

File No. 121048

Committee Item No. \_\_\_\_\_

Board Item No. //

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: \_\_\_\_\_

Date \_\_\_\_\_

Board of Supervisors Meeting

Date 11/6/2012

#### Cmte Board

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| <input type="checkbox"/>            | <input type="checkbox"/> | Motion                                       |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Resolution                                   |
| <input type="checkbox"/>            | <input type="checkbox"/> | Ordinance                                    |
| <input type="checkbox"/>            | <input type="checkbox"/> | Legislative Digest                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/> | Legislative Analyst Report                   |
| <input type="checkbox"/>            | <input type="checkbox"/> | Youth Commission Report                      |
| <input type="checkbox"/>            | <input type="checkbox"/> | Introduction Form (for hearings)             |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/> | MOU  |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Subcontract Budget                           |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement                           |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Application                                  |
| <input type="checkbox"/>            | <input type="checkbox"/> | Public Correspondence                        |

**OTHER** (Use back side if additional space is needed)

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Completed by: Victor Young Date November 1, 2012

Completed by: \_\_\_\_\_ Date \_\_\_\_\_

An asterisked item represents the cover sheet to a document that exceeds 25 pages.  
The complete document can be found in the file.

1 [Real Property Lease - 1155 Market Street - 1155 SF Partners, LLC - Various City  
2 Departments]

3 **Resolution authorizing the lease of approximately 103,501 sq. ft. of space at 1155**  
4 **Market Street with 1155 SF Partners, LLC, for use by various City Departments for the**  
5 **term of approximately ten years commencing January 15, 2013, and terminating on**  
6 **January 14, 2023, for renovation of the property.**

7  
8 WHEREAS, The Departments of Public Works, Treasurer-Tax Collector, Assessor-  
9 Recorder and General Services Agency has occupied space at 875 Stevenson Street since  
10 the 1990's; and

11 WHEREAS, The current lease for 875 Stevenson Street has been amended to call for  
12 an early termination February 4, 2013; and

13 WHEREAS, The current owner of 875 Stevenson Street plans to completely renovate  
14 the building and has no interest in a new lease with the City; and

15 WHEREAS, The Real Estate Division has identified a building which meets the needs  
16 of all City occupants of 875 Stevenson (with the exception of ReproMail, relocating  
17 elsewhere), and the Real Estate Division and 1155 SF Partners, LLC, a Delaware limited  
18 liability corporation ("Landlord") of 1155 Market Street have negotiated a lease ("Lease") at  
19 fair market rental, considering all factors; and

20 WHEREAS, Such leased premises at 1155 Market Street will also accommodate space  
21 needs of the San Francisco Public Utilities Commission (SFPUC) and the Mayor's Office on  
22 Disability; and

23 WHEREAS, Such Lease is subject to enactment of a resolution by the Board of  
24 Supervisors and the Mayor, in their respective sole and absolute direction, approving and  
25 authorizing such Lease; now, therefore, be it

1 RESOLVED, That in accordance with the recommendation of the Director of Property,  
2 the Director of Property is hereby authorized to take all actions on behalf of the City and  
3 County of San Francisco, as tenant, to lease the property commonly known as 1155 Market  
4 Street, San Francisco, California from Landlord (a copy of the Lease is on file with the Clerk of  
5 the Board of Supervisors in File No. 121048, which is hereby declared to be a part of this  
6 resolution as if set forth fully herein) and on a form approved by the City Attorney; and, be it;  
7 and, be it

8 FURTHER RESOLVED, That That the Lease for 1155 Market Street shall be for the  
9 term of approximately ten (10) years commencing January 15, 2013 and terminating on  
10 January 14, 2023, subject to City's right to terminate the Lease at the 60<sup>th</sup> month of the Lease  
11 or the 92<sup>nd</sup> month of the Lease by providing to Landlord one (1) year prior written notice and  
12 reimbursement of unamortized tenant improvements and a termination fee as set forth in the  
13 Lease; and, be it

14 FURTHER RESOLVED, That the base monthly rent for the first year of the term shall  
15 be approximately \$31.67 per sq. ft., increasing to \$39.14 per sq.ft. the second year of the term  
16 and annually thereafter on each January 15 of the remainder term, the base rent shall be  
17 subject to a three percent (3%) fixed increase. City shall pay either to Landlord or the service  
18 provider for separately metered utilities, janitorial, and other typical tenant expenses as set  
19 forth in the Lease; and, be it

20 FURTHER RESOLVED, That the Lease shall include a provision to allow the City to  
21 exercise an expansion right to include the vacant sixth floor of 1155 Market Street, subject to  
22 the enactment of a resolution by the Board of Supervisors and the Mayor, in their respective  
23 sole and absolute direction, approving and authorizing such expansion; and, be it

24 FURTHER RESOLVED, That the Lease shall include a provision granting to the City a  
25 Right of First Offer to Lease floors 10 or 11 of 1155 Market Street, subject to the enactment of

1 a resolution by the Board of Supervisors and the Mayor, in their respective sole and absolute  
2 direction, approving and authorizing such additional expansion; and, be it

3 FURTHER RESOLVED, That the City shall be granted a Right of First Offer to  
4 Purchase 1155 Market Street, subject to the terms and conditions of such Right as described  
5 in the Lease, and subject to the enactment of a resolution by the Board of Supervisors and the  
6 Mayor, in their respective sole and absolute direction, approving and authorizing such Right;  
7 and, be it

8 FURTHER RESOLVED, That the Lease shall include a lease clause, indemnifying,  
9 holding harmless, and defending Landlord and its agents from and against any and all claims,  
10 costs and expenses, including without limitation, reasonable attorneys' fees, incurred as a  
11 result of any default by the City in the performance of any of its obligations under the Lease,  
12 or any negligent acts or omissions of the City or its agents, in, on, or about the Premises or  
13 the property on which the Premises are located, excluding those claims, costs and expenses  
14 incurred as a result of the gross negligence or willful misconduct of the Landlord or its agents;  
15 and, be it

16 FURTHER RESOLVED, That all actions heretofore taken by the officers of the City  
17 with respect to such Lease are hereby approved, confirmed and ratified; and, be it

18 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of  
19 Property to enter into any amendments or modifications to the Lease (including, without  
20 limitation, the exhibits) that the Director of Property determines, in consultation with the City  
21 Attorney, are in the best interest of the City, do not increase the rent or otherwise materially  
22 increase the obligations or liabilities of the City, are necessary or advisable to effectuate the  
23 purposes of the Lease or this resolution, and are in compliance with all applicable laws,  
24 including the City Charter; and, be it

25 FURTHER RESOLVED, That the City shall occupy the entire Premises for the full term



1 of the Lease unless funds for rental payments are not appropriated in any subsequent fiscal  
2 year at which time the City may terminate the Lease with advance notice to Landlord. Said  
3 Lease shall be subject to certification as to funds by the Controller, pursuant to Section 6.302  
4 of the City Charter.

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8  Director of Property  
Real Estate Division  
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*John Updike*  
*Acting Director of Real Estate*



October 23, 2012

Through Naomi Kelly, City Administrator

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

**Re: Fourth Amendment to Lease of 875 Stevenson and  
Lease Agreement for 1155 Market Street and  
Lease Agreement for 110 12<sup>th</sup> Street**

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2012 OCT 23 PM 3:03

Dear Board Members:

Attached for your consideration is a proposed Resolution authorizing the acceptance of an early termination of the City's lease at 875 Stevenson Street, effective February 4, 2013. Also presented for separate consideration is a proposed Resolution authorizing the lease of eight (8) floors of 1155 Market Street, primarily to provide replacement space for those currently occupying space at 875 Stevenson Street, but also to address other space matters facing the City at this time. Finally, we submit another Resolution authorizing a lease at 110 12<sup>th</sup> Street for use by the City's Reproductions and Mail Services ("ReproMail"), also relocating from 875 Stevenson Street.

