prior written notice to Landlord, and subject to such Supplier entering into a commercially reasonable access agreement with Landlord providing for indemnification of Landlord, insurance, authorization, restoration and other reasonable terms. City agrees that Landlord may allow any Supplier access upon written demand from the Supplier, without verification whether or not removal is appropriate, and Landlord will not be liable for any error or removal of City's Personal Property. On City's reasonable request, Landlord will execute and deliver a commercially reasonable document required by any Supplier in connection with the installation in the Premises of any items of City's Personal Property, under which Landlord waives any rights it may have or acquire with respect to City's Personal Property, so long as the Supplier agrees that it (i) will remove the Property from the Premises within ten (10) days after the Expiration Date (and if it does not remove City's Personal Property within that time the Supplier will have waived any rights it may have had to City's Personal Property), and (ii) will repair any damage caused by the removal of City's Personal Property, and (iii) such other terms as are reasonably required by Landlord, in a form reasonably acceptable to Landlord.

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

(a) Landlord will use commercially reasonable efforts to minimize interference with or disruption to City's use and occupancy of the Premises during any alterations, installations, additions, or improvements to the Building, including any leasehold improvement work for other tenants in the Building. Landlord will make commercially reasonable efforts to promptly remedy any interference or disruption over which Landlord has control on receiving City's notice thereof.

(b) In the event any governmental authority having jurisdiction over the Property or the Building promulgates or revises any Law or building, fire or other code or imposes mandatory controls on Landlord or the Property or the Building relating to the use or conservation of energy or utilities or the reduction of automobile or other emissions (collectively, "**Controls**"), or in the event Landlord is required to make alterations to the Property or the Building in order to comply with such mandatory Controls, Landlord may comply with such Controls or make such alterations to the Property or the Building related compliance with the Controls. Such compliance and the making of such alterations will not constitute an eviction of City, constructive or otherwise, or impose upon Landlord any liability whatsoever, including, but not limited to, liability for consequential damages or loss of business by City. But, where Landlord's compliance with the Controls prevents City from using the Premises for the Permitted Use, it will be an interference under Section 5.3.

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

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

Subject to Tenant's obligations under Section 8.2 below, at its cost (subject to reimbursement as an Operating Cost to the extent permitted under this Lease) Landlord will repair and maintain the exterior and structural portions of the Building in first-class condition (including the roof, foundation, bearing and exterior walls, windows, doors, door frames, demising walls, and subflooring), and the heating, ventilating, air conditioning ("**HVAC**") systems (except as provided in Section 8.2(b) below), plumbing, electrical, fire protection, life safety, security, and other mechanical, electrical, and communications systems of the Building to the point of entry into the Premises (collectively, the "**Building Systems**") and the Common Areas. Without limiting the foregoing, Landlord will maintain the Building in a clean, safe, and attractive manner, will provide exterior graffiti removal with reasonable frequency, will make commercially reasonable efforts to not allow other tenants of the Building to unreasonably disturb or interfere with City's use of the Premises, and on request from Tenant with respect to a particular problem or situation, will make commercially reasonable efforts to prevent from being done in or about the Building or the Common Areas anything that is illegal, is dangerous to persons or property, or constitutes a nuisance.

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

(a) Subject to Landlord's warranty under Section 10.1 (Premises Condition), any construction warranties or guaranties received in connection with Landlord's completion of the Leasehold Improvements, and Landlord's repair and maintenance obligations under this Lease, City will repair and maintain at its cost the interior portions of the Premises and will keep the



Premises in good working order and in a safe and sanitary condition, except for ordinary wear and tear and damage by casualty or condemnation (which are addressed in Sections 12 and 1313 below). City will make any required repairs and replacements to the interior of the Premises 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 the interior portions of the Premises will be at least substantially equal in quality, value, and utility to the original work or installation before the damage, **(iv)** in a manner and using equipment and materials that will not materially interfere with or impair the operations, use, or occupation of the Building or the Building Systems, and **(v)** in compliance with all applicable Laws, including any applicable contracting requirements under City's Charter and Administrative Code. At all times during the Term, promptly after City's reasonable notice, Landlord will provide City and its Agents with access to those portions of the Building that are necessary to maintain or repair the telecommunications and data and computer cabling facilities and equipment installed by City.

**(b)** City, at City's cost, will obtain and keep in full force and effect standard maintenance and service contracts for any supplemental HVAC systems serving the Premises installed by Tenant as an Alteration after the Commencement Date (i.e., not Building HVAC system serving the Premises or supplemental HVAC systems serving the Premises installed by Landlord), and will maintain **(i)** such unit(s) and systems, and **(ii)** the security system serving the Premises (subject to Section 9.2(b) below) in good condition and proper working order throughout the Term. Any replacement of supplemental HVAC systems in and serving only the Premises will be done by City, at City's cost, as an Alteration, unless the replacement is necessitated by Landlord's negligence or willful misconduct.

**(c)** City, at its expense, will (i) use Mold Prevention; and (ii) promptly notify Landlord if it observes, suspects, has reason to believe that any Mold Condition exists at the Premises. "**Mold Prevention Practices**" means good housekeeping practices. "**Mold Conditions**" means mold and any other conditions that reasonably can be expected to cause or result from mold or fungus, including observed or suspected instances of water damage, condensation, seepage, leaks, or any other water penetration (from any source, internal or external), mold growth, mildew, and complaints of respiratory ailments or eye irritation by City's Agents and Invitees. City will allow Landlord to evaluate and make recommendations. Landlord will not be liable for any personal injury or damages to property caused by or associated with the growth of or occurrence of mold or mildew on or in the Premises or Building that are preventable through City's use of Mold Prevention Practices.

### **8.3. Liens**

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

## 9. UTILITIES AND SERVICES

### 9.1. Landlord's Provision of Utilities

(a) Landlord will furnish the following utilities and services to the Premises: (i) heating, air conditioning, and ventilation in amounts required under this Lease consistent with the ASHRAE standard (defined below), during the period from 8:00 a.m. to 6:00 p.m., Monday through Friday, except holidays generally recognized in San Francisco; (ii) elevator service by two (2) elevators (subject to the terms of the Work Letter) on a twenty-four (24) hours-a-day, three hundred sixty-five (365) days-a-year basis ("**Daily Basis**"); and (iii) water for lavatory, kitchen, and drinking purposes on a Daily Basis; all subject to temporary interruptions as permitted under this Lease, including in connection with maintenance or repair. Without limiting Landlord's obligations under this Section, Landlord will furnish all utilities and services required under this Lease in a manner consistent with utilities and services normally provided in other first class buildings similar to the Building in the Reference Area. If City requires heating or air conditioning before or after the hours set forth above, then Landlord will furnish heating or air conditioning so long as Tenant provides Landlord reasonable notice of City's requirement, and City will pay Landlord for the cost of the extra service in an amount not to exceed Landlord's actual cost in providing the service. The "**ASHRAE Standard**" means the American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc. guidelines intended to satisfy the majority of building occupants wearing a normal amount of clothing while working at a desk, which provide for temperatures of between 68° F to 74° F in the winter and 72° F to 80° F in the summer, with a relative humidity between 30 and 60 percent.

(b) City will not alter, adjust, or tamper with the installations or facilities supplying climate control to the Building or the Premises (other than any supplemental HVAC units). If the temperature otherwise maintained in any portion of the Premises by the HVAC system is affected as a result of (i) the type or quantity of any lights, machines or equipment (other than typical office equipment) used by City in the Premises, (ii) the occupancy of such portion of the Premises by more than one person per one hundred seventy-five (175) square feet of usable area therein, (iii) an electrical load for lighting or power in excess of standard use, (iv) any rearrangement of partitioning or other improvements, or (v) any supplemental HVAC units installed by City, then at City's sole cost, Landlord may install any equipment, or modify any existing equipment Landlord deems necessary to restore the temperature balance (such new equipment or modifications to existing equipment termed herein "**Temperature Balance Equipment**"). City agrees to cooperate with Landlord and to abide by the regulations and requirements Landlord may prescribe for the proper functioning and protection of the HVAC system. Landlord makes no representation to City regarding the adequacy or fitness of any equipment in the Building to maintain temperatures that may be required for, or because of, any of City's equipment in the Premises that is not typical office equipment (e.g., computers, copiers, printers, coffee machines, water coolers, etc., but specifically excluding IDF (intermediate distribution frame) rooms, which are served by supplemental units), and Landlord will have no liability for loss or damage suffered by City or others in connection therewith.

(c) City will contract and pay for electrical service directly with the service provider.

## 9.2. Services

(a) As an Operating Expense, Landlord will provide janitorial service in accordance with the specifications contained in the attached Exhibit H.

(b) As an Operating Expense, Landlord will provide security for the Building in accordance with the specifications contained in the attached Exhibit I. Except in the case of defective installation of the security system by Landlord (which Landlord will remedy at Landlord's expense within five (5) business days after notice from City), City acknowledges that City is solely responsible for any safety and security devices, and in no event will Landlord be responsible for theft or other criminal acts, or the safety of persons or property and City expressly assumes the risk that any safety device, service, or program may not be effective or may malfunction or be circumvented.

(c) City, at City's expense, will provide or procure (whether under Section 4.13 (Additional Services) or otherwise) any other services for the Premises as City may require, City will ensure that Landlord has keys and codes needed to access the Premises in the event of an emergency or as otherwise allowed under this Lease; if City fails to provide the keys and codes, then in an emergency Landlord may access the Building by any means reasonably necessary and City will be responsible for any and all repair costs reasonably incurred due to Landlord's emergency entry.

## 9.3. Disruption in Essential Utilities or Services

(a) If any failure, stoppage, or interruption of any utilities or services to be furnished by Landlord occurs, upon notice to Landlord, or Landlord's actual knowledge thereof, Landlord will promptly notify City of the failure, stoppage, or interruption; diligently attempt to restore service as promptly as possible; and keep City apprised of its efforts. Absent Landlord's negligence or willful misconduct, however, Landlord will not be responsible for disruptions in utilities or services related to shutdowns except as provided in subsection (b) below and City hereby waives the provisions of California Civil Code Section 1932(1) or any other applicable existing or future Laws permitting the termination of this Lease due to such interruption, failure, or inability to the extent it provides greater termination rights to City than what is provided in this Lease.

If Landlord is unable to supply any of the Building's sanitary, electrical, heating, air conditioning, water, elevator, fire protection/security, or life safety or other hazard detection /alarm serving the Premises for which Landlord is responsible under this Lease (collectively, "**Essential Services**") and that inability of Landlord materially impairs City's ability to carry on its business in the Premises for (a) three (3) or more consecutive business days and it is in Landlord's reasonable control to restore the Essential Services or (b) five (5) or more consecutive business days if the failure is not within Landlord's reasonable control, then the Rent will be abated based on the extent that the lack of the Essential Services impairs City's ability to normally carry on its business in the Premises, or, alternatively at City's election and following notice to Landlord, City may provide the Essential Services at a reasonable cost and offset such cost against the Rent next due under this Lease. The abatement or right to provide the Essential Services and offset against Rent will continue until the Essential Services have been restored so that the lack of any remaining

Essential Services no longer materially impairs City's ability to carry on its business in the Premises. Landlord will use commercially reasonable efforts to restore disrupted Essential Services as soon as possible. If the failure to provide any Essential Services occurs for any reason for ninety (90) consecutive days or more and that failure interferes with City's ability to normally carry on its business in the Premises (and City does not carry on its business in the Premises), then, without limiting any of its other rights or remedies under this Lease or at law or in equity, City may terminate this Lease on written notice to Landlord given after the expiration of such 90-day period and while the disruption is continuing. But City will not be entitled to any abatement of Rent or right to terminate if Landlord's inability to supply Essential Services to City results solely due to the negligent acts or omissions of City and its Agents and Invitees.

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

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

Subject to City's obligation under Section 8.2 (City's Repairs), Landlord will at all times during the Term maintain, at its cost (subject to reimbursement as an Operating Cost to the extent permitted by this Lease), the Property, Building, Common Areas, and the Building Systems in compliance with applicable present or future federal, state, local, and administrative laws, rules, regulations, orders, and requirements (collectively, "**Laws**"). Landlord represents and warrants to City, and covenants with City, as follows to Landlord's actual knowledge: (defined below) **(a)** the physical structure, fixtures, and permanent improvements of the Premises (including the Leasehold Improvements) and all portions of the Property and the Building along the path of travel to the Premises (including the Building entrances, Common Areas, restrooms, elevators, lobbies and drinking fountains) are now, and as of the Commencement Date will be, in compliance with the requirements of the Americans With Disabilities Act of 1990, California Code of Regulations Title 24, and all other applicable Laws intended to provide equal accessibility for persons with disabilities (collectively, "**Disabilities Laws**"); **(b)** the Building is not an unreinforced masonry building, and is now, and as of the Commencement Date will be, in compliance with all applicable Laws relating to seismic safety (collectively, "**Seismic Safety Laws**"); **(c)** the Building, the Common Areas, and Building Systems serving the Premises are now, and as of the Commencement Date will be, in compliance with all applicable Laws relating to fire and life safety (including the San Francisco High-Rise Sprinkler Ordinance) (collectively, "**Life Safety Laws**"); **(d)** the Building, the Common Areas, and Building Systems serving the Premises are now, and as of the Commencement Date will be, in compliance with all other applicable Laws; and **(e)** there are not now, and as of the Commencement Date will not be, any material physical or mechanical defects in the Premises, Building, or the Building Systems that would materially adversely affect City's intended use of the Premises. The foregoing representation, warranty, and covenant is to the actual knowledge of Steve Wolmark, a manager of Landlord, based on the representations and warranties of the architect and contractor retained in connection with completing Leasehold Improvements, without any duty of investigation. Without limiting Section 16.2 (Landlord's Indemnity), Landlord will Indemnify City against any and all Claims (defined in Section 16.1 (City's Indemnity) below) arising out of **(i)** any failure of the Property, Building, Common Areas, Building Systems (or any portion of any of them) to comply with applicable Laws (other than City's failure to comply with all applicable Laws as provided under Section 10.2 below); or **(ii)** any misrepresentation by Landlord under this Section.

## 10.2. City's Compliance with Laws; Indemnity

City will use the Premises during the Term in compliance with applicable Laws, except that City will not be required to make any structural alterations, additions, or other modifications in order to comply with applicable Laws unless the modifications are necessary primarily because of any Alterations or Cosmetic Work to the Premises made by City under Section 7 (Alterations) and the modifications are not otherwise Landlord's responsibility under this Lease. City will be responsible for complying with any requirement of the Disabilities Laws relating to the placement of City's furniture or other City Personal Property and the operation of any programs in the Premises, other than any requirement relating to the physical structure, fixtures, and permanent improvements of the Premises or portions of the Property or Building along the path of travel to the Premises, which are Landlord's obligation as provided in Section 10.1 (Premises Condition). Without limiting Section 16.1 (City's Indemnity), City will Indemnify Landlord against any and all Claims arising out of City's failure to comply with all applicable Laws as provided in this Section.

## 10.3. City's Compliance with Insurance Requirements

City will not conduct any use in or about the Premises that would: (a) invalidate or be in conflict with any fire or other casualty insurance policies covering the Building or any property located in the Building, (b) result in a refusal by casualty insurance companies of good standing to insure the Building or property in the Building 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 casualty insurance premium for the Building unless City agrees to pay the increase, or (d) subject Landlord to any liability or responsibility for injury to any person or property solely because of the business operation conducted by City in the Premises; provided, however, Landlord will provide City with reasonable prior written notice of any applicable insurance requirements and no insurance requirements will materially and adversely interfere with City's normal office use in the Premises.

## 11. SUBORDINATION

(a) Subject to subsection (b) below, this Lease is subject and subordinate at all times to the following (each an "**Encumbrance**"): (i) any reciprocal easement agreements, ground leases, or other underlying leases that may later be executed affecting Landlord's interest in the Property (or any portion of it), and (ii) the lien of any mortgages or deeds of trust and renewals, modifications, consolidations, replacements, and extensions of any of the foregoing that may be executed by Landlord at any time in any amount for which any part of the Property, any ground lease, or underlying lease, or Landlord's interest or estate in them is subject. But, if the ground lessor, mortgagee, trustee, or holder of any mortgage or deed of trust (each an "**Encumbrancer**") elects to have City's interest in this Lease be superior to its Encumbrance, then, on City's receipt of a notice from the Encumbrancer, this Lease will be deemed superior, whether this Lease was executed before or after the date of the Encumbrance or the date of its recording. The provisions of this subsection **Error! Reference source not found.**~~(a)~~ are self-operative and no further instrument will be required. At Landlord's request, however, City will enter into a subordination, nondisturbance, and attornment agreement ("**SNDA**") with Encumbrancer in a form reasonably acceptable to City and Encumbrancer evidencing the subordination or superiority of this Lease.