The City currently leases a portion of the first floor of 875 Stevenson Street, along with the entirety of the 3<sup>rd</sup> and 4<sup>th</sup> floors. That lease, as currently amended, provides the City space at 875 Stevenson until the end of May, 2015 for the 3<sup>rd</sup> and 4<sup>th</sup> floors, but we are on month-to-month holdover for the first floor presence which is our Reprographics/Mail Services operations. We occupy the space at a fixed rate of \$27.00/square foot per year, excluding janitorial, utilities and certain maintenance obligations which result in a cost to the City to occupy the space of approximately \$32/square foot per year. The City leases a total of 81,348 square feet at 875 Stevenson. Our present cost of occupancy at 875 Stevenson is therefore roughly \$2,603,136 per year or \$216,928 per month. Occupants at 875 Stevenson are:

- ReproMail
- Department of Public Works
- General Services Agency-Human Resources
- Treasurer-Tax Collector
- Assessor-Recorder

The City was approached this summer by the Landlord (Shorenstein) of 875 Stevenson (collectively branded as Market Square with 1355 Market Street, now home to Twitter, One Kings Lane and others), requesting the City consider leaving the property before the end of its term of occupancy. They desire to take advantage of the surging market in Civic Center and Central Market commercial

Jupdike/1650 mission/wall sign BOS intro letter 2-2012.doc

real estate, and to do so, need to vacate the entire building at Stevenson & 11<sup>th</sup> to refurbish it similar to what was successfully deployed at 1355 Market for Twitter and others.

The final negotiated exit payment and terms of the exit agreement (technically, a Fourth Amendment to Lease), followed intense but productive negotiations. The amount of compensation secured in the agreement, along with some additional flexibility granted to the City to depart by no later than March 4, 2013 (but at considerable financial impact to the City at any time after February 4, 2013), dovetail nicely with the entry agreements simultaneously negotiated elsewhere. The City's space planning efforts have the City geared up to execute our exit by no later than February 4, 2013 (to maximize the City's exit payment).

At approximately the same time this summer, the City rekindled negotiations with the ownership of 1155 Market Street, as the SFPUC commenced their exit from that property to 525 Golden Gate. A lease agreement has been negotiated at 1155 Market Street to meet our needs. Later this summer, the City finally located an acceptable new premises for ReproMail (of the Office of Contract Administration), at 110 12<sup>th</sup> Street, and have secured conceptually a lease agreement for that location.

The fiscal constraint was to orchestrate these agreements in such a way as to be expense neutral to the City over the course of the remainder of the current fiscal year, as well as the entirety of fiscal year 13-14. We are pleased to report that we have accomplished that goal in the legislation presented. Costs of renting space continue to rise throughout San Francisco, and given the 875 Stevenson lease was set to expire in May of 2015 (no renewal options remained), City staff knew this day was fast approaching to locate new space, more likely far more expensive space, to meet our space needs to 2020 and beyond. The notice from Shorenstein simply accelerated that timeline and provided the City an opportunity to make the change with a slightly reduced fiscal impact than we would have experienced in 2015.

The new lease at 1155 Market secures for the City initial access to floors 1-5 and 7-9 of the 11-story high-rise. The lease requires ownership to perform certain base building improvements and deliver to the City modest tenant improvements within a set budget. The tenant improvement package includes \$25/square foot of improvements delivered at the Landlord's expense, with an additional \$35/square foot of improvements delivered at the City's expense, amortized over the initial 10 year term of the lease at 8% interest. The current space plan Rough Order of Magnitude budget suggests the delivery of the necessary improvements may be somewhat less than the full \$60/square foot. However, for budget purposes staff is assuming full use of the tenant improvement allowance.

As previously mentioned, 1155 Market Street provides space for more than just those relocating from 875 Stevenson. We are accommodating a space need from the SFPUC to retain the 9<sup>th</sup> floor for their continued use. We are relocating the Mayor's Office on Disability from War Memorial to the ground floor of 1155 Market Street. In addition to the initial premises of 8 floors, the City has secured an option right to floors 6, 10 and 11. Exercise of those options is subject to further Board of Supervisor's approval. The lease agreement also includes a Right of First Offer to Purchase. Should ownership decide to sell the property, the City will have first opportunity to acquire.

The basic terms of the 1155 Market Street lease are:

- 10 year initial term, but City can exit after 5 years or after 92 months in the property by paying a modest termination fee.
- Initial year rate of \$31.67 per square foot (excluding janitorial and utilities – estimated at \$5.00/square foot per year), second year of \$39.14 per square foot and future years increasing at 3% per year.

The lease agreement at 110 12<sup>th</sup> Street calls for leasing the entirety of that property (also known as 101 South Van Ness), a 10,469 square foot building with secured parking area. The lease would commence February 1, 2013 and expire January 31, 2023, however the City would have on-going rights to terminate the lease without any penalty after the fifth year of the lease. The lease rate would be \$27,000/month (or \$30.95/square foot per year), increasing annually by 4%. The City would be responsible for utilities, janitorial expenses and the cost of an alarm system, which would likely be approximately \$4.00 to \$5.00/square foot per year. The landlord will provide all necessary improvements to the space to suit the City's needs.

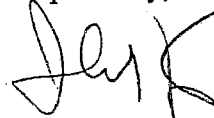
A comparison of existing lease expenses to new lease expenses is on the attached chart.

The Fourth Amendment to Lease at 875 Stevenson calls for the City to exit the property by February 4, 2013, which is the operative plan at this time. If successful in doing so, the City would be paid the sum of \$750,000 fifteen days after the approval of the new site agreements (to which staff is relocating), and the additional sum of \$2,500,000 fifteen days after vacating and surrendering the premises. Should the City be delayed in moving, there would be a reduction in the amount owed by the Landlord to the City, calculated on a per day basis. The move must absolutely be completed by no later than March 4, 2013, or the City would find itself in default of the lease as amended.

The Real Estate Division recommends approval of the Resolutions referenced herein. These agreements advance forward in time relocations that would otherwise be 100% fiscal burdens of the City in the near future with respect to ReproMail or in 2015 with respect to the other tenancies of 875 Stevenson. Accelerating these moves to take advantage of the availability of a funding source would appear to be the City's best course of action at this time.

If you have any questions in this regard, please contact me at 554-9860.

Respectfully,



John Updike  
Acting Director of Property

Attachments

c: Jaci Fong, Director of OCA  
Mohammed Nuru, Director of DPW  
Jose Cisneros, Treasurer-Tax Collector  
Phil Ting, Assessor  
Steve Nakajima, Director of GSA-HR  
Carla Johnson, Acting Director of Mayor's Office on Disability  
Michael Carlin, Assistant General Manager, SFPUC

**Comparison of Occupancy Expenses**

Existing Monthly Expense at 875 Stevenson	\$216,928	
First Year Monthly Expense at 1155 Market Street*	\$263,159	(1/15/2013-1/14/2014)
Second Year Monthly Expense at 1155 Market Street*	\$316,767	(1/15/2014-1/14/2015)
*excludes space to be occupied by Mayor's Office on Disability and SFPUC		
First Year Monthly Expense at 110 12 <sup>th</sup> Street	\$ 31,362	(2/1/2013-1/31/2014)
Second Year Monthly Expense at 110 12 <sup>th</sup> Street	\$ 32,616	(2/1/2014-1/31/2015)

New rent commences January 15, 2013 at 1155 Market Street  
 New rent commences February 1, 2013 at 110 12<sup>th</sup> Street  
 Prior rent at 875 Stevenson terminates February 4, 2013

New rent amount due January 15, 2013 through June 30, 2013:

\$263,159 x 5 = \$1,315,795	five months February, March, April, May and June at 1155 Market
\$263,159 / 2 = \$ 131,580	one half of January, 2013 at 1155 Market
\$ 31,362 x 5 = <u>\$ 156,810</u>	five months at 110 12 <sup>th</sup> Street
<b>\$1,604,185</b>	subtotal for FY12-13

New rent amount due July 1, 2013 through June 30, 2014

\$263,159 x 6.5 = \$1,710,533	July-January 15 at 1155 Market
\$316,767 x 5.5 = \$1,742,218	January 16 – June 30 at 1155 Market
\$ 31,362 x 7 = \$ 219,534	July 1 – January 31 at 110 12 <sup>th</sup> Street
\$ 32,616 x 5 = <u>\$ 163,080</u>	February 1 – June 30 at 110 12 <sup>th</sup> Street
<b>\$3,835,365</b>	subtotal for FY13-14

Impact of Amortization of improvements at 1155 Market Street (assuming full use of \$35/square foot available from Landlord over 86,117 square feet):

\$36,569 per month x 17.5 = <b>\$639,957</b>	Time period of 17.5 months from January 15, 2013 through June 30, 2014
--	--

Estimated Cost of physical moves, data/telephony, cubicles and FF&E: **\$900,000\***

\*excludes relocation and equipment calibration expenses associated with ReproMail, which has separate available funding source on Controller's Reserve.

Total new expense during period January 15, 2013 through June 30, 2014:

<b>\$1,604,185</b>
<b>\$3,835,365</b>
<b>\$ 639,957</b>
<b><u>\$ 900,000</u></b>
<b>\$6,979,507</b>

Expense of remaining at 875 Stevenson January 15, 2013 through June 30, 2014 (17.5 months), assuming lease was not terminated early: \$216,928 x 17.5 = **\$3,796,240**

Increase in expenses through 6/30/2014: \$6,979,507 - \$3,796,240 =	\$3,183,267
Payment due from Shorenstein:	\$3,250,000

OFFICE OF THE MAYOR  
SAN FRANCISCO



EDWIN M. LEE  
MAYOR

TO: Angela Calvillo, Clerk of the Board of Supervisors  
FROM: *Ed* Mayor Edwin M. Lee *EC*  
RE: Lease of Real Property with 1155 SF Partners, LLC  
DATE: October 23, 2012

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Attached for introduction to the Board of Supervisors is the resolution authorizing the lease of approximately 103,501 sq. ft. of space at 1155 Market Street with 1155 SF Partners, LLC for use by various City Departments.

I request that this item be calendared in Budget and Finance Committee.

Should you have any questions, please contact Jason Elliott (415) 554-5105.

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2012 OCT 23 PM 3:01  
*le*

*121048*

OFFICE LEASE

between

1155 SF PARTNERS, LLC,  
as Landlord

and

CITY AND COUNTY OF SAN FRANCISCO,  
as Tenant

For the lease of  
1155 Market Street  
San Francisco, California 94103

October \_\_\_\_, 2012

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- EXHIBIT I-1 – Form of Memorandum of Lease
- EXHIBIT I-2 – Form of Quitclaim of Leasehold Interest
- EXHIBIT J – Form of SNDA
- EXHIBIT K-1 – Base Building Work Prior To Commencement Date
- EXHIBIT K-2 – Base Building Work After Commencement Date

**OFFICE LEASE**

THIS OFFICE LEASE (this "Lease"), dated for reference purposes only as of October \_\_, 2012, is by and between 1155 SF Partners, LLC, a Delaware limited liability corporation ("Landlord"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City" or "Tenant").

Landlord and City hereby agree as follows:

**1. BASIC LEASE INFORMATION**

The following is a summary of basic lease information (the "Basic Lease Information"). Each item below shall be deemed to incorporate all of the terms in this Lease pertaining to such item. In the event of any conflict between the information in this Section and any more specific provision of this Lease, the more specific provision shall control.

Lease Reference Date: October \_\_, 2012

Landlord: 1155 SF Partners, LLC

Tenant: City and County of San Francisco

Building (Section 2.1): 1155 Market Street, San Francisco, CA 94103

Premises (Section 2.1): A portion of the ground floor and the entire second (2<sup>nd</sup>) through fifth (5<sup>th</sup>) floors and the entire seventh (7<sup>th</sup>) through ninth (9<sup>th</sup>) floors of the Building all as shown as the cross-hatched areas on Exhibit A. The area calculations for each floor are:

Floor	Net Rentable Area (SF)
Ground	8,478
2	13,679
3	14,014
4	14,092
5	14,079
7	12,859
8	13,101
9	13,086

Parking (Section 2.4): City shall have the right to rent up to fourteen (14) reserved parking stalls in the Building garage. If the City leases additional space in the Building pursuant to the One Time Expansion Right or the Right of First Offer to Lease, City shall have the right to rent up to one (1) additional reserved space in the Building garage for each additional full floor of the Building leased.

Rentable Area of Premises (Section 2.1): Approximately 103,388 rentable square feet plus any additional space in the Building, if any, leased by the City pursuant to its Right of

	First Offer to Lease or its One Time Expansion Right
Term ( <u>Section 3</u> ):	Ten (10) years
Extension Options ( <u>Section 3.4</u> ):	Two (2) additional term(s) of five (5) years (each), exercisable by City by notice to Landlord given not less than twelve (12) months and not more than eighteen (18) months in advance, with rent determined by the then fair market value.
Base Rent ( <u>Section 4.1</u> ):	Initial annual Base Rent: \$31.67 per square foot of the Premises
Adjustment Dates ( <u>Section 4.2</u> ):	Annual Base Rent will be adjusted to \$39.14 per square foot of the Premises on the first anniversary of the Commencement Date. On each following anniversary of the Commencement Date thereafter, Annual Base Rent shall increase three percent (3%) over the Annual Base Rent for the immediately preceding year, except that on the commencement of an Extended Term, Annual Base Rent will instead be adjusted to the Fair Market Value Rent as determined in accordance with <u>Section 4.2</u> .
Base Year ( <u>Section 4.3</u> ):	January 1, 2013 – December 31, 2013, if the Commencement Date is on or before January 15, 2013.  February 1, 2013 – January 31, 2014, if the Commencement Date is between January 16, 2013, and February 14, 2013.  March 1, 2013 – February 28, 2014, if the Commencement Date is between February 15, 2013, and March 15, 2013.
City's Percentage Share ( <u>Section 4.5</u> ):	72.39%, subject to adjustment pursuant to <u>Sections 22.1 and 22.2</u>
Leasehold Improvements ( <u>Section 6 and Work Letter</u> ) and Base Building Work ( <u>Section 2.3</u> ):	Landlord shall construct the Leasehold Improvements pursuant to the Work Letter. City shall receive a Leasehold Improvements Allowance of \$25.00 per square foot of the Premises. Landlord shall perform the Base Building Work at its sole cost.
Utilities ( <u>Section 9.1</u> ):	City shall procure all utilities (including telephone/data connections to be installed, if at all) at City's sole expense, provided that Landlord shall be responsible for the cost of

providing utility connections to the Building.

Services (Section 9.2):

City to provide any janitorial services desired by City at City's sole expense. Landlord shall provide security services consistent with the requirements set forth on Exhibit G.