City's covenant under this subsection (a) to subordinate this Lease to any Encumbrance is conditioned on each senior instrument containing the commitments in subsection (b) below.

(b) If any mortgage or deed of trust to which this Lease is subordinate is foreclosed or a deed in lieu of foreclosure is given to the mortgagee or beneficiary, or if any ground lease or underlying lease to which this Lease is subordinate is terminated, then this Lease will not be barred, terminated, cut off, or foreclosed and the rights and possession of City under this Lease will not be disturbed unless an Event of Default has occurred and is continuing. City will attorn to and become the tenant of the successor-in-interest to Landlord, provided that City has received proper written notice of the succession and the name and address of the successor landlord. The provisions of this Section ~~Error! Reference source not found.~~ 11(b) are self-operative and no further instrument will be required. Landlord agrees, however, upon request by City and in the form of Exhibit G or such other form reasonably acceptable to City to cause any Encumbrancer to execute, an SNDA evidencing the foregoing non-disturbance provisions together with the priority or subordination of this Lease with respect to any such Encumbrance. City will execute or provide comments to any proposed SNDA within fifteen (15) days after Landlord's request for approval.

(c) Concurrently with the execution of this Lease, Landlord and City will execute and Landlord will cause its current mortgagee or beneficiary under any deed of trust given by Landlord to execute the Subordination and Nondisturbance Agreement in the form attached as Exhibit G.

## 12. DAMAGE AND DESTRUCTION

(a) If the Premises, the Building, or any Building Systems are damaged by fire or other casualty, Landlord will repair the same without delay (and if Landlord is then carrying insurance on the Leasehold Improvements or if, at its sole option, City makes sufficient funds available to Landlord, Landlord will also repair the Leasehold Improvements) so long as the repairs can be made under applicable Laws within one hundred eighty (180) days after Landlord obtains all necessary permits but not later than three hundred sixty-five (365) days after the date of the damage (the "**Repair Period**"). If Landlord is obligated to repair as provided above, then this Lease will remain in full force and effect, except that City will be entitled to an abatement of Rent until the Premises are restored to their condition before the casualty unless the repair is necessitated by the negligence or misconduct of City and its Agents and Invitees and the damage is not covered by insurance. The abatement in Rent will be based on the extent to which the damage and the making of the repairs interferes with City's use of the Premises. Landlord's repairs will not include, and the Rent will not be abated as a result of, any damage by fire or other cause to City's Personal Property or any damage caused by the negligence or willful misconduct of City or its Agents that is not covered by insurance. In no event will Landlord be responsible to repair or replace City's Personal Property unless the repair or replacement is required because of Landlord's active negligence or willful misconduct.

(b) Within twenty (20) days after the date Landlord is notified or has actual knowledge of the damage, Landlord will notify City whether, in Landlord's reasonable judgment made in good faith, the repairs can be made within the Repair Period. If the repairs cannot be made within the Repair Period, then either party may terminate this Lease by giving written notice to the other given within thirty (30) days after the date of Landlord's notice. The termination date will be the date specified in the termination notice, which date may be not less than thirty (30) or

more than sixty (60) days after Landlord's notice. If either party elects to terminate this Lease, then the Rent will be reduced by a proportionate amount based on the extent to which the damage interferes with the normal conduct of City's business in the Premises, and City will pay the reduced Rent up to the date of termination. Landlord will refund to City any Rent previously paid for any period after the date of termination.

(c) Notwithstanding the foregoing, if the Premises are damaged or destroyed and the damage or destruction is not fully covered by insurance proceeds payable under the insurance policies Landlord is required to carry under this Lease (for purposes of this subsection the amount of Landlord's deductible will be considered part of the proceeds) or where Landlord's lender refuses to release such proceeds, then Landlord may terminate this Lease by written notice to City within thirty (30) days after the date Landlord receives written notice that the damage is not covered by insurance or Landlord's lender has refused to release the proceeds. Landlord's termination notice must include adequate written evidence of the denial of insurance coverage or lender's refusal to release the proceeds. If Landlord does not elect to terminate this Lease as provided in this subsection (c), then subsections (a) and (b) will apply.

(d) If during the last six (6) months of the Term there is substantial damage that Landlord would be required to repair under this Section, then within thirty (30) days after the date of the damage Landlord or City may, each at its option, terminate this Lease as of the date the damage occurred by giving written notice to the other party of its election to do so; provided, however, Landlord may terminate this Lease only if it would take more than sixty (60) days to repair the damage or the damage will not be completed prior to the Expiration Date despite Landlord's good faith efforts to complete the repairs.

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

### **13. EMINENT DOMAIN**

#### **13.1. Definitions**

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

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

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

## **13.2. General**

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

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

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

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

(a) If there is a Taking of any portion (but less than all) of the Premises, then this Lease will terminate in its entirety if all of the following exist: (i) the partial Taking, in City's reasonable judgment, renders the remaining portion of the Premises untenable or unsuitable for continued use by City for its intended purposes or otherwise materially adversely affects City's normal operations in the Premises or adversely affects access to the Premises, (ii) the condition rendering the Premises untenable or unsuitable or that materially adversely affects City's normal operations or adversely affects access to the Premises either is not curable or is curable but Landlord is unwilling or unable to cure the condition, and (iii) City elects to terminate on written notice to Landlord delivered within thirty (30) days after the Date of Taking.

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

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

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

On termination of this Lease in its entirety under Section 13.3 (Total Taking; Automatic Termination) or under Section 13.4 (Partial Taking; Continuation of Lease), then: (a) City's obligation to pay Rent will continue up until the date of termination and then will cease, and (b) Landlord will be entitled to the entire Award, except that City will receive any portion of the Award for the unamortized cost of any Leasehold Improvements paid for by City and any Award made specifically for City's relocation expenses or the interruption of or damage to City's business or damage to City's Personal Property.



### 13.6. Partial Taking; Continuation of Lease

If there is a partial Taking of the Premises and this Lease is not terminated in its entirety under Section 13.4 (Partial Taking; Continuation of Lease) above, then this Lease will terminate as to the portion of the Premises taken, but will remain in effect as to the portion not taken, and the rights and obligations of the parties will be as follows: (a) Rent will be equitably reduced depending on the configuration of the Premises and the portion taken (for instance, if the area of the Premises taken has no special or significant use, then the reduction may be by an amount that is in the same ratio to the Rent as the area of the Premises taken bears to the area of the Premises before the Date of Taking), and (b) Landlord will be entitled to the entire Award in connection therewith, provided that City will receive any portion of the Award for the unamortized cost of any Leasehold Improvements paid for by City in the portion of the Premises taken and any Award made specifically for City's relocation expenses or the interruption of or damage to City's business or damage to City's Personal Property.

### 13.7. Temporary Taking

Notwithstanding anything to contrary in this Section, if a Taking of the Premises occurs for sixty (60) consecutive days or fewer, this Lease will remain unaffected by the temporary Taking, and City will continue to pay Rent and to perform all of the terms, conditions, and covenants of this Lease. In the event of a temporary Taking, City will be entitled to receive that portion of any Award representing compensation for the use or occupancy of the Premises during the Term up to the total Rent owing by City and any out-of-pocket costs incurred by City due to the temporary Taking for the period of the Taking.

## 14. ASSIGNMENT AND SUBLETTING

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

(b) Landlord will have no obligation to consent to any assignment, sublease, or other transfer: (i) that releases City, (ii) if the assignee or transferee is not credit worthy, as reasonably determined by Landlord, (iii) where the transferee is not of a character reasonably acceptable to Landlord, or (iv) where any lender or mortgagee fails to consent (where such consent is required).

(c) If City desires to assign, sublet, or transfer all or part of this Lease or the Premises, then in connection with City's request to Landlord for Landlord's consent thereto, City will give notice to Landlord in writing ("**Tenant's Request Notice**") containing: (i) the identity of the proposed assignee, subtenant or other party and a description of its business; (ii) the terms of

the proposed assignment, subletting, or other transfer (including a copy of the proposed assignment, sublease or other document); (iii) the anticipated commencement date of the proposed assignment, subletting, or other transfer (the “**proposed sublease commencement date**”); (iv) the area proposed to be assigned, sublet, or otherwise encumbered; (v) evidence of financial responsibility of such proposed assignee, subtenant, or other party (unless City remains financially liable for City’s obligations under this Lease notwithstanding any such assignment, sublet, or transfer); and (vi) a certification executed by City and such party stating whether or not any premium or other consideration is being paid for the assignment, sublease or other transfer.

(d) Landlord will have thirty (30) days in which to approve or reject the proposed assignment, sublease, or other transfer. Any net profits received by City from any sublease or assignment (after deducting all actual and reasonable internal and external City costs in connection with the proposed sublease, including marketing costs, attorneys’ fees, brokers fees, and transaction costs) will be divided 50% to Landlord (the “**Additional Consideration**”) and 50% to City. Landlord will have the right to review City’s nonprivileged records relating to costs in order to confirm any net profit. After recovery of City’s costs as provided above, City will pay the Additional Consideration monthly to Landlord.

(e) In addition, in lieu of approving any proposed assignment, sublease, or transfer, Landlord will have the right to recapture the portion of the Premises that is proposed by City to be assigned, sublet, or transferred. If Landlord exercises this recapture right, (i) the recaptured space will be removed from the “Premises” for all purpose’s under this Lease and Landlord will be responsible for all costs needed to fully demise, separate, and secure the Premises from the recaptured space (including painting the demising wall in the Premises), (ii) Rent (including Additional Charges) will be proportionally reduced based upon the square footage that is removed from the Premises, and (iii) the parties agree to amend the Lease to reflect the above changes to the Premises and Rent, and any such amendment will be subject to the approval of the City’s Director of Property without the need for Board of Supervisors’ approval. In no event will the Purchase Option (defined in Section **Error! Reference source not found.** (City’s Option to Purchase) be available to any assignee, subtenant, or transferee.

(f) No assignment of the Lease or right of occupancy under this Lease may be effectuated by operation of law without the prior written consent of Landlord. Any attempted assignment or transfer of this Lease or any sublet or permission to use or occupy the Premises or any part of it not in accordance with this Section 14, will be void and of no force or effect. Landlord’s collection or acceptance of rent from any assignee or subtenant will not be construed either as waiving or releasing City from any of its liabilities or obligations under this Lease as a principal or as relieving City or any assignee or subtenant from the obligation of obtaining Landlord’s prior written consent to any subsequent assignment or subletting. As security for this Lease, City hereby assigns to Landlord the rent due from any assignee or subtenant of City during any period that there exists an Event of Default. City authorizes each assignee or subtenant to pay its rent directly to Landlord upon receipt of notice from Landlord stating that there is an Event of Default under this Lease and directing payment to Landlord. Landlord’s collection of such rent will not be construed as an acceptance of such assignee or subtenant as a tenant.

(g) City will pay to Landlord its reasonable, out-of-pocket, third party expenses (including reasonable attorneys’ fees and accounting costs) incurred by Landlord in connection

with City's request for Landlord to give its consent to any assignment, subletting, or transfer within thirty (30) days after receipt of Landlord's invoice together with reasonable supporting documentation. City will deliver to Landlord a fully-executed copy of each agreement evidencing a sublease, assignment or other transfer within ten (10) days after execution thereof.

(h) All restrictions and obligations imposed pursuant to this Lease on City will extend (as applicable) to any subtenant, licensee, concessionaire, or transferee, and City will cause such person to comply with such restrictions and obligations. Any assignee will be deemed to have assumed obligations as if such assignee had originally executed this Lease. Subject to any written agreement with Landlord at the time of entering into a sublease, each sublease is subject to the condition that if the Lease is terminated or Landlord succeeds to City's interest in the Premises by voluntary surrender or otherwise, at Landlord's option the subtenant will be bound to Landlord for the balance of the term of the sublease and will attorn to and recognize Landlord as its landlord under the then executory terms of the sublease. The extension options and purchase option are personal to City and are not exercisable by any transferee under any sublease, assignment, or other transfer requiring Landlord's consent, nor may City exercise any extension options or purchase option if City has transferred more than 50% of the Premises under an assignment, sublease, or similar document where Landlord's consent is required.

## **15. DEFAULT; REMEDIES**

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

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

(a) After Landlord is qualified as an approved vendor as provided in Section 4.114.16 (Payments by City) above, City fails to make any timely payment of Rent and to cure the nonpayment within five (5) business days after receipt of written notice or nonpayment from Landlord, provided that for the first two (2) monthly payments of Rent at the beginning of the Term and for the first monthly payment of Rent after the beginning of each new fiscal year for City have twenty (20) days after written notice from Landlord to cure any nonpayment, and further provided in no event will Landlord be required to provide more than three (3) written notices under this subsection (a) in any twelve (12) month period, after which late payments will be an automatic Event of Default.

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

(c) City assigns this Lease or subleases any portion of the Premises in violation of the terms of this Lease;

(d) City fails to provide evidence of insurance (to the extent required), estoppel certificates, signed SNDAs, or remove liens under Section 8.3 within the time provided in this Lease, which failure continues for five (5) business days after receipt of Landlord's written notice of default; or

(e) City's failure to perform any other of its covenants or obligations under this Lease (not involving the payment of money) and failure to cure the non-performance within thirty

(30) days of the date of receipt of Landlord's notice of the failure, provided that if more than thirty (30) days are reasonably required for the cure, no Event of Default will occur if City commences the cure within the 30-day period and diligently prosecutes the cure to completion (provided that where City's failure creates a dangerous condition or exposes Landlord to substantial or criminal penalties due to violations of Laws or otherwise, in which event City will be required to effect a cure within the time limit reasonably set forth by Landlord in its notice).

## **15.2. Landlord's Remedies**

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

(a) The rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including the right to terminate City's right to possession of the Premises and to recover the 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 under subsection (b) of Section 1951.2.

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

(c) Consistent with and subject to any Landlord obligation to mitigate damages under California law, if an event of default occurs under this Lease, then Landlord may put the Premises into rentable condition and relet the Premises or any part thereof for such term and on such terms and conditions (which may include any concessions or allowances granted by Landlord) as Landlord, in its reasonable discretion, may determine. Whether or not this Lease and/or City's right of possession is terminated or any suit is instituted, City will be liable for any base rent, additional rent, damages or other sum that may be due or sustained before such Event of Default, and for all actual and reasonable costs, fees and expenses incurred by Landlord in pursuit of its remedies hereunder and/or in recovering possession of the Premises as determined by a court of law. If Landlord does not terminate this Lease but instead leases or sublets the Premises, rents received by Landlord will be applied (i) first, to the payment of the costs of maintaining, preserving, altering and preparing the Premises for leasing and any other costs of leasing, including but not limited to brokers' commissions and attorneys' fees and expenses; (ii) second, to the payment of rent and additional rent then due and payable hereunder; (iii) third, to the payment of future rent as the same may become due and payable hereunder; and (iv) fourth to Landlord's damages, costs and fees related to City's default (including reasonable attorneys' fees), with any surplus held by Landlord as a security deposit under commercially reasonable standards (in a non-interest bearing account, which need not be segregated) pending termination of the Lease. If the rents received by Landlord, after application as provided above, are insufficient in any month to pay the rent due and payable hereunder for such month, City will pay such deficiency to Landlord monthly within thirty (30) days of Landlord's demand.

(d) All rights and remedies of Landlord set forth in this Lease are cumulative and in addition to all other rights and remedies available to at law or in equity, including those available as a result of any anticipatory breach of this lease. The exercise by Landlord of any such right or remedy will not prevent the concurrent or subsequent exercise of any other right or remedy.

### **15.3. Landlord's Default**

City will promptly advise Landlord of any repair or other obligation under this Lease on the part of Landlord to be performed. If Landlord fails to perform any of its obligations under this Lease within ten (10) days after written notice, then (without limiting any of City's other cure or other rights under this Lease), at its sole option, City may cure the default at Landlord's expense if the default continues after ten (10) days after the date City gives notice to Landlord of City's intention to perform the cure. However, if a default occurs because of a cause beyond Landlord's control (excluding any financial inability to perform), and Landlord cannot with due diligence cure the default within the ten (10)-day period, then the ten (10)-day period will be extended if, promptly on receipt of City's notice, Landlord advises City of Landlord's intention to cure the default, and Landlord promptly commences the cure and diligently prosecutes the cure to completion (a "**Correction Process**"). If any default by Landlord continues for sixty (60) days and impairs City's ability to carry on its normal business in the Premises, and Landlord has not notified City of a Correction Process, then City may terminate this Lease on written notice to Landlord within thirty (30) days after the expiration of the sixty (60)-day period. If Landlord fails to cure any default within the 10-day cure period provided above (as it may be extended as provided above), then, whether or not City elects to cure Landlord's default, the Rent will be abated based on the extent to which the default interferes with City's ability to carry on its normal business at the Premises until the default is cured. City's rights under this Section and under any other provision of the Lease will not limit in any way any of its other rights and remedies under this Lease or at law or in equity, unless City has expressly waived those rights. Notwithstanding the foregoing, where Tenant elects to complete the Leasehold Improvements, then Section 3.3 will control.