Notice Address of Landlord (Section 23.1):

Laurus Corporation  
1880 Century Park East  
Suite 1016  
Los Angeles, CA 90067  
Attn: Charles Russo  
Asset Manager

With a copy to:

Laurus Corporation  
1880 Century Park East  
Suite 1016  
Los Angeles, CA 90067  
Attn: Andres Szita  
Chairman

Rent Payment Address (Section 4.1):

Account Name: 1155 SF Partners LLC  
Bank Name: Wells Fargo Bank, N.A.  
Bank Address: 420 Montgomery Street, San  
Francisco, CA 94104  
Account Number: 4122197445  
ABA# 121000248

Key Contact for Landlord:

Charles Russo, Asset Manager

Landlord Contact Telephone No.:

(310) 277-8600

Notice Address for Tenant (Section 23.1):

Real Estate Division  
25 Van Ness Avenue, Suite 400  
San Francisco, CA 94102  
Attn: John Updike,  
Acting Director of Property  
Re: 1155 Market Street  
Fax No.: (415) 552-9216  
Email: john.updike@sfgov.org

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 Department  
Deputy City Attorney  
Re: 1155 Market Street  
Fax No.: (415) 554-4755  
Email: carol.r.wong@sfgov.org

Key Contact for Tenant:	Andrico Q. Penick
Tenant Contact Telephone No.:	(415) 554-9871
Alternate Contact for Tenant:	John Updike
Alternate Contact Telephone No.:	(415) 554-9875
Brokers ( <u>Section 23.8</u> ):	The CAC Group 255 California Street, Suite 200 San Francisco, CA 94111
Other Noteworthy Provisions ( <u>Section 22</u> ):	One Time Expansion Option: ( <u>Section 22.1</u> ) Right of First Offer to Lease: ( <u>Section 22.2</u> ) Right of First Offer to Purchase: ( <u>Section 22.3</u> ) Early Termination Option: ( <u>Section 22.4</u> )

## 2. PREMISES

### 2.1 Lease Premises

Landlord leases to City and City leases from Landlord, subject to the provisions of this Lease, those premises in the building identified in the Basic Lease Information (the "**Building**") and shown on the floor plan(s) attached hereto as Exhibit A (the "**Premises**"). The Premises contain the rentable area and are located on the floor(s) of the Building specified in the Basic Lease Information. As used in this Lease, the term "**rentable area**" shall mean that measurement of interior floor area computed in accordance with the "**Office Buildings: Standard Methods of Measurements**" ANSI/BOMA Z65.1-2010, adopted by the Building Owners and Managers Association (BOMA). The Building, land upon which the Building is located and all other improvements on or appurtenances to such land are referred to collectively as the "**Property**."

### 2.2 Common Areas

City shall have the non-exclusive right to use, together with other tenants in the Building, the lobbies, corridors, elevators, stairways and other public areas of the Building and the Property (collectively, the "**Common Areas**"), and the non-exclusive right of access to and from the Premises by the main entrances to the Building and the Property. Landlord shall provide keycard access for the Building entrance and metal keys for all Building service rooms and the roof (as appropriate and necessary) to City and its employees at Landlord's sole cost for up to a maximum of four hundred (400) keycards and two (2) sets of necessary metal keys. The City shall pay for additional keycards and metal keys. The City shall pay the actual replacement costs, without markup, of any keycards or metal keys lost or damaged by City or its employees and shall return all keycards and metal keys at the end of the Term.

### 2.3 Base Building Improvements

The Premises will be delivered in their current "as-is" condition; provided, however, that prior to the Commencement Date, Landlord shall complete the Leasehold Improvements (as defined in Exhibit H) and shall, at Landlord's sole expense, perform the work shown on Exhibits K-1 and K-2 (collectively, the "**Base Building Work**").



Landlord's Base Building Work listed on Exhibit K-1 (the "Initial Base Building Work") shall be performed by Landlord on or before the Commencement Date. Notwithstanding anything to the contrary contained herein, Landlord's Base Building Work listed on Exhibit K-2 shall be performed by Landlord after the Commencement Date (the "Post Commencement Base Building Work"), provided that Landlord shall complete the Post Commencement Base Building Work within the time periods set forth on Exhibit K-2, as applicable. In performing any portion of the Post Commencement Base Building Work that requires access to the Premises or will interfere with access to the Premises, Landlord shall (i) perform, or cause such work to be performed, in a workmanlike manner that reasonably minimizes interference with City's use of and access to the Premises, (ii) comply with all applicable laws, (iii) provide City with no less than five (5) business days' prior notice of the planned date and time of entry to the Premises to commence such work (or interference with Building paths of travel to the Premises), and (iv) diligently pursue such work to completion.

City acknowledges and agrees that the Post Commencement Base Building Work will be performed by Landlord in the Premises during the period of City's occupancy of the Premises; however the completion of such work therein shall not affect City's obligation to pay Base Rent and all additional sums required to be paid by City to Landlord under the Lease and to perform all of City's covenants and obligations under the Lease except to the extent Landlord's performance of the Post Commencement Base Building Work prevents City from using any portion of the Premises for three (3) or more consecutive business days. In such event, Base Rent shall be proportionately abated for the period of interference based upon the portion of the Premises City is unable to use. Any abatement of Base Rent to benefit City pursuant to this Section 2.3 shall, instead of a direct abatement against Base Rent then due, be received by City as a credit, one-twelfth (1/12) of which shall be applied against City's Percentage Share of monthly payments of Operating Costs and Real Estate Taxes payable by City from January of 2014 through (and including) December of 2014 (with any excess credit to be applied to City's Percentage Share of such costs for each month thereafter until utilized in full). Except as otherwise set forth in the foregoing sentence, City (a) agrees that City shall have no right or claim to any abatement, offset or other deduction of the amount of Rent payable by City for the Premises due to the installation and construction of any of the work to be performed by Landlord pursuant to this Section 2.3, (b) grants Landlord access to any and all of the Premises reasonably necessary to perform the work to be performed by Landlord pursuant to this Section 2.3, (c) waives any rights or claims City may have at law or in equity with respect to any interference with City's conduct of its operations in and about the Premises during the pendency of the work to be performed by Landlord pursuant to this Section 2.3, but not including any damage to the Premises or City's personal property caused by the gross negligence or willful misconduct of Landlord or its agents, and (d) agrees not to interfere, and not to allow any of City's representatives to unreasonably interfere, with Landlord and its contractors, representatives and consultants in the performance of the work to be performed by Landlord pursuant to this Section 2.3.

#### 2.4 Parking

During the Term (as defined in Section 3.1), City shall have the right to rent up to fourteen (14) reserved parking stalls in the Building garage at an initial monthly rate of \$250.00 per stall. Such monthly rate shall be subject to increase from time to time, as reasonably determined by Landlord, provided that any such increases shall not occur more than once per year nor result in a monthly rate that exceeds ninety-five percent (95%) of the average of the monthly parking rates being charged at the 1355 Market Street garage and the One South Van Ness garage at such time. If the City exercises the One Time Expansion Right (as defined in Section 22.1) or the Right of First Offer to Lease (as defined in Section 22.2), City shall have the right to rent up to an additional one (1) reserved parking stall in the Building garage for each additional full floor of the Building leased by City at the same monthly rate then charged for the other parking stalls rented by City pursuant to this Section.

### 3. TERM

#### 3.1 Term of Lease

Provided the Lease is fully executed and delivered by the Parties, the Premises are leased for an initial term (the "**Initial Term**") commencing on the earlier date (the "**Commencement Date**") to occur of: (a) the date Tenant commences business operations from the Premises, or (b) the date Landlord shall have delivered the Premises to City with the Initial Base Building Work and the Leasehold Improvements (as defined below) having been substantially completed by Landlord, which date is estimated to be January 15, 2013 (the "**Estimated Commencement Date**"). The Initial Term of this Lease shall end on the date that is one hundred twenty (120) full calendar months after the Commencement Date, or such earlier date on which this Lease terminates pursuant to the provisions of this Lease, including any exercise of City's early termination right pursuant to Section 22.4, provided that City shall have the right to extend the Initial Term pursuant to Section 3.4 (Extension Option(s), below. The word "**Term**" as used herein shall refer to the Initial Term and any Extended Term(s) if City properly and timely exercises the Extension Option(s) as provided below.

#### 3.2 Commencement Date and Expiration Date

The dates on which the Term commences and terminates pursuant hereto are referred to respectively as the "**Commencement Date**" and the "**Expiration Date**." If the Commencement Date occurs on a date other than the Estimated Commencement Date, then promptly thereafter Landlord shall deliver to City a notice substantially in the form of Exhibit B attached hereto, confirming the actual Commencement Date, but Landlord's failure to do so shall not affect the commencement of the Term. City shall execute and return such notice of Commencement Date, or deliver written notice of its disagreement with the actual Commencement Date set forth in such notice, within ten (10) days after receipt. City's failure to timely return such notice or deliver written notice of such disagreement shall be deemed City's approval of the Commencement Date set forth in Landlord's notice.

#### 3.3 Delay in Delivery of Possession

Landlord shall use commercially reasonable efforts to deliver possession of the Premises with all of the Leasehold Improvements and the Initial Base Building Work Substantially Completed (as defined in Section 5.b. of Exhibit H) on or before the Estimated Commencement Date. If the Term commences later or earlier than the Estimated Commencement Date, this Lease shall nevertheless expire on the Expiration Date, unless sooner terminated pursuant to the provisions under this Lease. If Landlord is unable to deliver possession of the Premises as provided above until after the Estimated Commencement Date, then the validity of this Lease shall not be affected by such inability to deliver possession and Landlord shall not be subject to any liability, except that City's obligations to pay Base Rent or any other charges shall not commence until such time as Landlord has delivered the Premises as required under this Lease.

If Landlord is unable to deliver possession of the Premises to City with all of the Leasehold Improvements and the Initial Base Building Work Substantially Completed on or before February 4, 2013, the validity of this Lease shall not be affected by such inability to deliver possession and Landlord shall not be subject to any liability except that City's obligation to pay Base Rent or any other charges shall not commence until such time as Landlord has delivered the Premises with the Leasehold Improvements and Initial Base Building Work Substantially Completed and City shall receive the Late Delivery Rent Credit (defined as follows), if applicable, one-twelfth (1/12) of which shall be applied against City's Percentage Share of monthly payments of Operating Costs and Real Estate Taxes payable by City from January of 2014 through (and including) December of 2014 (with any excess credit to be applied

to City's Percentage Share of such costs for each month thereafter until utilized in full). If Landlord is unable to deliver possession of the Premises to City with all of the Leasehold Improvements and the Initial Base Building Work Substantially Completed on or before August 31, 2013 [such date to be extended for the period of any Unavoidable Delay (as defined in Section 6.a. of Exhibit H) or Tenant Delay (as defined in Section 6.b. of Exhibit H)], City shall additionally have the right, at its option, terminate this Lease, without any further liability under this Lease (except for those obligations that expressly survive the termination of the Lease), upon written notice to Landlord, provided such termination notice is delivered prior to the date Landlord Substantially Completes the Leasehold Improvements and Initial Base Building Work. The "Late Delivery Rent Credit" shall be calculated on a daily rate that commences on February 4, 2013 (provided Landlord has failed to Substantially Complete the Leasehold Improvements and Initial Base Building Work by such date), and terminates on the date that the date Landlord delivers possession of the Premises to City with all of the Leasehold Improvements and the Initial Base Building Work Substantially Completed, at a rate of \$10,000 per day from February 4, 2013, through February 10, 2013, and \$20,000 per day for each day that occurs on or after February 11, 2013. All dates in the immediately preceding sentence shall be subject to automatic extension for the period of any Unavoidable Delay and/or Tenant Delay.

### 3.4 Extension Option(s)

(a) City shall have the right to extend the Initial Term of this Lease (the "Extension Options") for the additional terms specified in the Basic Lease Information (the "Extended Terms"). Such Extension Options shall be on all of the terms and conditions contained in this Lease, except that the Base Rent for any Extended Term shall be as specified in Section 4.2 below.

(b) City may exercise the Extension Options, if at all, by giving written notice to Landlord no later than twelve (12) months and not more than eighteen (18) months prior to expiration of the then expiring Term. Landlord acknowledges and agrees that City's notice of its intent to exercise an Extension Option shall be subject to enactment of a resolution by the Board of Supervisors and the Mayor, in their respective sole and absolute discretion, approving and authorizing the same, within ninety (90) days after the date such notice of exercise is given, and, if such authorizing resolutions approving the exercise of an Extension Option are not issued and received by Landlord within such ninety (90) day period, then City's exercise of the Extension Option shall be rendered null and void and City's rights under this Section 3.4 shall terminate and be of no further force or effect.

The Extension Options are personal to City and may not be assigned, voluntarily or involuntarily, separate from or as part of the Lease. At Landlord's option, all rights of City under this Section shall terminate and be of no force or effect if any of the following individual events occur or any combination thereof occur: (1) City is in monetary or other material default beyond any applicable cure period on the date Landlord receives a notice exercising an Extension Option; and/or (2) City has assigned its rights and obligations under all or part of the Lease or City has subleased all or part of the Premises in a transfer (except with respect to subleases permitted under this Lease without Landlord's consent); and/or (3) City has failed to exercise properly an Extension Option in a timely manner in accordance with the provisions of this Section; and/or (4) City no longer has possession of the entire Premises pursuant to the Lease (except with respect to subleases permitted under this Lease without Landlord's consent), or if the Lease has been terminated earlier, pursuant to the terms and provisions of the Lease. Time is of the essence with respect to each and every time period described in this Section 3.4.

### 3.5 Improvements at the Beginning of Extended Term(s)

Provided City has duly extended the Lease Term for an Extended Term, within 180 days of City's delivery of the authorizing legislation for such Extended Term, Landlord shall

replace the carpet and paint in the Premises, using building standard materials consistent with those used for other first class office buildings in the vicinity of the Building and in colors approved by City (the "**Extended Term Work**"). The presence of new paint and carpet will be acknowledged in the fair market value rent determination for such Extended Term.

In connection with any Extended Term Work, City shall be responsible at its sole cost and expense for moving any furniture and equipment in the Premises to the extent reasonably necessary for Landlord to perform such Extended Term Work. The 180 day period referenced above for Landlord to complete the Extended Term Work shall be subject to extension to the extent the Extended Term Work is delayed by any City acts or failures to act and any events of Force Majeure. In the performance of any portion of the Extended Term Work, Landlord shall (i) perform, or cause the Extended Term Work to be performed, in a workmanlike manner that reasonably minimizes interference with City's use of the Premises, (ii) comply with all applicable laws, (iii) provide City with no less than five (5) business days' prior notice of the planned date and time of entry to the Premises to commence such work, and (iv) diligently pursue the Extended Term Work to completion.