## **16. INDEMNITIES**

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

City will indemnify, defend, and hold harmless ("**Indemnify**") Landlord and its Agents from and against any and all claims, losses, damages, costs, and expenses, including reasonable attorneys' fees (collectively, "**Claims**"), incurred as a result of (a) City's use of the Premises, or (b) any default by City in the performance of any of its material obligations under this Lease (including the Work Letter), or (c) any negligent acts or omissions of City or its Agents in, on, or about the Premises or the Property; provided, however, City will not be obligated to Indemnify Landlord or its Agents to the extent any Claim arises out of the negligence or willful misconduct of Landlord or its Agents. In any action or proceeding brought against Landlord or its Agents because of a Claim Indemnified by City under this Section, at its sole option, City may elect to defend the Claim by attorneys in City's Office of the City Attorney, by other attorneys selected by City, or both. City will have the right to control the defense and to determine the settlement or compromise of any action or proceeding, provided that Landlord will have the right, but not the

obligation, to participate in the defense of the Claim at its sole cost. City's obligations under this Section will survive the termination of the Lease for a period of three (3) years.

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

Landlord will Indemnify City and its Agents against any and all Claims incurred as a result of (a) any material 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 negligence of Landlord or its Agents in, on, or about the Premises or the Property; provided, however, Landlord will not be obligated to Indemnify City or its Agents to the extent any Claim arises out of the negligence or willful misconduct of City or its Agents. In any action or proceeding brought against City or its Agents because of a Claim Indemnified by Landlord under this Section, at its sole option, Landlord may elect to defend the Claim by attorneys selected by Landlord. Landlord will have the right to control the defense and to determine the settlement or compromise of any action or proceeding, provided that City will have the right, but not the obligation, to participate in the defense of any Claim at its sole cost. Landlord's obligations under this Section will survive the termination of this Lease for a period of three (3) years.

## **17. INSURANCE**

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

Landlord acknowledges that City maintains a program of self-insurance and City is not be required to carry any insurance with respect to this Lease. City assumes the risk of damage to any of City's Personal Property, except for damage caused by Landlord's or its Agents' active negligence or intentional acts. City's self-insurance program will cover the following items (as if City had purchased a standard insurance policy from an independent insurance provider licensed to do business in California):

(a) Commercial general liability insurance with limits not less than Three Million Dollars (\$3,000,000) each occurrence combined single limit for bodily injury and property damage, including contractual liability, independent contractors, broad-form property damage, fire damage legal liability (of not less than Fifty Thousand Dollars (\$50,000)), personal injury, products and completed operations, and explosion, collapse and underground (XCU).

(b) Worker's Compensation Insurance with Employer's Liability limits not less than One Million Dollars (\$1,000,000) each accident.

(c) Business automobile liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including owned and non-owned and hired vehicles, as applicable, if City uses automobiles in connection with its use of the Premises.

(d) An Umbrella policy in the amount of Five Million Dollars (\$5,000,000).

## 17.2. Landlord's Insurance

(a) At all times during the Term, Landlord will keep the Building and all improvements (including Leasehold Improvements and similar improvements for other tenants in the Building) insured against damage and destruction by fire, vandalism, malicious mischief, sprinkler damage (including earthquake sprinkler leakage) and other perils customarily covered under a cause of loss-special form property insurance policy in an amount equal to one hundred percent (100%) of the full insurance replacement value (replacement cost new, including debris removal and demolition) with a deductible of not more than \$1,000,000 or the amount under policies carried by institutional owners of Comparable Buildings in the Reference Area . Upon City's request, Landlord will provide to City a certificate of insurance issued by the insurance carrier, evidencing the required insurance. Landlord will provide (or cause its insurer to provide) at least thirty (30) days' prior written notice to City of any cancelation or reduction of coverage or other modification of Landlord's required insurance coverage. Landlord waives any rights to collect from City for loss or damage to the Premises or any other part of the Property to the extent covered by Landlord's property insurance.

(b) In addition, Landlord will procure and keep in effect at all times during the Term insurance as follows: (i) commercial general liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including contractual liability, independent contractors, broad-form property damage, fire damage legal liability (of not less than Fifty Thousand Dollars (\$50,000)), personal injury, products and completed operations, and explosion, collapse, and underground (XCU); and (ii) worker's compensation insurance in the amounts required by applicable Laws and employer's liability with limits not less than One Million Dollars (\$1,000,000) each accident. All insurance policies required by this Lease to be maintained by Landlord must be endorsed to provide for thirty (30) days' prior written notice to Landlord and City of cancellation for any reason, intended non-renewal, or reduction in coverage (or, if such endorsement is not available from the insurer, Landlord will provide such notice to City).

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

(d) Landlord will maintain such umbrella policy and additional coverage as it reasonably determines necessary or as required by any Encumbrancer. The parties agree that the minimums set forth in this Section **Error! Reference source not found.**17.2 will be re-evaluated every five (5) years, and increased to the extent consistent with similarly situated landlords and properties.

## 17.3. Waiver of Subrogation

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

## **17.4 Liability of Landlord**

(a) Neither Landlord nor Landlord's Agents will be liable to City and its Agents for any damage, injury, loss or claim to City's Personal Property or lost income based on or arising out of the following (except as expressly set forth in this Lease to the contrary, and except to the extent caused by Landlord or its Agents' negligence or intentional acts): repair to any portion of the Premises or the Building; interruption in the use of the Premises or the Building (except as otherwise provided in this Lease) or any equipment therein; any accident or damage resulting from any use or operation by City's or any other person or entity of elevators or heating, cooling, electrical, sewage or plumbing equipment or apparatus; termination of this Lease by reason of damage to the Premises or the Building under Article 12; any fire, robbery, theft, vandalism, mysterious disappearance or any other casualty; actions of any other person or entity; failure or inability to furnish any service specified in this Lease (except as otherwise provided in this Lease); and leakage in any part of the Premises or the Building from water, rain, ice, flooding or snow that may leak into, or flow from, any part of the Premises or the Building, or from drains, pipes or plumbing fixtures in the Premises or the Building (except to the extent due to Landlord's negligent failure to maintain the Building as required by this Lease). If any condition exists that may be the basis of a claim of constructive eviction, then City will give Landlord written notice thereof and a reasonable opportunity to correct such condition, and in the interim City will not be entitled to a rent abatement (except as otherwise allowed under this Lease). For purposes of this article, the term "Building" will be deemed to include the land on which the Building and parking are situated. Notwithstanding the foregoing provisions of this section, Landlord will not be released from liability to City for any physical injury to any natural person caused by the negligence or willful misconduct of Landlord or its Agents to the extent such damage is not covered by insurance either carried by City (or would have been had City not self-insured) or such person or required by this Lease to be carried by City.

(b) Neither Landlord nor any of its Agents (nor any past, present or future board member, partner, trustee, director, member, officer, employee, agent, representative or advisor of any of them) will under any circumstances be liable for any exemplary, punitive, consequential, or indirect damages in connection with or relating to this Lease. Neither Tenant nor any of its Agents (nor any past, present or future board member, partner, official, trustee, director, member, officer, employee, agent, representative or advisor of any of them) will under any circumstances be liable for any exemplary, punitive, consequential, or indirect damages in connection with or relating to this Lease.

(c) No landlord hereunder will be liable for any obligation or liability based on or arising out of any event or condition occurring during the period that such landlord was not the owner of the building or a landlord's interest therein; provided, however, that any successor landlord will be liable for continuing events and conditions.

(d) Subject to applicable Law, the obligations of City under this Lease are independent covenants and agreements, such that all such obligations of City, including, without limitation, the obligation to pay Base Rent, Additional Charges and all other sums due to Landlord hereunder, will continue unaffected, unless the requirement to pay or perform same has been terminated or abated pursuant to an express provision of this Lease. Such waiver and acknowledgements by City are a material inducement to Landlord entering into this Lease. City



will not have the right to set off or deduct any amount allegedly owed to City pursuant to any claim against Landlord from any Rent or other sum payable to Landlord except as provided in this Lease. Except as provided in this Lease, City's remedy for recovering upon such claim will be to institute an independent action against Landlord; provided, however, that the foregoing will not prohibit City from asserting a counterclaim in any proceeding instituted by Landlord against City.

(e) If City or any Agent or Invitee is awarded a money judgment against Landlord, then recourse for satisfaction of such judgment will be limited to execution against Landlord's estate and interest in the Building (and all property and accounts related thereto), or the amount that would have been available had Landlord maintained equity in the Building that equals or exceeds twenty percent (20%) of its fair market value. So long as Landlord complies with the foregoing equity requirement, no other asset of Landlord will be available to satisfy or be subject to any such judgment. No asset of any of Landlord's Agents (or any past, present or future board member, partner, director, member, officer, trustee, employee, agent, representative, or advisor of any of them (each, an "officer")) or any other person or entity, will be available to satisfy or be subject to any such judgment. No such Landlord's Agent, officer, or other person or entity will be held to have personal liability for satisfaction of any claim or judgment whatsoever under this Lease.

## **18. ACCESS BY LANDLORD**

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

## **19. ESTOPPEL CERTIFICATES**

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

## **20. SURRENDER OF PREMISES**

On the expiration or sooner termination of this Lease, City will surrender the Premises to Landlord broom clean, free from debris, and in good order and condition, excepting reasonable use and wear and damage by fire or other casualty or condemnation. Within ten (10) days after

the Expiration Date, City will remove from the Premises all of City's Personal Property, City's telecommunications, data, and computer facilities and any Alterations City desires or is required to remove from the Premises under the provisions of Section 7.1 (Alterations by City). City will repair or pay the cost of repairing any damage to the Premises or the Building resulting from that removal. City will not be required to demolish or remove from the Premises any of the Leasehold Improvements. City's obligations under this Section will survive the expiration or earlier termination of this Lease. If City fails to remove its furniture, furnishings, equipment, City's Personal Property, debris and designated Alterations as required under this Section, Landlord will have the right at City's expense, to remove from the Premises any or all such items (and put the Premises in the condition required) and City will pay to Landlord all actual and reasonable costs incurred by Landlord in effectuating such removal and restoration plus a four percent (4%) administrative fee.

## **21. HAZARDOUS MATERIALS**

### **21.1. Definitions**

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

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

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

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

### **21.2. Landlord's Representations and Covenants**

Landlord represents and warrants to City that, to Landlord's actual knowledge (as qualified in Section 10.1), the following statements are true and correct and will be true and correct as of the Commencement Date **(a)** the Property is not in violation of any Environmental Laws; **(b)** the Property is not now, and has not been, used for the manufacture, use, storage, discharge, deposit, transportation, or disposal of any Hazardous Material, except for the use of Hazardous Material in limited quantities as are customarily used in offices, which limited use is and has been in compliance with Environmental Laws; **(c)** the Property does not consist of any landfill or contain any underground storage tanks; **(d)** the Building does not contain any asbestos-containing

materials or have building materials that contain any other Hazardous Material in violation of applicable Laws, and the Premises or the common areas of the Building do not contain any lead-based paints in violation of applicable Laws; (e) there is and has been no Release of any Hazardous Material in the Building or in, on, under, or about the Property; and (f) the Property is not subject to any claim by any governmental regulatory agency or third party related to the Release of any Hazardous Material, and there is no inquiry by any governmental agency (including the California Department of Toxic Substances Control or the Regional Water Quality Control Board) with respect to the presence of Hazardous Material in the Building or in, on, under, or about the Property, or the migration of Hazardous Material from or to other real property. Subject to City's obligations under this Section below, Landlord will maintain the Property throughout the Term in compliance with all Environmental Laws that could affect the health, safety, and welfare of City's employees or City's use, occupancy, or enjoyment of the Premises for their intended purposes, except to the extent caused by City and its Agents and Invitees.

### **21.3. Landlord's Environmental Indemnity**

Without limiting Landlord's Indemnity in Section 16.2 (Landlord's Indemnity), Landlord will Indemnify City and its Agents against any and all Claims arising during or after the Term (a) as a result of any breach of any of Landlord's representations, warranties, or covenants in the preceding Section, or (b) in connection with any Release of any Hazardous Material in the Building or on, under, or about the Property caused by Landlord and its Agents, unless City or its Agents caused the Release.

### **21.4. City's Covenants**

Neither City nor its Agents (nor, to the extent the Premises are used as a public facility, its Invitees) will cause any Hazardous Material to be brought on, kept, used, stored, generated, or disposed of in, on or about the Premises or the Property, or transported to or from the Premises or the Property in violation of any Environmental Laws.

### **21.5. City's Environmental Indemnity**

If City breaches its obligations contained in the preceding Section 21.4 (City's Covenants), or if City or its Agents cause the Release of Hazardous Material from, in, on, or about the Premises or the Property, then City will Indemnify Landlord against any and all Claims arising during or after the Term as a result of the Release, except to the extent Landlord or its Agents is responsible for the Release. The foregoing Indemnity will not include any Claims resulting from the non-negligent aggravation by City, its Agents, or Invitees of physical conditions of the Premises, or other parts of the Property, existing before City's occupancy.

## **22. CITY'S OPTION TO PURCHASE**

### **22.1. Grant of Option; Approvals; Purchase Agreement**

(a) Landlord grants to City an exclusive and irrevocable option to purchase the Property (the "**Purchase Option**") at any time after the Effective Date for the price and on the terms and conditions set forth in this Section 22. City may exercise the Purchase Option at any time during the first nine (9) months following the Effective Date (the "**Option Term**") by giving Landlord written

notice (the “**Option Notice**”) during such time, together with the purchase and sale agreement in the form attached as **Exhibit G** (the “**PSA**”), all terms of which are expressly incorporated into this Section 22. Before including the PSA with the Option Notice, City may revise the PSA only to insert factual information (e.g., Seller name, signature information, leases to be assumed, and legal description) and City’s calculation of the Purchase Price under Section 22.2 based on the Construction Costs (supported by the approved Construction Budget, invoices, and applications for payment) under the Work Letter. City’s purchase of the Property under the Purchase Option is subject to approval by City, at its sole discretion, of an appraisal (if required by City), the title to the Property, and any environmental and other investigations of the Property that City may deem appropriate, and approval by City’s Board of Supervisors and Mayor, at their respective sole discretion, and adoption of a resolution authorizing the purchase and ordinance appropriating all necessary funds in accordance with all applicable Laws (including CEQA) (collectively, the “**Resolution and Approvals**”), all of which conditions must be satisfied or waived by City within ninety (90) days after Landlord’s receipt of the Option Notice (the “**Approval Deadline**”), as provided in PSA, with Closing (as defined in the PSA) occurring no later than thirty (30) days following the Approval Deadline. Landlord will have ten (10) business days following Landlord’s receipt of the Option Notice and PSA to object to City’s calculation of the Purchase Price, which objection must be accompanied by reasonable supporting documentation and Landlord’s calculation of the Purchase Price under Section 22.2 based on the Construction Costs (supported by the approved Construction Budget, invoices, and applications for payment) under the Work Letter. If Landlord does not so object and provide its calculation of the Purchase Price with the 10 business day period, then the terms of the PSA and City’s calculation of the Purchase Price will be binding on Landlord and City. If Landlord does timely object and provide City its calculation supported by reasonable documentation, then City will have five (5) business days to review and approve the Purchase Price calculated by Landlord, or elect to have a Neutral Auditor review this Lease, including the Work Letter, and all relevant books and records and determine the Purchase Price. The Neutral Auditor’s determination of the Purchase Price will be final and binding on Landlord and City. If Landlord timely and properly objects to City’s calculation of the Purchase Price, then City’s deadlines for obtaining the Resolutions and Approvals and the Closing Date will be extended day for day until the Purchase Price is determined as provided in this Section. The PSA will be effective as of the date the Purchase Price is determined under this Section. City and/or Landlord may elect to execute the PSA for its preference or convenience, but the failure of either party to execute the PSA will not affect the effectiveness or binding nature of the PSA. This Purchase Option is a one-time option granted to City, and time is of the essence with respect to City’s rights and obligations under this Section 22.

## **22.2. Purchase Price**

The total purchase price for the Property (the “**Purchase Price**”) will be:

(a) If the Closing occurs after Landlord has incurred out-of-pocket costs for the completion of the Leasehold Improvements, then Fifty-Six Million Dollars (\$56,000,000) *plus* the amount of the Construction Costs (as defined in the Work Letter) incurred by Landlord as of Closing.

(b) Under this Lease, the period between the Commencement Date and the Rent Commencement Date (the “**Free Rent Period**”) is the 180-day period in which City has no obligation to pay Base Rent (the amount of Base Rent that is not payable during the Free Rent Period is “**Free Rent.**”) If the Closing occurs before the Rent Commencement Date, then City

will be credited again the Purchase Price any amount of the Free Rent remaining in the Free Rent Period. For example, if the Commencement Date of the Lease occurs on February 15, 2021, and the Closing occurs on March 15, 2021, then an amount equal to 152 days of Base Rent will be credited against the Purchase Price.

### **22.3. Other Purchase Option Terms**

(a) Where the Purchase Option is terminated due to City's inability to obtain the Resolution and Approvals, City will pay Landlord within thirty (30) days of demand for all actual out-of-pocket costs, expenses, and fees Landlord incurred in in connection with this Section 22, and all fees owed to the Title Company.

(b) Where Closing occurs after Landlord has entered into construction contracts for construction of the Leasehold Improvements, at Closing Landlord will assign and City will assume such construction contracts.

(c) Notwithstanding City's exercise of the Purchase Option, this Lease, including City's obligation to pay Rent, will continue in full force and effect until terminated (whether expressly, under the terms of this Lease, the PSA, or by merger or otherwise as a matter of law). If the Purchase Option or City's acquisition is terminated for any reason, then this Lease will continue in full force and effect except for this Section 22, which will be deemed terminated.

(d) This Section 22 is personal to City and the Purchase Option may not be exercised by any subtenant, assignee, or transferee. This Purchase Option may only be exercised one time by City. Time is of the essence with respect to City's exercise of the Purchase Option, Approval Deadline, and Closing Date.

## **23. CITY PROVISIONS**

### **23.1. MacBride Principles - Northern Ireland**

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

### **23.2. Controller's Certification of Funds**

The terms of this Lease are governed by and subject to the budgetary and fiscal provisions of City's Charter. Notwithstanding anything to the contrary contained in this Lease, there will be no obligation for the payment or expenditure of money by City under this Lease unless the Controller of the City and County of San Francisco first certifies, under Section 3.105 of City's Charter, that there is a valid appropriation from which the expenditure may be made and that unencumbered funds are available from the appropriation to pay the expenditure. City will make commercially reasonable efforts to keep Landlord apprised of the annual budget process and any matters that are likely to prevent appropriation and certification. 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 will immediately notify Landlord and either Landlord or City may terminate this Lease, without penalty, liability or expense of any kind to City as a result of such early termination (but the City will be liable for all amounts due prior to such termination), and such termination to be effective as of the last date on which sufficient funds are appropriated. City will use reasonable efforts to give Landlord reasonable advance notice of such termination. In the event of any subleasing, assignment or transfer, unless Landlord agrees otherwise in an SNDA, City's termination will terminate such transferee's right to occupy the Premises, and City will be liable for any and all Claims related to City's failure to surrender the Premises in accordance with this Lease, including without limitation any such transferee's failure to vacate as of City's termination date if required to do so as described above.

### **23.3. Prevailing Wages and Working Conditions**

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

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

### **23.4. Non Discrimination in City Contracts and Benefits Ordinance**

- (a) Covenant Not to Discriminate

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

**(b) Subcontracts**

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

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

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

**(d) CMD Form**

As a condition to this Lease, Landlord will 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 represents that before execution of the Lease: **(i)** Landlord executed and submitted to the CMD Form CMD-12B-101 with supporting documentation, and **(ii)** the CMD approved the form.

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

The provisions of San Francisco Administrative Code Chapters 12B and 12C relating to non-discrimination by parties contracting for the lease of property to City are incorporated into this Section by reference and made a part of this Lease as though fully set forth. Landlord will comply fully with and be bound by all of the provisions that apply to this Lease under Administrative Code Chapters 12B and 12C, including the remedies provided in those

Chapters. Without limiting the foregoing, Landlord understands that under San Francisco Administrative Code section 12B.2(h) a penalty of Fifty Dollars (\$50) for each person for each calendar day during which that person was discriminated against in violation of the provisions of this Lease may be assessed against Landlord and/or deducted from any payments due Landlord.

### **23.5. Tropical Hardwood and Virgin Redwood Ban**

(a) Except as expressly permitted by San Francisco Environment Code sections 802(b) and 803(b), neither Landlord nor any of its contractors may provide any items to City in the construction of the Leasehold Improvements or otherwise in the performance of this Lease that 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) If Landlord fails to comply in good faith with any of the provisions of San Francisco Environment Code Chapter 8, Landlord will 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 will be payable to the City and County of San Francisco on demand and may be set off against any monies due to Landlord from any contract with City.

### **23.6. Bicycle Parking Facilities**

San Francisco Planning Code (the "**Planning Code**") Article 1.5, section 155.3 requires that bicycle parking must be provided at City-leased buildings at no cost to Landlord. During the Term, City will have the right to install and maintain, at no cost to Landlord, 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.

### **23.7. Resource-Efficient City Buildings**

Landlord acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code sections 700 to 713 relating to green building requirements for the design, construction, and operation of City buildings. Landlord will comply with all applicable provisions of those code sections.

### **23.8. Sunshine Ordinance**

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



organization is awarded the contract, lease, agreement, or benefit. Information provided that is covered by this Section will be made available to the public on request.

### **23.9. Conflicts of Interest**

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

### **23.10. Notification of Prohibition on Contributions**

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

### **23.11. Preservative-Treated Wood Containing Arsenic**

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

immersion” means a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

## **24. GENERALLY APPLICABLE PROVISIONS**

### **24.1. Notices**

Except as otherwise specifically provided in this Lease, any notice given under this Lease must be in writing and given by delivering the notice in person or by commercial courier, or by sending it by first-class mail, certified mail, return receipt requested, or Express Mail, return receipt requested, with postage prepaid, to: (a) City at City’s address set forth in the Basic Lease Information; or (b) Landlord at Landlord’s address set forth in the Basic Lease Information; or (c) any other address designated by as either Landlord or City as its new address for notices by notice given to the other in accordance with this Section. A properly addressed notice transmitted by one of the foregoing methods will be deemed received upon confirmed delivery, attempted delivery, or rejected delivery. Except for default notices, notices may be given by email to the email address number set forth in the Basic Lease Information or any other email address as may be provided from time to time, and such notice will be deemed received on the date on which a responsive email from the recipient acknowledging receipt is delivered to the sender.

### **24.2. No Implied Waiver**

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

### **24.3. Amendments**

The terms and provisions of this Lease may only be changed, waived, discharged, or terminated by a written instrument signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought. No waiver of any breach will affect or alter this Lease, and each and every term, covenant, and condition of this Lease will continue in full force and effect with respect to any other then-existing or subsequent breach. Whenever this Lease requires or permits City’s consent or approval, the Director of Property, or his or her designee, will be authorized to provide the consent or approval, except as otherwise provided by applicable Law, including the Charter of the City and County of San Francisco. City will promptly inform Landlord of any consent or approval that requires additional action on the part of City. City’s agreement to any amendments or modifications to this Lease (including the exhibits) may be made on the sole approval of the Director of Property, or his or her designee; provided, however, material

amendments or modifications to this Lease **(a)** changing the legal description of the Premises, **(b)** increasing the Term, **(c)** increasing the Rent, **(d)** changing the general use of the Premises from the use authorized under Section 5.1 (Permitted Use), and **(e)** any other amendment or modification that materially increases City’s liabilities or financial obligations under this Lease will also require the approval of City’s Board of Supervisors.

#### **24.4. Authority**

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

#### **24.5. Parties and Their Agents; Approvals**

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

#### **24.6. Interpretation of Lease**

The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and will in no way define or limit the scope or intent of any provision of this Lease. Except as otherwise specifically provided in this Lease, wherever Landlord or City is required or requested to give its consent or approval to any matter or action by the other, the consent or approval will not be unreasonably withheld or delayed and the reasons for disapproval of consent will be stated in reasonable detail in writing. Provisions in this Lease relating to number of days will be calendar days, unless otherwise specified. If the last day of any period to give notice, reply to a notice, or to take any other action occurs on a Saturday, Sunday, or a bank or City holiday, then the last day for taking the action or giving or replying to the notice will be the next succeeding business day. Business days do not include Saturdays, Sundays, and recognized holidays when City offices are closed, as described in Exhibit H, Paragraph XII. The words “**include**” or “**including**” or similar words will not be construed to limit any general term, statement, or other matter in this Lease or any of its attached exhibits, whether or not language of non-limitation, such as “without limitation” or similar words, are used.

#### **24.7. Successors and Assigns**

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

#### **24.8. Brokers**

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

#### **24.9. Severability**

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

#### **24.10. Governing Law**

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

#### **24.11. Entire Agreement; Incorporation of Exhibits**

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

#### **24.12. Attorneys' Fees**

If either Landlord or City fails to perform any of its obligations under this Lease or if a dispute arises concerning the meaning or interpretation of any provision of this Lease, the defaulting party or the non-prevailing party in the dispute, as the case may be, will pay the 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 dispute and/or prosecution or defense of an action and enforcing or establishing its rights under this Lease (whether or not any action is prosecuted to a judgment). For purposes of this Lease, reasonable attorneys' fees of City's Office of the City Attorney will be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the legal subject matter area 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" also includes all fees incurred for appeals, mediations, arbitrations, and bankruptcy proceedings, and whether or not any action is brought in the matter for which the fees were incurred. The term "costs" means the costs and expenses of counsel to the parties, which may include printing, duplicating, and other similar expenses, air freight charges, expert fees, and fees billed for law clerks, paralegals, and others not admitted to the bar but performing services under the supervision of an attorney. For purposes of this Lease, reasonable attorneys' fees of Landlord will include any in-house counsel fees at the rate set forth above for City staff attorneys.

#### **24.13. Holding Over**

If City holds over in possession of the Premises after the expiration of the Term with Landlord's consent, that holding over will not be deemed to extend the Term or renew this Lease, and City's tenancy will continue as a month-to-month tenancy until the tenancy is terminated by either party by giving least thirty (30) days' prior written notice of termination. The month-to-month tenancy will be on all the terms and conditions of this Lease and at the monthly Base Rent in effect during the last month of the Term or as Landlord and City may mutually agree in writing. If City holds over without Landlord's consent, the rent payable by City during the period of holding over will be one hundred twenty-five percent (125%) of the monthly Base Rent in effect during the last month of the Term of this Lease, and the tenancy will otherwise be on the terms and conditions contained in this Lease, but, Landlord's acceptance of such holdover fee will not limit Landlord's other rights and remedies under this Lease or at Law. If, as provided in Sections 7.3(b) and 20 above, City fails to remove its or a Supplier's furniture, furnishings, equipment, City's Personal Property and designated Alterations by the Expiration Date, then City's continued possession will be deemed a holding over, but Base Rent will not be payable for a 10-day period so long as City complies with Section 20 no later than the last day of such 10-day period; if City remains in possession of the Premises beyond that 10-day period, then City's possession will be deemed a holding over and Base Rent will be payable for the entire hold over period (including the 10 days) as set forth in this Section 24.13. In no event will any nonconsensual holdover be deemed a permitted extension or renewal of the Term. City will be liable for any all Claims and damages incurred by Landlord in connection with City's nonconsensual holding over.

#### **24.14. Cumulative Remedies**

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

#### **24.15. Time of Essence**

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

#### **24.16. Survival of Indemnities**

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

#### **24.17. Signs**

City may erect or post exterior signs on or about the Premises with Landlord's prior approval, at its sole cost and in compliance with all Laws. Landlord reserves the right to review and approve the placement, design, and plan for before City erects or posts any sign, which review and approval will not be unreasonably withheld or delayed. Interior signs not visible from the exterior of the Premises are permitted as provided under Article 7 (Alterations). Upon expiration or earlier termination of this Lease, City will remove the signs at its sole cost and repair any damage caused by removal.

#### **24.18. Quiet Enjoyment and Title**

Landlord covenants and represents that it has full right, power, and authority to grant the leasehold estate as provided in this Lease, and covenants that City, on paying the Rent and performing the covenants contained in this Lease, will peaceably and quietly have, hold, and enjoy the Premises and all related rights during the Term as against all persons or entities or on account of any action, inaction, or agreement of Landlord or its Agents.

#### **24.19. 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. City's leasehold estate under this Lease includes all rights to receive and enjoy all services, facilities, and amenities of the Premises and the Building as provided in this Lease. If any of the services, facilities, or amenities are terminated, or materially limited or restricted because of any such case or proceeding, or for any other reason, City may (a) contract directly with any third-party provider of those services,

facilities, or amenities, and (b) offset against the Rent all reasonable costs and expenses incurred by City in obtaining those services, facilities, or amenities.

#### **24.20. Transfer of Landlord's Interest**

Landlord may transfer its interest in the Property, the Building, or this Lease and on such transfer, Landlord will be relieved of Landlord's obligations under this Lease accruing from and after the date of the transfer when (a) Landlord has provided notice to City of the name and address of Landlord's successor, (c) Landlord has delivered to City an express written assumption by the transferee of all of Landlord's obligations under this Lease. Any transfer of Landlord's interest in the Property, the Building, or this Lease to a lender in exercise of its rights is governed by Section 11 (Subordination) and any SNDA with such lender.

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

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

#### **24.22. Counterparts**

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

#### **24.23. Effective Date**

This Lease will become effective on the date (the "**Effective Date**") that (a) City's Mayor and Board of Supervisors, at their sole and absolute discretion, adopt a resolution approving this Lease in accordance with all applicable Laws; (b) this Lease is duly executed by Landlord and City; and (c) Landlord has provided to City the SNDA executed by Landlord and Landlord's lender with acknowledgments as required under Section 11(c). City will promptly advise Landlord upon the occurrence of subclause (a) above. If subclause (a) does not occur by June 30, 2020, Landlord may terminate this Lease upon written notice to City given at any time before City's notice that subclause (a) is satisfied.

#### **24.24. 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. If Landlord or any of its officers or members have been suspended, disbarred, disciplined, or prohibited from contracting with any governmental agency, it will immediately notify City of that fact and the reasons for the suspension, disbarment, discipline, or prohibition together with any relevant facts or information requested by City. If there is any suspension, disbarment, discipline, or prohibition that may result in the termination or suspension of this Lease, City may terminate this Lease on written notice to Landlord. Landlord acknowledges that this certification is a material term of this Lease.

#### **24.25. Memorandum of Lease**

On the Effective Date, Landlord and City will execute the memorandum of lease in the form attached as **Exhibit E** (the “**Memorandum of Lease**”), and Landlord will 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 after execution (subject to extension due to Unavoidable Delay). On termination of the Purchase Option or any PSA, City will promptly execute in recordable form documents as reasonably requested by Landlord to establish that the Property is no longer subject to the option.

#### **24.26. Cooperative Drafting**

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

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



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

LANDLORD:

333 VALENCIA OWNER, L.L.C.,  
a Delaware limited liability company

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

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

CITY:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

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

RECOMMENDED:

\_\_\_\_\_  
DR. GRANT COLFAX  
Director of Public Health

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
Deputy City Attorney

**EXHIBIT A**

**FLOOR PLANS**

CONSISTING OF \_\_\_\_ PAGES

DRAFT

**EXHIBIT B**

**NOTICE OF COMMENCEMENT DATE**

[Date]

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

RE: Acknowledgement of Commencement Date, Lease Between 333 VALENCIA OWNER, L.L.C., a Delaware limited liability company (Landlord), and the CITY AND COUNTY OF SAN FRANCISCO (Tenant), for premises known as 333 Valencia Street in San Francisco, California.