City acknowledges and agrees that the Extended Term Work will be installed and constructed by Landlord in the Premises during the period of City's occupancy of the Premises; however the completion of such work therein shall not affect City's obligation to pay Base Rent and all additional sums required to be paid by City to Landlord under the Lease and to perform all of City's covenants and obligations under the Lease; provided, however, to the extent Landlord's performance of the Extended Term Work prevents City from using any portion of the Premises for three (3) or more consecutive business days, then Base Rent shall be proportionately abated during such period of interference based upon the portion of the Premises City is unable to use. Except as otherwise set forth in the foregoing sentence, City (a) agrees that City shall have no right or claim to any abatement, offset or other deduction of the amount of Rent payable by City for the Premises due to the performance of the Extended Term Work by Landlord or its agents pursuant to this Section 3.5, (b) grants Landlord access to any and all of the Premises reasonably necessary to perform the work to be performed by Landlord pursuant to this Section 3.5, (c) waives any rights or claims City may have at law or in equity with respect to any interference with City's conduct of its operations in and about the Premises during the pendency of the Extended Term Work to be performed by Landlord pursuant to this Section 3.5, but not including any damage to the Premises or City's personal property caused by the gross negligence or willful misconduct of Landlord or its agents, and (d) agrees not to interfere, and not to allow any of City's representatives to unreasonably interfere, with Landlord and its contractors, representatives and consultants in the performance of the Extended Term Work to be performed by Landlord pursuant to this Section 3.5.

#### 4. RENT

##### 4.1 Base Rent

Prior to the Commencement Date, Landlord shall deliver the materials and information required by City's Office of the Controller to establish a vendor identification number and set up electronic payments of Base Rent through Paymode-X, a Bank of America Merrill Lynch business-to-business electronic system. Beginning on the Commencement Date, City shall pay to Landlord during the Term the annual Base Rent specified in the Basic Lease Information (the "**Base Rent**"). The Base Rent shall be payable via wire transfer or Paymode-X (or any other electronic payment service used by City during the Term) in equal consecutive monthly payments on or before the first day of each month, in advance, at the address specified for Landlord in the Basic Lease Information, or such other place as Landlord may designate in writing upon not less than thirty (30) days' advance notice. City shall pay the Base Rent without any prior demand and without any deductions or setoff except as otherwise expressly provided in this Lease. If the Commencement Date occurs on a day other than the first day of a calendar

month or the Expiration Date occurs on a day other than the last day of a calendar month, then the monthly payment of the Base Rent for such fractional month shall be prorated based on a thirty (30)-day month.

#### 4.2 Adjustments in Base Rent

(a) On the first anniversary of the Commencement Date, annual Base Rent payable under Section 4.1 shall be adjusted as provided in the Basic Lease Information.

(b) On the second anniversary of the Commencement Date, and each subsequent anniversary of the Commencement Date thereafter other than the commencement of an Extended Term (each, an "**Adjustment Date**"), the annual Base Rent shall be adjusted to equal one hundred three percent (103%) of the Base Rent for the lease year immediately preceding each such Adjustment Date.

(c) On the commencement of an Extended Term, the Base Rent payable under Section 4.1 shall be adjusted to equal the then fair market value rent for the Premises ("**FMV Rent**"), which shall mean 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 (taking into account the painting and carpeting to be performed by Landlord in the Premises pursuant to Section 3.5 and any other improvements or improvement allowance Landlord agrees to provide at City's request) and situated within the Mid-Market and South of Market areas of San Francisco, the floor location and size of the Premises, the duration of the Extended Term, and free rent and any other out of pocket tenant concessions given for other such comparable space. FMV Rent shall be established as follows:

(i) Within thirty (30) days of Landlord's receipt of the City's notice of its intent to exercise an Extension Option, Landlord shall give the City written notice of Landlord's good faith determination of the FMV Rent for the Extended Term (the "**FMV Notice**"). The City shall have thirty (30) days to either accept or reject, in writing, Landlord's initial determination of FMV Rent. If the City accepts (or fails to timely object in writing to) the Landlord's determination of FMV Rent, then the FMV Rent specified in the FMV Notice shall be the Base Rent for the first lease year of the Extended Term. During the remainder of the Extended Term, the Base Rent shall adjust as set forth in Section 4.2(b).

(ii) If the City objects to the FMV Rent specified in the FMV Notice, then within thirty (30) days of City's receipt of FMV Notice, City shall give Landlord written notice of its objection (the "**FMV Objection Notice**"). The FMV Objection Notice shall advise the Landlord that City disagrees with the FMV Rent specified in the FMV Notice and shall propose City's good faith determination of FMV Rent. The Landlord shall have thirty (30) days to either accept or reject City's determination of FMV Rent. If the Landlord accepts (or fails to timely object to) the City's determination of FMV Rent, then the FMV Rent determined by City shall be final and binding in fixing the adjusted Base Rent for the first lease year of the Extended Term. During the remainder of the Extended Term, the Base Rent shall adjust as set forth in Section 4.2(b).

(iii) If the FMV Rent specified in the FMV Notice differs from the FMV Rent specified in the FMV Objection Notice by ten percent (10%) or less per rentable square foot per annum for each year during the Extended Term, then the FMV Rent shall be set by taking the average of the FMV Rent specified in the FMV Notice and the FMV Objection Notice. If the FMV Rent set forth in the FMV Notice and the FMV Objection Notice differs by more than ten percent (10%) per rentable square foot per annum for any year during the Renewal Term, the determination of FMV Rent for the Extended Term shall be made as follows.

(iv) If Landlord and Tenant fail to agree upon a final and binding FMV Rent within thirty (30) days after Landlord receives the FMV Objection Notice, **and if** the FMV Rent specified in the FMV Notice and the FMV Objection Notice differs by more than ten percent (10%) per rentable square foot per annum, then Landlord and City shall mutually designate an Arbitrator (as defined in this subsection). This shall be baseball-style arbitration and the sole determination of the Arbitrator will be to decide if FMV Rent will be either the FMV Rent specified in the FMV Notice or the FMV Rent specified in the FMV Objection Notice. The Arbitrator shall not have the power to select any other amount as the FMV Rent or to add to, modify, or change any of the provisions of this Lease. The Arbitrator's determination of FMV Rent pursuant to this subsection shall be final and binding upon Landlord and City.

(v) If Landlord and Tenant fail to mutually agree upon the choice of the Arbitrator within thirty (30) days of Landlord's receipt of the FMV Objection Notice, then either party may apply to the American Arbitration Association or any successor thereto having jurisdiction to designate an Arbitrator. The "Arbitrator" shall be a real estate broker or consultant who is MAI certified by the Appraisal Institute and has at least fifteen (15) years continuous recent experience in the business of appraising or managing commercial real estate or acting as a commercial real estate agent or broker in the City and County of San Francisco.

(vi) The Arbitrator shall conduct such hearings and investigations as s/he may deem appropriate and shall, within thirty (30) days after his/her designation, determine whether the FMV Rent specified in the FMV Notice or the FMV Objection Notice shall be the FMV Rent for the first lease year of the Extended Term. Each party shall pay its own attorneys' fees and expenses, if any, in connection with any arbitration under this subsection(e), and the parties shall share equally all other expenses and fees of the Arbitrator. Notwithstanding the foregoing, in no event shall the monthly Base Rent for any period of an Extended Term as determined pursuant to this Section 4.2(c), be less than the highest monthly Base Rent charged during the initial term of the Lease.