Dear Mr. Penick:

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

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

Very truly yours,

333 VALENCIA OWNER, L.L.C., a Delaware  
limited liability company

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

Accepted and Agreed:

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

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

## EXHIBIT C

### BUILDING RULES AND REGULATIONS

1. Tenant must make a written request (which is subject to reasonable approval by Landlord) for any shades, curtains, or blinds to be installed on exterior windows. No awning is permitted on any part of the Premises.
2. If Tenant utilizes an outside drinking water service or any other service provided to the Premises by an outside company, the service providers will comply with Landlord's reasonable regulations for deliveries and placement and maintenance of equipment.
3. The sidewalks, halls, passages, exits, entrances, elevators, and stairways in the common areas may not be obstructed by any of Tenant's employees, invitees, contractors or representatives or used by Tenant for any purpose other than for ingress to and egress from its Premises.
4. Tenant may not alter any lock or install any new or additional locks or any bolts on any interior or exterior door of the Premises or Building without the prior written consent of Landlord.
5. The toilet rooms, toilets, urinals, wash bowls and other apparatus may not be used for any purpose other than that for which they were constructed and no foreign substance of any kind whatsoever may be thrown therein and the expense of any breakage, stoppage or damage resulting from the violation of this rule will be borne by the tenant who, or whose employees or invitees, caused it.
6. Tenant may not overload the floor of the Premises or mark, drive nails, screw or drill into the partitions, woodwork or plaster or in any way deface the Premises or any part thereof; provided, however, that Tenant may hang on the walls of the Premises certificates, plaques, artwork, white boards and other items typically hung in office premises using nails, hooks, or other devices that are customarily used in office buildings comparable to the Building and minimize damage to walls.
7. Landlord has the right to reasonably prescribe the weight, size, and position of all safes and other heavy equipment brought into the Building. Safes or other heavy objects must, if considered necessary by Landlord, stand on a platform of such thickness as is necessary to properly distribute the weight. Landlord will not be responsible for loss of or damage to any such safe or property from any cause, and all damage done to the Building by moving or maintaining any such safe or other property will be repaired at the expense of Tenant. The persons employed to move Tenant's equipment, material, furniture, or other property in or out of the Building must be acceptable to Landlord in Landlord's reasonable discretion. The moving company must be City employees or a locally recognized professional mover, whose primary business is the performing of relocation services, and must be bonded and fully insured. In no event may Tenant employ any person or company whose presence may give rise to a labor disturbance in the Building. A certificate or other verification of any third party mover's insurance must

be received and approved by Landlord before the start of any moving operations. Insurance must be sufficient in Landlord's reasonable opinion, to cover all personal liability, theft, or damage to the Building, including, but not limited to, floor coverings, doors, walls, elevators, and stairs. All moving operations must be conducted at such times and in such a manner as Landlord may direct, in Landlord's commercially reasonable discretion.

8. Tenant will not cause any unnecessary labor by reason of Tenant's carelessness or indifference in the preservation of good order and cleanliness, as indicated in reasonable detail by Landlord.
9. Tenant may not use, keep, or permit to be used or kept any foul or noxious gas or substance in the Premises, or permit or suffer the Premises to be occupied or used in a manner reasonably offensive or reasonably objectionable to Landlord or other occupants of the Building by reason of noise, odors, and/or vibrations, or interfere in any way with other tenants or those having business therein. In no event may Tenant keep, use, or permit to be used in the Premises or the Building any guns, firearm, explosive devices, or ammunition.
10. Except in areas constructed for kitchen purposes in accordance with the provisions of the Lease, no cooking may be done or permitted by Tenant in the Premises, nor may the Premises be used for the storage of merchandise, for washing clothes, for lodging, or for any improper, objectionable, or immoral purposes. Notwithstanding the foregoing, however, Tenant may maintain and use microwave ovens and equipment for brewing coffee, tea, hot chocolate and similar beverages, provided that Tenant will (i) prevent the emission of any food or cooking odor from leaving the Premises, (ii) dispose of all food-related waste in designated receptacles, (iii) maintain and use such areas solely for Tenant's employees and business invitees, not as public facilities, and (iv) keep the Premises free of vermin and other pest infestation.
11. Tenant may not use or keep in the Premises or the Building any kerosene, gasoline, or inflammable or combustible fluid or material, or use any method of heating or air conditioning other than that supplied by Landlord.
12. Upon the expiration or earlier termination of the Lease, Tenant will deliver to Landlord the keys of offices, rooms, and toilet rooms that have been furnished by Landlord to Tenant and any copies of such keys which Tenant has made. If Tenant has lost any keys furnished by Landlord, Tenant will pay Landlord for such keys.
13. Landlord reserves the right to exclude or expel from the Building any person who, in the judgment of Landlord, is intoxicated or under the influence of liquor or drugs, or who acts in violation of any of the rules and regulations of the Building. Persons must identify themselves to Landlord upon request, and show reasonable identification. Landlord will in no case be liable for damages for any error with regard to exclusion from the Building of any person. In case of invasion, mob, riot, public excitement, or other commotion, Landlord reserves the right to prevent access to the Building during the continuance of the same by closing the doors or otherwise, for the safety of the tenants and protection of property in the Building.

- 14.** Tenant is be responsible for insuring that the doors of the Building are closed and securely locked before leaving the Building and must observe strict care and caution that all water faucets or water apparatus are entirely shut off before Tenant or Tenant's employees leave the Building, and that all electricity, gas or air is likewise carefully shut off, so as to prevent waste or damage.
- 15.** Employees of Landlord will not perform any work or do anything outside of their regular duties unless under special instructions from Landlord.
- 16.** No vending machine or similar machines may be installed, maintained, or operated upon the Premises without the prior written consent of Landlord, which will not be unreasonably withheld, conditioned, or delayed.
- 17.** Tenant will close and keep locked all entrance and exit doors of the Building on Saturdays, Sundays, and legal holidays during such further hours as Landlord may deem advisable for the adequate protection of the Building and the property of its tenants.
- 18.** Tenant may not use in any space or in the public halls of the Building, any hand trucks except those equipped with rubber tires and rubber side guards.
- 19.** Except where otherwise required by Law, Tenant may only bring animals onto the Property in accordance with the attached Schedule C-1, and a reasonable number of fish in bowls holding less than two (2) gallons of water each.
- 20.** Tenant will inform its employees and invitees of the applicable provisions of these rules and regulations. Tenant must comply with Landlord's requests to inform Tenant's employees of items of importance to the Landlord.

## SCHEDULE C-1

### TENANT PETS

Tenant's employees will have the right to bring Tenant Pets into the Premises (and no other animals other than certified or trained service animals or support animals where required by Laws) at any time, subject to applicable Laws and Landlord's reasonable written regulations (as the same may be prepared and reasonably amended from time to time) regarding pets in the Building, including, without limitation, those regarding animal waste, noise, animal behavior and limitations on the use of Common Areas.

**"Tenant Pets"** means non-aggressive, fully domesticated, fully-vaccinated (including vaccines for rabies, distemper, hepatitis, para-influenza, parvovirus and Bordetella for dogs) and properly licensed dogs and cats that are: (A) the personal pets of the employees of Tenant; and (B) first reviewed and approved by Tenant's office manager as being house trained and non-aggressive. Landlord will at all times have the right (but not the responsibility), in its reasonable discretion, to deny or revoke "Tenant Pet" status with respect to any animals that, in Landlord's good-faith judgment, may injure a person or pet, or otherwise not comply with the terms of this Lease. Tenant Pets must be on a leash or in a carrier while in any area in and about the Building outside of the Premises. Tenant Pets may not be brought to the Building if such animal has fleas or ticks, is dirty, is ill or contracts a disease that could potentially threaten the health or wellbeing of any other animal, or any tenant, occupant and/or invitee of the Building (which diseases may include, but shall not be limited to, rabies, leptospirosis and Lyme disease). Tenant will not permit any objectionable pet-related odors and/or sounds to emanate from the Premises, and in no event may Tenant Pets be at the Building overnight or unsupervised. Tenant will ensure that Tenant Pets are taken away from the Building at regular times to allow defecation or urination at places other than the Property, except as provided below. Any bodily waste generated by Tenant Pets in or about the Property will be promptly removed and disposed of in trash receptacles inside the Premises and any areas of the Property affected by such waste must be cleaned and otherwise sanitized by Tenant in a manner satisfactory to Landlord (in Landlord's reasonable discretion), at Tenant's sole cost and expense. Tenant Pets may not be permitted to defecate or urinate at the Premises, Building and/or Property except where Tenant creates a designated pet relief area, and then only on that area, which must be cleaned and disinfected regularly by Tenant. Tenant will be responsible to replace any carpet or flooring that is damaged in connection with Tenant Pets, and "reasonable wear and tear" will not include any damage related to the presence of Tenant Pets. Tenant will be responsible for any pest control required in the Building or on the Property in connection with Tenant Pets, and will regularly remove dog drool from walls and doors in the Building or Premises, as needed. Tenant will be responsible for any damages, claims, or liabilities related to the presence of Tenant Pets on the Property. To the extent there are more than a *de minimis* number of Tenant Pets in the Premises, Landlord will not be responsible for temperatures in the Premises that are higher than otherwise required under the Lease due to the presence of such Tenant Pets. To the extent Landlord incurs additional maintenance and repair costs in connection with Tenant Pets, such costs will be borne by Tenant.

## **EXHIBIT D**

### **WORK LETTER**

*(333 Valencia Street, San Francisco)*

This Work Letter is part of the Lease dated as of \_\_\_\_\_, 2020 (the “**Lease**”), executed concurrently with this Work Letter, by and between 333 VALENCIA OWNER, L.L.C., a Delaware limited liability company, as Landlord, and the City and County of San Francisco, as Tenant, covering the Premises, as defined in the Lease. All terms that are capitalized but not defined in this Work Letter have the same meanings given to them in the Lease.

Landlord, at Landlord’s sole cost, will (i) complete the Premises to a warm shell condition (including earthquake, fire, and life safety for the base, core, and shell of the Premises), (ii) retain the LEED consultant, and (iii) pay all costs for the LEED certification (“**Base Building Work**”). Landlord, at City’s sole cost and expense (except as otherwise specifically set forth below), and through Landlord’s general contractor (the “**Contractor**”), will construct, furnish, and install in the Premises the improvements shown on the Construction Documents finally approved by City under Paragraph 1 below (the “**Leasehold Improvements**” and the construction, furnishing and installation of the Leasehold Improvements, the “**Leasehold Improvement Work**”), in accordance with the provisions of this letter. The current Contractor is Pankow Corporation, the current Architect is Brick Architecture & Interiors Inc., and the current Engineer is A.G.E. Consulting, Inc.; each of Contractor, Architect and Engineer are approved by City. Landlord may not change the Contractor, Architect, or Engineer without the prior written consent of City, which will not unreasonably withhold or delay.

#### **1. Plans and Specifications**

**a. Schematic Design Documents.** City and Landlord approve the schematic design plans for the Leasehold Improvement Work dated \_\_\_\_\_, prepared by Landlord’s architect (“**Architect**”) (the “**Schematic Design Documents**”) and City acknowledges the Schematic Design Documents are in accordance with the program requirements; provided, however, that approval will not limit Landlord’s obligations under this Work Letter or the Lease.

**b. Design Development Documents.** City and Landlord approve the plans and specifications dated \_\_\_\_\_, prepared by the Architect and Landlord’s qualified and licensed engineer (the “**Engineer**”) expanding in greater detail the representations of the Schematic Design Documents and fixing and describing the size and character of the Leasehold Improvements (the “**Design Development Documents**”). City acknowledges the Design Development Documents are in accordance with the program requirements and the Schematic Design Documents.

**c. Construction Documents.** Based on the Design Development Documents and any further adjustments approved by City, on or before \_\_\_\_\_, Landlord will cause its Architect and Engineer to prepare and submit to City for its approval final plans, specifications, and working drawings for the Leasehold Improvements, setting forth in detail all aspects of the design, function, and construction of the Leasehold Improvements, in form sufficient



for bidding of all elements of construction, and in conformity with all of the requirements of this Work Letter (collectively, the “**Construction Documents**”). The Construction Documents are subject to approval by City in accordance with Paragraph 1.e below.

**d.**     Design in Accordance with City’s Requirements. City has prepared and submitted to Landlord program documents that outline City’s space requirements for the Premises. Landlord’s Architect has designed the Premises and prepared all plans and specifications, including the Design Development Documents and will prepare the Construction Documents, in conformity with the program documents. Landlord’s Architect will consult and hold periodic meetings with City and its architectural consultants and space planners in the preparation of the Construction Documents. City will be available as needed for such meetings as reasonably determined by Landlord.

**e.**     City’s Approval of Plans, Landlord Change Orders. The Construction Documents and any Landlord Change Orders (defined in Paragraph 1.g.ii below) are subject to approval by City, which approval will not be unreasonably withheld or delayed, in accordance with the following procedure. After Landlord submits the Construction Documents or proposed Landlord Change Order to City, City will have (i) ten (10) business days for initial Construction Documents and Landlord Change Orders that will cost \$25,000 or more, and (ii) three (3) business days with respect to revised Construction Documents and Landlord Change orders costing less than \$25,000, to notify Landlord of its disapproval any element of any of them and of the revisions consistent with the Design Development Documents and this Work Letter that City reasonably requires in order to approve. As soon as reasonably possible, but not later than five (5) days after receipt of City’s disapproval notice, Landlord will submit to City documents incorporating the required revisions. The revisions will be subject to City’s approval, which will not be unreasonably withheld or delayed. If City disapproves of any portion of the revisions, then City will notify Landlord within 3-business days together with the changes City reasonably requires in order to approve. This process will continue until City approves the Construction Documents or Landlord Change Orders, or Construction Budget revisions, as applicable. City’s failure to timely respond in the manner required under this Paragraph 1.e, will be a Tenant Delay.

**f.**     Payment for Plans. Landlord will initially pay the costs of preparing the Construction Documents; however, such costs will be payable by City in accordance with this Work Letter. Landlord will provide City evidence of the costs by invoices and other substantiation as City may reasonably require.

**g.**     Changes to Approved Construction Documents.

**i.**     City Change Orders. If following its approval of the Construction Documents, City requests any change, addition, or alteration thereto relating to the design or specifications of the Leasehold Improvement Work (“**City Change Order**”), Landlord will cause the Architect or Engineer, as applicable, to prepare plans and specifications for the change, addition, or alteration. As soon as reasonably practicable based on the scope of the City Change Order, Landlord will notify City of the cost that would be incurred resulting from the proposed City Change Order and any delay in the anticipated date of Substantial Completion that would result from the City Change Order. If City approves the cost of the City Change Order within three (3) business days of receipt from Landlord, then Landlord’s Contractor will proceed with the

City Change Order as soon as reasonably practicable, and the Construction Budget will be amended to include the cost. If City does not approve the cost within the three (3) business-day period, then construction of the Premises will proceed in accordance with the original completed and approved Construction Documents. City will be responsible for the reasonable cost actually incurred by Landlord in the preparation of the plans and specifications for any City Change Order, as evidenced by invoices or other substantiation reasonably required by City in accordance with Paragraph 4 below. Any delay related to a City Change Order will be a Tenant Delay. While Landlord will make commercially reasonable efforts to accommodate any requested City Change Order, Landlord does not guarantee that this will be possible, and any inability or failure to implement or accommodate a City Change Order will not impact or affect the parties' obligations under this Lease.

**ii. Landlord Change Orders.** If after City's approval of the Construction Documents, Landlord requests or is required by a third party or government agency to make any change, addition, or alteration thereto relating to the design or specifications of the Leasehold Improvement Work ("**Landlord Change Order**"), Landlord will provide City with proposed plans and specifications for the change, addition, or alteration, together with notice of any delay in the anticipated date of Substantial Completion that would result from the Landlord Change Order. Any Landlord Change Order will be subject to City's prior written approval, in accordance with Paragraph 1.e above. No approval by City of any Landlord Change Order will relieve or modify Landlord's obligations to complete the construction of the Leasehold Improvements in accordance with the approved Construction Schedule, or limit any of City's rights or remedies under this Work Letter or under the Lease. Where Landlord seeks a Landlord Change Order for its convenience, or as a result of an error made by Landlord or Architect, Landlord will be solely responsible for the cost of the Landlord Change Order, including the costs of preparing the plans and specifications, and none of the costs for or related to any such Landlord Change Order will be paid or deducted from the Allowance. Notwithstanding the foregoing, any delays related to changes required by a third party or government agency in connection with Landlord's installation of the second elevator will constitute an Unavoidable Delay.

**iii. Appointment of Representatives.** City and Landlord will each designate and maintain at all times during the design and construction period a project representative ("**Representative**"), and an alternate for the Representative ("**Alternate**"), each of whom will be authorized to confer and attend meetings and represent such party on any matter relating to this Work Letter. Landlord and City may not make any inquiries of or requests to, and will not give any instructions or authorizations to, any other employee or agent of the other party, including the other party's architect, engineers, consultants, and contractors or any of their agents or employees, regarding matters associated with this Work Letter. Landlord will be allowed to rely on any approval, denial, change, statement, or direction from the City Representative and Alternate. The initial Representatives and Alternates are:

City:	Representative — Kay Kim, Kay.Kim@sfdph.org
	Phone: _____
	Alternate — Kathy Jung, Kathy.Jung@sfdph.org
	Phone: _____

Landlord: Representative — Steve Wolmark, swolmark@murrayhillpartners.com  
Phone: 510.984.3867  
Alternate — Matthew Friedman, matthew@mifriedman.com  
Phone: 510.290.3580

Each party may at any time and from time to time change its Representative or Alternate by written notice to the other party; provided, however, that any delay that results from a party's a voluntary change (e.g., a change other than as a result of a person's death, illness, or termination of employment) will be a Tenant Delay or Landlord Delay, as applicable. Each party's Representative or Alternate must be available during ordinary business hours so that questions and problems may be quickly resolved and so that the Leasehold Improvements may be completed economically and in accordance with the Construction Schedule. All approvals made by City's Representative or Alternate must be made in writing.

## 2. Permits

a. Responsibility for Obtaining Permits. Landlord is responsible for obtaining all governmental permits and approvals required to commence and complete the Leasehold Improvement Work, and promptly on receipt of any permit or approval, Landlord will deliver copies it to City. Landlord will use commercially reasonable to obtain all needed approvals and permits on or before August 6, 2020 (subject to Unavoidable Delay and Tenant Delay). Landlord is responsible for calling for all inspections required by City's Bureau of Building Inspection. City (acting in its proprietary capacity and not as regulator) will cooperate to facilitate issuance of required permits and approvals to the extent necessary or appropriate.

b. No approval by City or any of its Agents of the pricing plans, Construction Documents, or completion of Leasehold Improvement Work for purposes of this Lease will be deemed to constitute approval of any governmental or regulatory authority with jurisdiction over the Premises, and nothing herein will limit Landlord's obligations to obtain all such approvals.

## 3. Construction

a. Construction of Leasehold Improvements. After City's approval of the Construction Documents, and receipt of required permits, Landlord will cause the Leasehold Improvements to be constructed and installed in a good and professional manner in accordance with sound building practice and in conformity with the Construction Documents, as revised by any approved Change Orders, and the terms of this Work Letter. City will not have any obligation for any work except as provided in this Work Letter.

b. Construction Schedule. Landlord will commence construction of the Leasehold Improvements within three (3) business days after approval of all required permits for construction in accordance with the approved Construction Documents, subject to Unavoidable Delays and Tenant Delays, and will diligently pursue construction to completion, all in accordance with the construction schedule attached as Schedule D-2 to this Work Letter (as amended from time to time, the "**Construction Schedule**").

c. Status Reports; Inspections. Landlord will keep City apprised of the status of permit approval and the progress of construction. Landlord or its Contractor will furnish City with weekly reports on construction. From time to time during the design and construction of the Leasehold Improvements, after reasonable advance oral or written notice to Landlord, City may enter the Premises at reasonable times to inspect the Premises, and City will use commercially reasonable efforts not to materially interfere with the construction. Landlord or its Representative may accompany City during any inspection. Any such entry is at City's sole risk and City will Indemnify Landlord with respect to any Claims related thereto in accordance with the Lease.

d. General Conditions. The performance of all Leasehold Improvement Work by Landlord is subject to the following terms and conditions:

i. All of the Leasehold Improvement Work must be performed in compliance with all Laws bearing on construction of the Leasehold Improvements;

ii. Without limiting the foregoing, the construction of the Leasehold Improvements must comply with all requirements of the Americans With Disabilities Act of 1990 and Title 24 of the California Code of Regulations and all other applicable Laws intended to provide equal accessibility for persons with disabilities (collectively, "**Disabled Access Laws**"); and

iii. Landlord and its Contractor are responsible for all required insurance at no cost to City.

e. Cooperation. City will cooperate at all times with Landlord in bringing about the timely completion of the Leasehold Improvements. Except as otherwise expressly provided herein, City will be required to provide approvals, responses, and information requested by Landlord or Contractor by email to City's Representative or Alternate within three (3) business days of request by Landlord's Representative or Alternate. It will be considered a Tenant Delay if City fails to respond to requests for approval within the time periods set forth in this Work Letter. Landlord and City will make commercially reasonable efforts to resolve any and all disputes arising out of the construction of the Leasehold Improvements in a manner that will allow work to proceed expeditiously.

f. Telecommunications, Data and Computer Cabling Installation Work to be Performed by Landlord. The Leasehold Improvement Work will include construction of server room(s), including power supply, reasonably necessary for the City's telecommunications, data, and computer facilities and equipment, as provided for in approved Construction Drawings. As part of the Leasehold Improvement Work and in compliance with **Schedule D-1** to this Work Letter and City's data and computer cabling specifications and requirements ("**City Data Specs**"), Landlord or its consultants and contractors will perform surveys and develop plans and specifications for the installation of telecommunications, data, and computer cabling for City's occupancy of the Premises. City or its contractor, at City's cost, will be responsible for providing telecommunications, data, and computer cabling up to the point where it is stubbed out in the Building's core area. Beyond that point, Landlord will be responsible for installing the cabling to service points on each floor, as provided in the City Data Specs, as part of the Leasehold Improvement Work. City, at its expense, will be responsible for providing cabling from the service

points to workstations. Landlord will cause Contractor to cooperate reasonably with City and its consultants, contractors, and subcontractors during all surveying work and the installation of the telecommunications, data, and computer cabling. The foregoing obligation will include an obligation to give City and its consultants, contractors, and subcontractors access and entry to the Premises and sufficient opportunity and time during each work day without separate charge, to enable the installation of City's telecommunications, data, and computer cabling to the Building's core area and to install work stations. That access must include reasonable access to the elevators in the Building **(i)** on a non-exclusive basis during normal business hours and **(ii)** on an exclusive basis after hours as reasonably needed from time to time. If, despite Landlord's and Contractor's good faith cooperation, Substantial Completion of the Leasehold Improvements is delayed by such access and entry, that delay will be a Tenant Delay. Landlord understands that the conduit for the telecommunications, data, and computer cabling will be included in the Construction Documents and installed by Contractor.

**g. Asbestos Related Work.** If City, its consultants, contractors or subcontractors encounter any asbestos containing materials ("ACM") in the Building in connection with the installation of City's telecommunications, data, and computer cabling, Landlord will be responsible for all legally required work or other work necessary relating to the proper containment, abatement, removal, and disposal of the ACM and all costs related to the ACM. In no event will any of those costs be deducted from the Allowance or otherwise be City's responsibility. Any delay due to the presence of unknown ACM in the Building will be considered a Landlord Delay (defined below).

**h. Construction Improvements that Disturb or Remove Exterior Paint.** Lease Section 6.2 is incorporated by this reference.

#### **4. Payment for Work; Allowance**

**a. Accessibility Improvements.** Through its approved Contractor, Landlord will furnish and install all improvements that are required to bring the Common Areas serving the Premises, including the lobbies, corridors, drinking fountains, elevators, elevator vestibules, stairs, stair vestibules, restrooms, and signage in all those areas, into full compliance with all Disabled Access Laws. All costs of that work will be performed at Landlord's sole cost and expense, and will not be deducted from the Allowance (defined below).

**b. Allowance; Construction Costs; Landlord's Oversight Fee.** Except as provided in Paragraph 4.a above, City will be responsible for all Construction Costs, subject to Landlord's contribution of an allowance of Two Million Six Hundred Fifty-Three Thousand Seven Hundred Forty Dollars (\$2,653,740) (i.e., Sixty Dollars (\$60) per rentable square foot in the Premises) (the "**Allowance**"). Any portion of the Allowance not used by City will be credited against Base Rent next due under the Lease within ninety (90) days following the Commencement Date. "**Construction Costs**" means all costs and fees in connection with constructing and installing the Leasehold Improvements, including (A) space planning, architectural, engineering, and design professional work and fees related thereto, all required governmental and quasi-governmental permits, Landlord's Oversight Fee, all costs of preparing the space plans, Schematic Design Documents, Design Development Documents and Construction Documents, and (B) labor and materials costs, construction costs, contractors' overhead and profit, insurance, performance

and payment bonds, but in no event will Construction Costs include any overhead or other general expenses of Landlord, any charges for parking or and charges for use of elevators. All Base Building Work, including, but not limited to, base, core, shell, earthquake, fire, and life safety work, will be completed by Landlord at Landlord's sole cost, and no portion of the Allowance may be used for Base Building Work. "**Landlord's Oversight Fee**" is be an amount equal to four percent (4%) of the total Construction Costs.

c. City's Approval of Costs. The costs of the Leasehold Improvement Work are set forth in the Construction Budget, which includes (i) sufficient contingency reserves to address unknown and unexpected elements inherent in any construction and (ii) Landlord's Oversight Fee. The initial City-approved construction budget is attached as **Schedule D-3** (as amended from time to time, the "**Construction Budget**"). If the Leasehold Improvements cannot be completed in strict conformity with the most recently approved Construction Budget, Landlord must immediately submit to City for its approval a revised construction budget and identify to City changes in line items and the reasons for the changes. City will approve or disapprove any Construction Budget revisions in its reasonable judgment within ten (10) business days after submission where the proposed cost increase is in excess of \$25,000 and otherwise within five (5) business days. The most recently approved Construction Budget will supersede all previously approved budgets. Where City disapproves of an increase in the Construction Budget, it will submit a City Change Order that allows the Leasehold Improvements to be completed without exceeding the Construction Budget, which must be submitted within three (3) business days following its disapproval.

d. Progress Payments. From time to time, but no more frequently than every than once every thirty (30) days, Landlord will deliver to City an application for payment in accordance with the Paragraph and Paragraph 4.e below. Provided that the conditions set forth in Paragraph 4.e below regarding documentation of costs have been met, City will make monthly progress payments for the cost of the Leasehold Improvement Work in the amount of City's Share of the requested payment. City will disburse each progress payment on or about the tenth (10th) day of each month following the month in which the application for payment was received. "**City's Share**" means a fraction, where the numerator is the aggregated Construction Costs as shown the Construction Budget that exceed the Allowance, and the denominator is the aggregated Construction Costs as shown in the Construction Budget. At least ten (10) days before each progress payment is due, Landlord will submit to City an itemized application for payment for work completed in accordance with the approved Construction Budget. The applications may not include requests for payment of amounts Landlord does not intend to pay to Contractor because of a dispute or otherwise. Landlord will promptly apply all of City's progress payments to the payment of the invoice or invoices to which the payment relates (or, where Landlord has advanced payment to the Architect, Engineer, Contractor, or otherwise in connection with Construction Costs (including for Landlord's Oversight Fee), in repayment of Landlord). If Landlord does not timely submit an application or the application is materially incomplete or incorrect, City will promptly notify Landlord and the date the progress payment will be due from City will be extended for each day the complete, correct application is late.

e. Required Documentation of Costs. Each application for payment under Paragraph 4.d, must include (i) copies of all invoices received by Landlord from Contractor in connection with the construction of the Leasehold Improvements, (ii) satisfactory evidence of

payment of the invoices, including lien waivers that meet the requirements of California Civil Code section 8124 and in the form required by California Civil Code sections 8132 or 8134, as applicable, and be executed by each subcontractor and material supplier having a claim in excess of \$10,000 and intended to be paid out of the particular disbursement and covering all labor, services, equipment, and materials performed or supplied by the particular subcontractor or material supplier since the last previous disbursement (collectively, “**Lien Waivers**”), and (iii) any additional supporting data that substantiates the Contractor’s right to payment as City may reasonably require, such as copies of requisitions from subcontractors and material suppliers.

**f. Payment of Retention.** Landlord will withhold a ten percent (10%) retainage with respect to Contractor, which will be paid upon Substantial Completion and completion of all punchlist items.

**g. Payment of Retention.** City will pay its share of the ten percent (10%) retainage on: (i) Substantial Completion (as defined below) of the Leasehold Improvements and completion of all punchlist items; and (ii) delivery of unconditional Lien Waivers from Contractor and each subcontractor and material supplier having a claim in excess of \$10,000 on final payment that meet the requirements of California Civil Code section 8124 and be in the form required by California Civil Code section 8138, together with any other proof City may reasonably require that all of the costs and expenses of the Leasehold Improvements have been paid.

**h. No Waiver of Conditions.** Any 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 will not be a waiver of the conditions, and City reserves the right to require their 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.

**i. City’s Cure Right.** Provided that City has paid all amounts due under this Paragraph 4, if Landlord does not make timely payment to Contractor or any of its subcontractors or material suppliers of any undisputed amount, after thirty (30) days written notice to Landlord and Landlord’s failure to cure or indicate to City that Landlord disputes such claim, City may, but will not be obligated to, advance City’s funds directly to the Contractor or its subcontractors or material suppliers to pay the cost of the Leasehold Improvements, and Landlord will reimburse City for the advance immediately on demand, with interest at a rate of the lesser of twelve percent (12%) per annum or the maximum rate permitted by Law.

## **5. Substantial Completion**

**a. Construction Schedule.** Landlord will use commercially reasonable efforts to complete the Leasehold Improvement Work on or before the Estimated Commencement Date. In no event may construction of the Leasehold Improvements be Substantially Completed later than the Estimated Commencement Date, except as extended by Tenant Delays and Unavoidable Delays (as defined in Paragraph 6 below). When construction progress permits, but not less than fifteen (15) days before Substantial Completion, Landlord will notify City of the date that the Leasehold Improvement Work is anticipated to be Substantially Completed in accordance with the approved Construction Documents and the provisions of the Lease and this Work Letter. Landlord

will notify City when the Leasehold Improvement Work is in fact Substantially Completed and the Premises are ready for occupancy by City. Promptly after City receives Landlord's notice of substantial completion, City or its representatives will accompany Landlord or its architect on an inspection of the Premises on a mutually agreeable date.

**b. Substantial Completion.** The terms “**Substantially Completed**” and “**Substantial Completion**” mean (i) the Base Building Work excluding the second elevator have been completed as certified by the Architect; (ii) the Leasehold Improvements have been completed substantially in accordance with the approved Construction Documents pursuant to a completed AIA Document G704, Certificate of Substantial Completion, (iii) Landlord has procured a temporary or final certificate of occupancy of final inspection and sign-off on the job card for the Leasehold Improvements and all necessary inspections required for occupancy of the Premises and all necessary inspections required for occupancy of the Premises have been completed and signed off as approved by the appropriate governmental agencies, and has delivered evidence thereof to City (iv) Landlord has completed a three (3) day running “burn off” of the HVAC system serving the Premises following completion of all floor installations and painting to dissipate fumes and dust, (v) Landlord has delivered and air balance report showing any HVAC system servicing the Premises and Leasehold Improvements is operative as designed, (vi) Landlord and City have completed a joint walk-through of the space with the Architect, which will be take place within three (3) days of Landlord's written notice to City that the Leasehold Improvements are ready for walk through Inspection, and during which the Architect and City will compile a written punch list of items that have not yet been completed in accordance with the Construction Documents, and (vii) Landlord has delivered to City keys or access cards for the Premises. Obtaining LEED Gold Certification will not be a requirement of Substantial Completion, which must be completed within twelve (12) months of Substantial Completion. The second elevator must be completed, certified, and fully operational not later than June 30, 2021, subject to Unavoidable Delay, and if not completed by that date then City may cause the elevator work to be completed at Landlord's expense; City will reasonably cooperate to allow Landlord to complete installation of the second elevator by such date. The date of Substantial Completion will, upon request by either party, be memorialized in writing signed by both Landlord and City. The Leasehold Improvements will be deemed Substantially Completed even though there may remain minor details that would not materially interfere with City's use. Landlord will diligently pursue to final completion all such details. Notwithstanding the foregoing, City will have the right to present to Landlord within thirty (30) days after City's acceptance of the Premises, a supplemental written punch list consisting of any incomplete or defective items that have not been finished in accordance with the Construction Documents and the terms of this Work Letter, provided that such incomplete or defective items were not reasonably observable on the earlier walkthrough inspection of the Premises and are not the result of damage caused by City during or after move-in. Landlord will use commercially reasonable efforts to complete all defective or incomplete items identified in such punch list within thirty (30) days after the delivery of such list, or as soon thereafter as reasonably practicable. City's failure to include any item on such list will not constitute any waiver of any latent defects but each item on the list will be subject to and governed by any construction warranty period provided for in the construction contract with the general contractor for Leasehold Improvements.