(d) If for any reason the FMV Rent shall not have been determined prior to the commencement of an Extended Term, then, until the FMV Rent and accordingly the adjusted Base Rent for the first lease year of such Extended Term, shall have been finally determined, the Base Rent payable for and during the Extended Term shall be equal to the FMV Rent specified in the FMV Notice. If, upon final determination of the FMV Rent, it shall have been determined that the FMV Rent is the FMV Rent specified in the FMV Notice, then the adjusted Base Rent for the first year of the Extended Term shall continue to be the FMV Rent specified in the FMV Notice. If, upon final determination of the FMV Rent, it shall have been determined that the FMV Rent is the FMV Rent specified in the FMV Objection Notice, then an appropriate adjustment to the adjusted Base Rent for the first lease year of the Extended Term shall be made reflecting such final determination, and Landlord shall refund to City (either in the form of cash or rent credit, at City's election) any overpayment in City's payment of adjusted Base Rent from the commencement of the Extended Term to the date of such final determination and adjustment.

#### 4.3 Additional Charges

City shall 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 provided for herein below and any payments to be made by City pursuant to Section 22.1(d). All such Additional Charges for Real Estate Taxes and Operating Costs provided for herein below shall be payable to Landlord concurrently with monthly Base Rent at the place where the Base Rent is payable. Landlord shall have the same remedies for a default in the payment of any Additional Charges as for a default in the payment of Base Rent. The Base Rent and Additional Charges are sometimes collectively referred to below as "**Rent**."

#### 4.4 Definitions

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

- (a) "**Base Year**" means the year specified in the Basic Lease Information.
- (b) "**City's Percentage Share**" means the percentage specified in the Basic Lease Information.
- (c) "**Expense Year**" means each calendar year commencing January 1st of each year during the Term, including any partial year in which this Lease commences. Expense Year shall not include the Base Year.

(d) "**Operating Costs**" means all fees, costs and expenses incurred by Landlord in connection with managing, operating, maintaining, repairing and replacing the Premises, Building and Property as needed to comply with its obligations under this Lease and to maintain and operate the Building in a condition and manner comparable to other first-class office buildings in the vicinity of the Building, including, but not limited to: (1) the cost of air conditioning, electricity, steam, water, heating, mechanical, telephone, ventilating, escalator and elevator systems and all other utilities, (2) the cost of repairs and replacements to the Premises, Building and Property and all labor and material costs related thereto, and the cost of general maintenance, cleaning and service contracts and the cost of all supplies, tools and equipment required in connection therewith, (3) the cost incurred by Landlord for all insurance carried on the Building and Property, (4) wages, salaries, payroll taxes and other labor costs and employee benefits relating to employees of Landlord or its agents engaged in the operation, repair, or maintenance of the Property, allocated in proportion to the percentage of such person's working time actually spent working in connection with the Property, (5) reasonable management fees, (6) fees, charges and other costs of all independent contractors engaged by Landlord, allocated in proportion to the percentage of such person's working time actually spent working in connection with the Property, (7) accounting and legal expenses, (8) depreciation on personal property, including, without limitation, carpeting in public corridors and Common Areas and window coverings provided by Landlord, (9) the fair market rental value of offices in the Building for the property manager, (10) the cost of capital improvements made to the Building after the Commencement Date as a labor-saving or energy saving device or to effect other economies in the operation or maintenance of the Building and which benefit the Premises, or made to the Building after the Commencement Date that are required under any governmental law or regulation that was not applicable to the Building at the time that permits for the construction thereof were obtained, but excluding any fines or penalties arising from Landlord's deliberate or negligent violation of such law, rule or regulation, and except to the extent such improvements are attributable to or are made for the primary benefit of a Property tenant or occupant other than City, and (11) any other expenses reasonably incurred in connection with the management, operation, maintenance, repair or replacement of the Building and Property (other than Real Estate Taxes and any services for which Landlord is separately and directly reimbursed by City or other tenants in the Building) which would, under standard commercial real estate accounting principles consistently applied, be considered an operating expense. With respect to the costs of items included in Operating Costs under (10) and all fees, costs and expenses of replacements of capital items included in Operating Costs, such costs and such fees, costs and expenses shall be amortized over the useful life thereof, together with interest on the unamortized balance at a rate per annum equal to four (4) percentage points over the Five Year Treasury Rate charged at the time such item is constructed, but not more than the maximum rate permitted by law at the time such item is constructed.

In the event that in the Base Year for Operating Costs or in any Expense Year the Building is less than ninety-five percent (95%) occupied, the Operating Costs shall be appropriately adjusted to reflect a ninety-five percent (95%) occupancy level. In no event shall Landlord recapture more than one hundred percent (100%) of the Operating Costs in any Expense Year. Notwithstanding anything to the contrary set forth in this Lease, when calculating Operating Costs for the Base Year, Operating Costs shall exclude one-time costs or fees incurred in the Base Year only, including those attributable to market-wide labor-rate increases or other extraordinary circumstances, including, but not limited to, boycotts and strikes, and costs relating to capital improvements or expenditures. Further, Operating Costs for any Expense Year shall exclude the items described on the attached Exhibit C and the costs incurred by Landlord with respect to the Base Building Work, the Tenant Improvement Work, any Additional Space Improvements (as defined in Section 22.1), and any Extended Term Work.

(e) "**Real Estate Taxes**" means all taxes, assessments and charges levied upon or with respect to the Property. Real Estate Taxes shall include, without limitation, all general real property taxes and general and special assessments, charges, fees and assessments for transit, housing, police, fire, or other governmental services thereof, service payments in lieu of taxes that are now or hereafter levied or assessed against Landlord by the United States of America, the State of California or any political subdivision thereof, public corporation, district, or any other political or public entity, and shall also include any other tax, fee or other excise, however described, that may be levied or assessed as a substitute for, or as an addition to, in whole or in part, any other Real Estate Taxes.

Notwithstanding the foregoing, Real Estate Taxes shall exclude: (1) franchise, transfer, inheritance, or capital stock taxes or income taxes measured by the net income of Landlord from all sources unless, due to a change in the method of taxation, any of such taxes is levied or assessed against Landlord as a substitute for, or as an addition to, in whole or in part, any other tax that would otherwise constitute a Real Estate Tax, (2) any penalties, fines, interest or charges attributable to the late payment of any taxes, except to the extent attributable to City's failure to pay its portion of Real Estate Taxes hereunder, or (3) any personal property taxes payable by City hereunder or by any other tenant or occupant of the Building.

(f) "**Tax Year**" means each calendar year during the Term, including any partial year during which this Lease may commence; provided that Landlord, upon notice to City, may change the Tax Year from time to time to any other twelve (12) consecutive month period and, in the event of any such change, City's Percentage Share of Real Estate Taxes shall be equitably adjusted for the Tax Year involved in any such change. Tax Year shall not include the Base Year.

#### **4.5 Payment of Percentage Share of Operating Costs**

During the Term, commencing after the end of the Base Year, City shall pay to Landlord each month, as Additional Charges, one twelfth (1/12) of City's Percentage Share of the amount, if any, by which Operating Costs for each Expense Year exceed the Operating Costs for the Base Year. City shall make such payments, in advance, in an amount estimated by Landlord in reasonable detail in a writing delivered to City. Landlord may revise such estimates of Operating Costs from time to time and City shall thereafter make payments on the basis of such revised estimates, provided that no such revisions shall be retroactive and Landlord may not make any such revisions more than twice in any given Expense Year and no such revision may be made any earlier than four (4) months subsequent to the prior estimate for such Expense Year. With reasonable promptness not to exceed one hundred twenty (120) days after the expiration of each Expense Year, Landlord shall furnish City with a statement (herein called "**Landlord's Expense Statement**"), prepared by an agent of Landlord, setting forth in reasonable detail the Operating Costs for such Expense Year and City's Percentage Share thereof. If City's Percentage Share of the actual Operating Costs for such Expense Year exceeds the estimated Operating



Costs paid by City for such Expense Year, City shall 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 any such Percentage Share of Operating Costs exceeds City's Operating Costs Share of the actual Operating Costs for such Expense Year, such excess shall be credited against the next installments of Operating Costs due from City to Landlord hereunder, or refunded to City, at City's option.