## 6. Delays in Construction

a. Unavoidable Delays. “**Unavoidable Delays**” means any delays by reason of acts of nature; accidents; breakage; repairs; strikes, lockouts, or other labor disputes; inability to obtain (or delays in obtaining) labor or materials after using diligent and timely efforts (including due to unavailability related to COVID-19); delays related to Landlord’s inability to obtain utility connections or initial utility service; enemy action; civil commotion; epidemics and related governmental orders and requirements (and private sector responses thereto); protests; riots; demonstrations; or by any other reason without fault and beyond the reasonable control of the party obligated to perform (other than purely monetary obligations between Landlord and City to pay one another as required pursuant to the Lease). If an Unavoidable Delay occurs, the party affected by the Unavoidable Delay will give prompt written notice to the other of the event causing the Unavoidable Delay and the length of the projected delay in performance, and will continue to keep the other party regularly informed of the status of the Unavoidable Delay. The time in which performance is required by either party under this Lease will be tolled during any period of Unavoidable Delay. It is the intent of the parties that where an Unavoidable Delay extends the time for performance by one party, and the other party’s subsequent performance is dependent on the delayed party’s performance, then each party’s time for performance will be extended due to the Unavoidable Delay. For example, due to an Unavoidable Delay, City is unable to complete its initial review of the Construction Documents within ten (10) business days under Paragraph 1.e, and responds instead in twenty (20) business days. Despite both parties’ diligence in the construction process, the ten (10) business day Unavoidable Delay in approving the Construction Documents results in a three (3) business day delay in the date of Substantial Completion. The three (3) business day delay would also be considered an Unavoidable Delay, not a Landlord Delay.

b. Tenant Delays. Subject to any Unavoidable Delay, City will be responsible for any delay in the construction of the Leasehold Improvements resulting solely and directly from any of the following (collectively, “**Tenant Delays**”): (i) City’s failure to grant or withhold its consent, approve or provide reasons for disapproval, respond to requests for information, or provide requested responses within the time provided in this Work Letter, (ii) City Change Orders, including any cost or delay resulting from proposed changes that are not ultimately made, and (iii) City’s delay in paying or failure to pay any amounts owed by City under this Lease, (iv) City’s entry into the Premises before Substantial Completion of Leasehold Improvements, (v) the inclusion in the Construction Drawings or in any of City’s selections of any so called “long lead” materials (such as carpeting or other items that are not readily available within industry standard lead times (e.g., custom made items that require time to procure beyond that customarily required for standard items, or items that are currently out of stock and will require extra time to back order); (vi) City’s delay in providing information critical to the normal progression of Leasehold Improvements; and (vii) any other request, act, or omission by City or its Agents (or persons employed by such persons). In the event of a Tenant Delay, the Commencement Date will be deemed to have occurred on the date it would have occurred but for such Tenant Delay(s), as reasonably determined by Landlord (notwithstanding that the actual date occurs later).

c. Landlord Delays. Landlord will be responsible for any delay in the construction of the Leasehold Improvements due directly to any of the following (a “**Landlord Delay**”): (i) Landlord’s or Architect’s (or their Agents’) negligence or intentional misconduct, (ii) the failure of Landlord to provide required documents or requested responses within the time provided in this Exhibit C, subject to Unavoidable Delays, (iii) Landlord Change Orders, including any delay

resulting from proposed changes that are not ultimately made, and (iv) any Contractor failure to adhere to the then-current Construction Schedule, subject to extensions for Unavoidable Delays and Tenant Delays.

**d. Landlord Delays; Liquidated Damages.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE LEASE, IF LANDLORD FAILS TO ACHIEVE SUBSTANTIAL COMPLETION OF THE LEASEHOLD IMPROVEMENTS BY THE DATE THAT IS SIXTY (60) DAYS AFTER THE ESTIMATED COMMENCEMENT DATE (AS EXTENDED BY UNAVOIDABLE DELAYS AFFECTING LANDLORD OR ITS CONTRACTOR IN ACCORDANCE WITH SUBSECTION A ABOVE AND TENANT DELAYS IN ACCORDANCE WITH SUBSECTION B ABOVE), THEN LANDLORD WILL PAY TO CITY EIGHT THOUSAND DOLLARS (\$8,000), FOR EACH DAY OF DELAY AS LIQUIDATED DAMAGES AND AS CITY'S SOLE AND EXCLUSIVE REMEDY EXCEPT FOR CITY'S TERMINATION RIGHTS AND RIGHT TO REIMBURSEMENT AS SET FORTH IN THE LEASE; BUT IN NO EVENT MAY LIQUIDATED DAMAGES EXCEED \$480,000. LANDLORD MAY PAY THE LIQUIDATED DAMAGES DUE TO CITY UNDER THIS SECTION IN THE FORM OF A CREDIT AGAINST RENT. THE PARTIES HAVE AGREED THAT CITY'S ACTUAL DAMAGES IN THE EVENT OF DELAY WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. THEREFORE, BY PLACING THEIR INITIALS BELOW, THE PARTIES ACKNOWLEDGE THAT THEY HAVE AGREED ON THE SUM SPECIFIED ABOVE, AFTER NEGOTIATION, AS THEIR REASONABLE ESTIMATE OF CITY'S DAMAGES CAUSED BY THE DELAY.

Initials: Landlord \_\_\_\_\_ City \_\_\_\_\_

**7. General Provisions.**

**a. Notices.** Except as may be otherwise specifically provided in this Work Letter, any notice given under this Work Letter must be in writing and given by delivering the notice in person, by commercial courier or by sending it by first class mail, certified mail with a return receipt requested, or Express Mail, return receipt requested, with postage prepaid, and addressed to the parties as follows:

City: Real Estate Division  
25 Van Ness Avenue, Suite 400  
San Francisco, CA 94102  
Attn: Director of Property  
Email: \_\_\_\_\_

Landlord: c/o Murray Hill Partners LLC  
5821 Pinewood Road  
Oakland, CA 94611  
Attn: Steve Wolmark  
Email: swolmark@murrayhillpartners.com

or any other address as a party may designate to the others as its new address for notices by notice given to the others in accordance with the provisions of this paragraph. A properly addressed notice transmitted by one of the foregoing methods will be deemed received upon confirmed delivery, attempted delivery, or rejected delivery. Except for default notices, notices may also be

given by email to the email address above or any other email address as may be provided from time to time, and such notice will be deemed received on the date on which a responsive email from the recipient acknowledging receipt is delivered to the sender.

**b. Landlord's Duty to Notify City.** Landlord will promptly notify City in writing of **(i)** any written communication that Landlord may receive from any governmental, judicial, or legal authority giving notice of any claim or assertion that the Property, Building, or Leasehold Improvements fail in any respect to comply with applicable Laws; **(ii)** any known material adverse change in the physical condition of the Property, including any damage suffered as a result of earthquakes; and **(iii)** any known default by the Contractor or any subcontractor or material supplier that is likely to impact completion of Leasehold Improvements, or any known material adverse change in the financial condition or business operations of any of them that may impact their work.

**c. Prevailing Wages and Apprentices.** Any person performing labor in the construction of the Leasehold Improvements that Landlord is obligated to provide under this Work Letter will be paid not less than the highest prevailing rate of wages and Landlord will include in any contract for construction of the Leasehold Improvements a requirement that all persons performing labor under the contract will be paid not less than the highest prevailing rate of wages for the labor performed. In connection with the construction of the Leasehold Improvements under this Work Letter, Landlord will comply with all the provisions of subsection (b) of San Francisco Charter Section A7.204 and Section 6.22(E) of the San Francisco Administrative Code. In addition, if the Leasehold Improvements are Covered Construction (as defined in San Francisco Administrative Code section 23.61), Landlord will pay the Prevailing Rate of Wages (as defined in San Francisco Administrative Code section 23.61), employ Apprentices (as defined in San Francisco Administrative Code section 23.61), and comply with all the provisions of Section 23.3 of the Lease, and San Francisco Administrative Code section 23.61 of the regarding the Leasehold Improvements.

**d. Tropical Hardwood and Virgin Redwood Ban.**

Except as expressly permitted by the application of San Francisco Environment Code sections 802(b) and 803(b), neither Landlord nor any of its contractors may 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.

City urges companies not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood product, virgin redwood, or virgin redwood wood products.

If Landlord fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Landlord will be liable for liquidated damages for each violation in any 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 will be payable to City on demand and may be set off against any monies due to Landlord from any contract with City.

e. Days; Incorporation of Schedules. Unless otherwise provided in this Work Letter, all periods specified by a number of days will refer to business days. Saturdays, Sundays, and recognized City holidays will not constitute business days. Schedules D-1, D-2, and D-3 attached to this Work Letter, are made a part of this Work Letter by this reference.

f. Approvals. City is entering into this Work Letter in its proprietary capacity and not as a regulatory agency with certain police powers. Notwithstanding anything to the contrary in this Work Letter or the Lease, no approval by City of the plans for the Leasehold Improvements (including the Design Development Documents or Construction Documents or Change Orders), completion of the Leasehold Improvement Work or any other approvals by City under this Work Letter or the Lease will be deemed to constitute approval of any governmental or regulatory authority with jurisdiction over the Premises. All approvals or other determinations of City as tenant under this Work Letter or the Lease may be made by City's Director of Property and City's Representative or Alternate, unless otherwise specified.

8. Time of the Essence. Time is of the essence with respect to all provisions of this Work Letter where definite time for performance is specified, including the date for Substantial Completion.

*Signatures Appear on Following Page*

The parties have executed this Work Letter as of the date of the Lease.

**LANDLORD:** 333 VALENCIA OWNER, L.L.C.,  
a Delaware limited liability company

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

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

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

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

**CITY:** CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

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

RECOMMENDED:

\_\_\_\_\_  
Dr. Grant Colfax  
Director, Department of Public Health

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

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

Deputy City Attorney

**Schedule D-1**

**City's Data and Computer Cabling Specifications and Requirements**

**Schedule D-2**  
**Construction Schedule**

**Schedule D-3**  
**Construction Budget**



**EXHIBIT E**

**FORM OF MEMORANDUM OF LEASE**

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

Exempt from recording fees under Government Code  
Section 27383.

Documentary Transfer Tax: NONE – Exempt under San  
Francisco Business and Tax Regulations Code Section  
1105

Address: 333 Valencia Street  
APN: 3547/017

(Space above this line reserved for Recorder’s use only)

**MEMORANDUM OF LEASE**

This Memorandum of Lease (“**Memorandum**”), dated for reference purposes as of \_\_\_\_\_, 2020, is by and between 333 VALENCIA OWNER, L.L.C., a Delaware limited liability company (“**Landlord**”), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“**City**”).

**Recitals**

A. Landlord and City have entered into that certain Lease, dated \_\_\_\_\_, 2020 (the “**Lease**”), under which Landlord leased to City and City leased from Landlord the real property more particularly described in the attached **Exhibit A** (the “**Property**”) and granted City the right to purchase the Property under certain circumstances (the “**Purchase Option**”).

B. Landlord and City desire to execute this Memorandum to provide constructive notice of the Lease and the Purchase Option to all third parties.

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

1. **Term.** Under 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 will expire on the date that is fifteen (15) years after the Commencement Date (as defined in the Lease), subject to one option to extend (subject to the

terms and conditions of the Lease) for the Term for ten (10) years, unless earlier terminated in accordance with the terms of the Lease.

2. Lease Terms. Landlord leases the Premises to City on the terms and conditions of the Lease, which are incorporated into this Memorandum by reference as if they were fully set forth in this Memorandum; the rights and obligations of Landlord and Tenant are contained in the Lease. This Memorandum does not and will not be deemed to modify, alter, or amend the Lease in any way. If any conflict exists between the terms of the Lease and this Memorandum, the terms of the Lease will govern. Except as otherwise defined in this Memorandum, capitalized terms have the meanings given them in the Lease.

3. Purchase Option. Any transfer of title to the Property under the Purchase Option must occur no later than the end of the thirteenth (13<sup>th</sup>) month following the Effective Date, after which time the Purchase Option is of no further force and effect.

4. Successors and Assigns. This Memorandum and the Lease bind and will inure to the benefit of the parties and their respective heirs, successors, and assigns, subject, to the provisions of the Lease.

IN WITNESS WHEREOF, Landlord and City have executed this Memorandum of Lease as of the day and year first written above.

LANDLORD:

333 VALENCIA OWNER, L.L.C.,  
a Delaware limited liability company

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

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

CITY:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation,

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

ANDRICO Q. PENICK  
Director of Property

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

State of California                    )  
  ) ss  
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)

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

State of California )  
 ) ss  
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)

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

State of California                    )  
   ) ss  
 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 A**  
**TO MEMORANDUM OF LEASE**

**Legal Description of Property**

**EXHIBIT F**  
**Form of PSA**

**EXHIBIT G**

**Form of SNDA**

*[UNDER REVIEW BY THE LENDER]*

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

[Lender]  
10100 Santa Monica Blvd., Suite 1000  
Los Angeles, CA 90067  
Attn: Servicing

---

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This Subordination, Non-Disturbance and Attornment Agreement (the “**Agreement**”) is dated as of \_\_\_\_\_, 2020, among [Lender] , a Delaware limited liability company (together with its successors and/or assigns, “**Lender**”), City and County of San Francisco, a California municipal corporation (“**Tenant**”), and 333 Valencia Owner, L.L.C., a Delaware limited liability company (“**Landlord**”).

RECITALS

A. Tenant is the tenant under a certain lease (as amended, the “**Lease**”) and other documents listed on Exhibit A attached hereto with Landlord of premises described in the Lease (the “**Premises**”) located in a certain building located at 333 Valencia Street, San Francisco and more particularly described in Exhibit B attached hereto and made a part hereof (such building, including the Premises, is referred to as the “**Property**”).

B. This Agreement is being entered into in connection with a deed of trust loan (the “**Loan**”) made by Lender to Landlord, and secured by, among other things, a first priority deed of trust on and of the Property (the “**Deed of Trust**”), which was recorded on \_\_\_\_\_ as Document Number \_\_\_\_\_ by the San Francisco Assessor-Recorder in the Official Records of San Francisco County.

C. Tenant acknowledges that Lender will rely on this Agreement.

AGREEMENT

For mutual consideration, including the mutual covenants and agreements set forth below, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Tenant agrees that the Lease is and shall be subject and subordinate to the Deed of Trust and to all present or future advances under the obligations secured thereby and all renewals,



amendments, modifications, consolidations, replacements, and extensions of the secured obligations and the Deed of Trust, to the full extent of all amounts secured by the Deed of Trust from time to time. Said subordination is to have the same force and effect as if the Deed of Trust and such renewals, modifications, consolidations, replacements and extensions thereof had been executed, acknowledged, delivered and recorded prior to the Lease, any amendments or modifications thereof and any notice thereof.

2. Lender agrees that, if the Lender exercises any of its rights under the Deed of Trust, including an entry by Lender pursuant to the Deed of Trust or a foreclosure of the Deed of Trust, Lender shall not disturb Tenant's right of quiet possession of the Premises under the terms of the Lease so long as Tenant is not then in default after notice thereof and expiration of any applicable cure period of any term, covenant, or condition of the Lease.

3. Tenant agrees that, in the event of a foreclosure of the Deed of Trust by Lender or the acceptance of a deed in lieu of foreclosure by Lender or any other succession of Lender to fee ownership, Tenant will attorn to and recognize Lender as its landlord under the Lease for the remainder of the term of the Lease (including all extension periods that have been or are later exercised) upon the same terms and conditions as are set forth in the Lease, and Tenant hereby agrees to pay and perform all of the obligations of Tenant pursuant to the Lease.

4. Tenant agrees that, in the event Lender succeeds to the interest of Landlord under the Lease, Lender shall not be:

(a) liable for any act or omission of any prior Landlord (including, without limitation, the then defaulting Landlord) but Lender will be obligated to cure landlord defaults that are continuing after the date the Lender takes possession, or

(b) subject to any defense or offsets which Tenant may have against any prior Landlord (including, without limitation, the then defaulting Landlord) unless expressly included in the Lease, or

(c) bound by any payment of rent or additional rent that Tenant paid more than one month in advance of the due date under the Lease to any prior Landlord (including, without limitation, the then defaulting Landlord), or

(d) bound by any obligation to make any payment to Tenant that was required to be made before the time Lender succeeded to any prior Landlord's interest, or

(e) accountable for any monies deposited with any prior Landlord (including security deposits), except to the extent such monies are actually received by Lender, or

(f) bound by any surrender, termination, amendment, or modification of the Lease not contemplated in the Lease and made without the consent of Lender.

5. Reserved.

6. Tenant agrees to give to Lender copies of all notices of Landlord default under the Lease in the same manner as, and whenever, Tenant gives any such notice of default to Landlord. Lender shall have the right to remedy any Landlord default under the Lease, or to cause any default of Landlord under the Lease to be remedied, and for such purpose Tenant hereby grants Lender

such additional period of time as may be reasonable to enable Lender to remedy, or cause to be remedied, any such default in addition to the period given to Landlord for remedying, or causing to be remedied, any such default, not to exceed an additional sixty (60) days. Tenant shall accept performance by Lender of any term, covenant, condition, or agreement to be performed by Landlord under the Lease with the same force and effect as though performed by Landlord. If the nature of the default is such that Tenant's use of the Premises is not materially impaired, no Landlord default under the Lease shall exist or shall be deemed to exist (i) as long as Lender, in good faith, shall have commenced to cure such default within the above referenced time period and shall be prosecuting the same to completion with reasonable diligence, subject to force majeure, or (ii) and either possession of the Premises is required in order to cure such default, or such default is not susceptible of being cured by Lender, then as long as Lender, in good faith, has notified Tenant that Lender intends to institute proceedings under the Deed of Trust, and, within thirty (30) days thereafter such proceedings are instituted and prosecuted with reasonable diligence. In the event of the termination of the Lease by reason of any default thereunder by Landlord, upon Lender's cure of the Landlord default that caused such termination and Lender's written request, given within thirty (30) days after any such termination, Tenant, within fifteen (15) days after receipt of such request, shall execute and deliver to Lender or its designee or nominee a new lease of the Premises for the remainder of the term of the Lease upon all of the terms, covenants and conditions of the Lease. Lender shall have the right, without Tenant's consent, to foreclose the Deed of Trust or to accept a deed in lieu of foreclosure of the Deed of Trust or to exercise any other remedies under the Deed of Trust.

7. Tenant hereby consents to the assignment of leases and rents from Landlord to Lender under the Deed of Trust in connection with the Loan. Tenant acknowledges that the interest of the Landlord under the Lease is to be assigned to Lender solely as security for the purposes specified in said assignments, and Lender has no duty, liability or obligation whatsoever under the Lease or any extension or renewal thereof, either by virtue of said assignments or by any subsequent receipt or collection of rents thereunder, unless Lender shall specifically undertake such liability in writing or unless Lender or its designee or nominee becomes, and then only with respect to periods in which Lender or its designee or nominee becomes, the fee owner of the Premises. Tenant agrees that upon receipt of a written notice from Lender of a default by Landlord under the Loan, Tenant will thereafter, if requested by Lender, pay rent to Lender in accordance with the terms of the Lease. Landlord will treat all payments of rent paid by Tenant to Lender in accordance with this Agreement as rent timely paid under the Lease in compliance with all terms of the Lease.

8. The Lease shall not be assigned by Tenant, modified, amended, or terminated (except an assignment, modification, amendment, or termination that is permitted or contemplated in the Lease) without Lender's prior written consent in each instance.

9. The term "**Lender**" includes any successor or assign of the named Lender herein, including without limitation, any co-lender at the time of making the Loan, any purchaser at a foreclosure sale and any transferee pursuant to a deed in lieu of foreclosure, and their successors and assigns, and the terms "**Tenant**" and "**Landlord**" include any successor and assign of the named Tenant and Landlord herein, respectively; provided, however, that such reference to Tenant's or Landlord's successors and assigns shall not be construed as Lender's consent to any assignment or other transfer by Tenant or Landlord.

10. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be deemed modified to the extent necessary to be enforceable, or if such modification is not practicable, such provision shall be deemed deleted from this Agreement, and the other provisions of this Agreement shall remain in full force and effect.

11. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing executed by the party against which enforcement of the termination, amendment, supplement, waiver or modification is sought. This Agreement may be executed in counterparts. This Agreement shall be construed in accordance with the laws of the state of California. The person executing this Agreement on behalf of Tenant is authorized by Tenant to do so and execution hereof is the binding act of Tenant enforceable against Tenant.

REMAINDER OF PAGE LEFT INTENTIONALLY BLANK

Witness the execution hereof as of the date first above written.

LENDER:

[LENDER] ,  
a Delaware limited liability company

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

TENANT:

[TENANT],  
a \_\_\_\_\_ corporation

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

LANDLORD:

[BORROWER],  
a \_\_\_\_\_ limited liability company

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

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

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)

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

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)

STATE OF \_\_\_\_\_ )  
 ) Ss





**EXHIBIT "A"**

**LIST OF LEASE DOCUMENTS**



**EXHIBIT "B"**

**DESCRIPTION OF LAND**

**EXHIBIT H**

**STANDARDS FOR JANITORIAL SERVICE**

333 Valencia Street, San Francisco

***[UNDER REVIEW BY PROPERTY MANAGER]***

**I. SPECIFICATION OF SERVICES TO BE PERFORMED - SCOPE OF WORK**

- A.** Landlord’s janitorial contractor (its “**Contractor**”) will furnish all labor, materials, and equipment required to perform exterior and interior janitorial service five days a week, Monday through Friday, excluding holidays, at the above location in accordance with these specifications:
- B.** All windows and glass broken by Landlord’s Contractor will be replaced at no cost to City.
- C.** Landlord’s Contractor must, at all times, maintain adequate staffing that meets these specifications. All employees must wear uniforms (See Section II). City may request Landlord to remove any janitor from the Premises at any time it desires and for any reason whatsoever, and an immediate replacement will be provided. All written notices are to be submitted to:

City and County of San Francisco  
***[DEPARTMENT]***  
***[ADDRESS]***  
San Francisco, CA 941\_\_  
Attn.: ***[\_\_\_\_\_]***

- D.** All services must be performed after 5:00 p.m.
- E.** All employees of Landlord’s Contractor must be fully trained and experienced in the custodial service trade.
- F.** Landlord will assign space in the Building to Contractor to store supplies and equipment. Supplies and equipment must be neatly stored only in the areas provided by Landlord. No supplies or equipment may be stored in the Premises without City’s prior approval.
- G.** City’s Recycling Program includes recycling materials from offices in the Building. Bins for recyclable materials can be obtained from City.
- H.** On or before the Commencement Date, Landlord’s Contractor will provide a schedule for all periodic services specified in this Exhibit.

**I. Janitorial Service Specifications for Offices and Common Areas.**

**1. Nightly Services**

- a.** Turn off all lights as soon as possible each night.
- b.** Vacuum all carpets. Move electric cords to prevent damage to the corner bead.
- c.** Dust mop all resilient and composition floors with treated dust mops. Damp mop to remove spills and water stains as required.
- d.** Spot clean any stains on carpet.
- e.** Dust all desks and office furniture with treated dust cloths.
- f.** Papers and folders on desks are not to be moved.
- g.** Sanitize all telephone receivers.
- h.** Empty all waste paper baskets and other trash containers and remove all trash from floors to the designated trash areas. Sort and put ALL RECYCLABLE MATERIAL into bins provided by City.
- i.** Remove fingerprints, dirt smudges, graffiti, etc., from all doors, frames, glass partitions, windows, light switches, and walls.
- j.** Return chairs and waste baskets to proper positions.
- k.** Clean, sanitize, and polish drinking fountains.
- l.** Monitor any interior public planters and remove extraneous items.
- m.** Dust and remove debris from all metal door thresholds.
- n.** Wipe clean smudged brightwork.
- o.** Spot clean resilient and composition floors as required.
- p.** Service all walk-off mats as required.
- q.** Close all window coverings.
- r.** Check for burned out lights and replace from building stock (to be supplied by Landlord).

**2. Weekly Services**

- a.** Dust all low reach areas including chair rungs, structural and furniture ledges, baseboards, window sills, door louvers, wood paneling, molding, etc.
- b.** Dust inside of all door jambs.
- c.** Clean and polish all metal door thresholds.
- d.** Wipe clean and polish all brightwork
- e.** Sweep the service stairwell.
- f.** Damp mop all vinyl bases.
- g.** Edge all carpeted areas.

**3. Monthly Services**

- a.** Dust all high reach areas including tops of door, frames, structural and furniture ledges, air conditioning diffusers and return grilles, tops of partitions, picture frames, etc.
- b.** Vacuum upholstered furniture.
- c.** Move all plastic carpet protectors and thoroughly vacuum under and around all desks and office furniture.
- d.** Clean and buff all building standard resilient and/or composite flooring.

**4. Quarterly Services**

- a.** Shower-scrub or otherwise recondition all resilient or composition flooring to provide a level of appearance equivalent to a completely refinished floor.
- b.** Wash all chair pads.

**5. Semi-Annual Services**

- a.** Vacuum all window coverings.
- b.** Dust light diffusers.

**6. Annual Services**

- a.** Shampoo carpets in offices (schedule to be approved in advance), using products and methods recommended by manufacturer and/or carpet installation contractor.

**J. Rest Room Service Specifications**

**1. Daily Service**

- a.** Re-stock all rest rooms with supplies from the Landlord's stock, including paper towels, toilet tissue, seat covers, and hand soap, as required.
- b.** Re-stock all sanitary napkin and tampon dispensers from Contractor's stock, as required.
- c.** Wash and polish all mirrors, dispensers, faucets, flushometers, and brightwork with non-scratch disinfectant cleaner. Wipe dry all sinks.
- d.** Wash and sanitize all toilets, toilet seats, urinals, and sinks with non-scratch disinfectant cleaner.
- e.** Remove stains, scale toilets, urinals, and sinks, as required.
- f.** Mop all rest room floors with disinfectant, germicidal solution, include scrubbing of all base, inside corners, and hard-to-reach areas.
- g.** Empty and sanitize all waste and sanitary napkin and tampon receptacles.
- h.** Remove all rest room trash.
- i.** Spot clean fingerprints, marks and graffiti from walls, partitions, glass, aluminum, and light switches as required.
- j.** Check for burned out lights and replace from building stock (supplied by Landlord).
- k.** Ventilate rest rooms.

**2. Weekly Services**

- a.** Dust all low reach and high reach areas, including structural ledges, mirror tops, partition tops and edges, air conditioning diffusers, and return air grilles.

**3. Monthly Services**

- a.** Wipe down all walls and metal partitions. Partitions must be left clean and not streaked after this work.
- b.** Clean all ventilation grilles.
- c.** Dust all doors and door jambs.

**4. Quarterly Services**

- a.** Thoroughly clean and reseal all ceramic tile floors, using approved sealers.

**K. Main Floor Elevator Lobbies and Public Corridors Specifications**

**1. Nightly Services**

- a.** Spot clean all glass including low partitions and the corridor side of all windows and glass doors to City's Premises and other tenants' premises.
- b.** Spot clean all chrome brightwork including swinging door hardware, kick plates, base partition tops, handrails, waste paper receptacles, planters, elevator call button plates, hose cabinets, and visible hardware on the corridor side of tenant entry doors.
- c.** Thoroughly clean all door saddles of dirt and debris.
- d.** Empty, clean, and sanitize all waste paper baskets and refuse receptacles as required.
- e.** Vacuum and spot clean all carpets as necessary.
- f.** Spot clean all elevator doors and frames.

**L. Exterior Structure and Grounds Services Specifications**

**1. Daily Service**

- a.** Spot clean accumulations of dirt, papers, and leaves in all corner areas where winds tend to cause collections of debris.
- b.** Spot clean all exterior glass at building entrances.
- c.** Lift nap on all entry walk-off mats as necessary with a heavy bristle brush and vacuum.

- d. Empty all waste receptacles and remove trash to designated trash areas.
- e. Clean sidewalk, steps, and landscaped area, walks and benches; including gum removal.

2. Monthly Weekend Services

- a. Steam clean exterior sidewalk and walk way areas.

**M.** Carpet Cleaning

- 1. Provide spot cleaning to tenant space as necessary and shampoo carpets in tenant office space and any common areas once each year (exact schedule to be approved in advance by City).

**N.** Window Cleaning

- 1. All work to be performed in accordance with generally accepted industry standards.
- 2. Proper safety standards are to be maintained at all times, including use of proper warning signs and clean up of water in compliance with all City, State, and Federal laws (including OSHA).
- 3. Window cleaning standards are to include clean up of water, wipe down of adjacent window mullions and ledges to prevent streaking, spotting, and excessive runoff.
- 4. When necessary, drop cloths are to be used to prevent damage to floors and adjacent surfaces.
- 5. Interior and exterior window washing will be scheduled immediately before the Lease Commencement Date. Interior glass will be cleaned not less than once per year. Exterior glass will be cleaned as needed, but not less than once every six months, including May of each year.
- 6. Contractor will notify City for specific scheduling of window washing one week before scheduled cleaning.
- 7. Contractor will be responsible for removing paint and putty etc. from both glass and plastic windows.
- 8. Exterior surfaces of windows are not to be washed when it is raining.
- 9. The words “window” and “light” as used in this Exhibit are synonymous and are to be construed to mean any pane of glass or glass substitute.

## **II. UNIFORMS**

- A.** Janitors must wear their uniforms whenever on duty.
- B.** All personnel, including the coordinator and supervisors, must be uniformed. All personnel must have a visible company name, logo, badge, etc., on their uniform.

## **III. EMPLOYEE SAFETY**

Landlord's Contractor will accept responsibility for determining that all necessary safeguards for protection of Contractor's employees are available or will be furnished. All work performed must conform to CAL-OSHA standards.

## **IV. SUPPLIES**

Landlord or its Contractor will supply floor wax, wax stripper, and other expendable supplies required for daily cleaning and maintenance, as well as janitorial supplies such as hand soap, paper hand towels, paper toilet tissue, paper seat covers, and deodorants. Furthermore, Landlord or its Contractor will supply all equipment including ladders, vacuum cleaners, extractors, floor machines, mops, and buckets.

## **V. APPROVAL OF PRODUCTS**

City will have the right to prohibit the use of any product proposed or being used by Landlord's Contractor should City deem the product to be unsafe or harmful to those items being cleaned or to City's staff. In this regard, Landlord must provide on request a complete list of products to be used in the course of this Lease, together with Material Safety Data Sheets for each cleaning chemical.

## **VI. DISPOSITION OF REFUSE**

All trash and refuse collected by the custodians will be deposited in a debris box as designated by the Landlord. (Landlord will pay for debris box service).

## **VII. MAINTENANCE PROBLEMS**

Employees of Landlord's Contractor will note maintenance problems (such as broken glass, light bulbs missing or burned out, inoperative fixtures, etc.) and report them to Landlord. Any problem that prevents performance must be noted in the log (Section VIII) before the end of the shift. Contractor will not claim, and City will not entertain, any claim that those problems prevented Contractor's performance if the claim is not entered in the log.

## **VIII. JANITORIAL LOG**

Landlord's Contractor will provide, and City will keep, a janitorial log noting any deficiencies in performance, special problems, or instructions. Landlord's Contractor will check the log daily, as arranged with City, and correct any deficiencies in service within



twenty-four (24) hours of the log entry. Contractor will initial and date each entry when deficiency has been corrected.

**IX. EMERGENCY CONTACT**

Landlord's Contractor will provide City with an emergency telephone number where Contractor may be reached at any time during normal business hours (Monday – Friday, 8:00 a.m. – 5:00 p.m.). Contractor must respond to emergency calls relating to deficiency of service by correcting the deficiency within two hours after receipt of the call.

**X. PERFORMANCE**

Landlord and its Contractor will guarantee that workmanship required for the performance of this Lease will be in accordance with the highest level of workmanship and accomplished according to the highest professional standards. The determination as to the adequacy of performance will be made by City or its Director of Property. Contractor or Contractor's agent must be available at reasonable intervals during regular business hours as requested by City, to participate in inspection walk throughs. Contractor will supervise all janitors during all shifts.

**XI. VERIFICATION OF SERVICE**

City may provide, install, or establish a system of sign off slips, service receipts, or room service sign off cards. Landlord's Contractor will faithfully comply with same by initialing, dating, and indicating time that service was completed. It is agreed that no service has been completed unless signed off by Contractor and countersigned by City if said system so requires.

**XII. HOLIDAY SCHEDULE FOR CITY**

New Year's Day  
Martin Luther King Day  
President's Day  
Memorial Day  
Independence Day  
Labor Day  
Columbus Day  
Veteran's Day  
Thanksgiving Day  
Friday after Thanksgiving Day  
Christmas Day

**EXHIBIT I**

**STANDARDS FOR SECURITY SERVICE**

Landlord will furnish security services as follows:

**SECURITY GUARDS:**

The number of security guards in the lobby of the Building from 8 a.m. to 5 p.m., Monday through Friday (except holidays), and during such other times as City reasonably requests in writing.