#### 4.6 Payment of Percentage Share of Real Estate Taxes

During the Term, commencing after the end of the Base Year, City shall pay to Landlord each month, as Additional Charges, one twelfth (1/12) of City's Percentage Share of the amount, if any, by which Real Estate Taxes for each Tax Year exceed Real Estate Taxes for the Base Year; provided, however, that the amount of Real Estate Taxes for the Base Year shall be reduced to take into account any decreases in real estate taxes obtained in connection with a reassessment of the Property that decreases Real Estate Taxes. City shall make such payments, in advance, in an amount estimated by Landlord in reasonable detail in a writing delivered to City. Landlord shall furnish City, as a component of Landlord's Expense Statement, the amount of Real Property Taxes for such Tax Year and City's Percentage Share thereof. If City's Percentage Share of the actual Real Estate Taxes for such Tax Year exceeds the estimated Real Estate Taxes paid by City for such Tax Year, City shall 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 Expense Statement. If the total amount of estimated Real Estate Taxes paid by City for such Tax Year exceeds City's Percentage Share of the actual Real Estate Taxes for such Tax Year, such excess shall be credited against the next installments of Real Estate Taxes due from City hereunder; provided, however, that Landlord shall refund any excess resulting from the last Tax Year of the Term to City at the time Landlord delivers the Landlord's Expense Statement for the last Lease Year.

Notwithstanding anything to the contrary in the foregoing paragraph, the payment of City's Percentage Share of Reassessment Increases (as defined further below) shall be paid as follows. If there is any increase in Real Estate Taxes based upon an increase in assessed value of the Building arising as a consequence of a sale or transfer of the Building (a "**Reassessment Increase**"), City's payment of City's Percentage Share of such Reassessment Increase shall be suspended during the period ("**Suspension Period**") that is twenty-four (24) months immediately following the Reassessment Increase or the remaining balance of the Lease Term, whichever is shorter. City shall pay Landlord the full amount of City's Percentage Share of a Reassessment Increase accumulated during a Suspension Period (the "**Accumulated Amount**") over a period (the "**Payment Period**") that is the shorter to occur of the six (6) year period immediately following the termination of such Suspension Period or the period between the termination of such Suspension Period and the expiration of this Lease. The total Accumulated Amount shall be amortized on a straight line basis over the Payment Period, bearing interest at eight percent (8%), compounded annually, with City making monthly payments to Landlord of such amortized amount throughout such Payment Period; provided, however, that City shall have the right, at its sole option, to pay the Accumulated Amount in full at any time during the Payment Period. City's right to suspend its payment of City's Percentage Share of any Reassessment Increase pursuant to this Section may be exercised by City throughout the Term each time there is a Reassessment Increase.

#### 4.7 Proration

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

#### 4.8 Audits

City shall have the right, upon not less than ten (10) business days' notice to Landlord, to audit the books and records of the Building related to Operating Costs and Real Estate Taxes. If such audit discloses any discrepancies which would result in a reduction of City's Percentage Share of Operating Costs for any Expense Year, Landlord shall immediately refund to City the amount of any overpayment by City. City shall pay the cost of such audit, provided that if such audit conclusively shows that City has overpaid City's Percentage Share of Operating Costs for any calendar year by more than five percent (5%) for any Expense Year, then Landlord shall pay the reasonable and actual costs of such audit and reimburse City for any inspection and copying costs paid by City to Landlord for the provision of books and records for such review.

#### 4.9 Records

Landlord shall make available, at Landlord's property management company offices in San Francisco, California, in a safe, complete and organized manner all of its records pertaining to Real Estate Taxes, Operating Costs and any other charges paid by City pursuant hereto, for a period of not less than three (3) years following expiration of the Term. Landlord shall maintain such records on a current basis and in sufficient detail to facilitate adequate audit and review thereof. All such books and records shall be available for inspection, copying and audit by City and its representatives, at City's expense.

#### 4.10 Late Charges

If any installment of Rent or any other sum due from City shall not be received by Landlord or Landlord's designee by the due date therefor, then City shall pay to Landlord a late charge equal to ten percent (10%) of the amount due. The late charge shall be deemed Additional Rent and the right to require it shall be in addition to all of Landlord's other rights and remedies hereunder, at law and/or in equity and shall not be construed as liquidated damages or as limiting Landlord's remedies in any manner.

### 5. USE

#### 5.1 Permitted Use

City may use the Premises for general office uses consistent with a first class office building in the Mid-Market and South of Market areas. In addition, City, permitted assignees and subtenants, shall also have the right to use the Premises for public programs if required by City's Charter, Administrative Code, or law; and for such other uses as may be specified in the Basic Lease Information consistent with a first class office building in the Mid-Market and South of Market areas, and for no other use without the prior written consent of Landlord, which shall not be unreasonably withheld or delayed.

#### 5.2 Observance of Rules and Regulations

City shall comply with Landlord's reasonable rules and regulations for the Building and all recorded covenants, conditions and restrictions and all ground leases now or hereafter affecting the Property; provided, however, that any recorded covenants, conditions and restrictions and all ground leases now or hereafter affecting the Property entered into after the Effective Date shall not materially interfere with City's rights under this Lease. City acknowledges and agrees to the current Building rules and regulations attached hereto as Exhibit D (the "**Rules and Regulations**"). Landlord may make reasonable additions or modifications thereto, which shall be binding upon City within a reasonable implementation period upon Landlord's delivery to City of a copy thereof, provided that such additions or

modifications shall not reduce Landlord's obligations hereunder nor materially and adversely interfere with City's business in the Premises, and such additions or modifications must be applicable to the other Building tenants, are not in conflict with the provisions of this Lease, do not materially increase the burdens or obligations upon City, do not impose a charge upon City for services which this Lease expressly states are to be provided to City at no charge, and do not materially adversely affect the conduct of any business in the Premises which City is permitted to conduct pursuant to Section 5.1 hereof. Landlord shall administer the Rules and Regulations in a fair and nondiscriminatory manner and use reasonable efforts to cause other Building tenants to comply with them. City shall be entitled upon request to any waiver or special dispensation granted by Landlord to any other tenant in the Building with respect to the Rules and Regulations, and Landlord shall notify City of any such waiver or special dispensation.

### **5.3 Interference with Access**

Landlord shall provide to City access to the Building and the Premises twenty-four (24) hours per day, seven (7) days per week, 52 weeks per year, together with uninterrupted access thereto to the maximum extent reasonably possible, including, without limitation, during any power outages affecting the Premises or any portion of the Building; provided, however, that Landlord may interrupt City's access to the Premises or the Building in the event of an immediate threat of the Premises, the Common Areas or any other portion of the Building being rendered unsafe for human occupancy. If City's use of any of the Premises or access thereto is prevented as a result of the Premises, the Common Areas or any other portion of the Building being rendered unsafe for human occupancy due to Landlord's failure to comply with its obligations under this Lease or for any other reason other than City's default hereunder, then Landlord shall promptly and diligently take all reasonable steps necessary to correct such condition. In the event such condition continues for three (3) or more consecutive business days, is within Landlord's reasonable control to cure, and prevents City's ability to carry on its business in the Premises, the Rent payable hereunder shall be abated based on the extent to which City is prevented from using the Premises for the conduct of its business. Nothing in this Section shall limit City's rights with respect to any disruption due to casualty pursuant to Section 12 (Damage and Destruction) hereof.

City agrees that Landlord shall not be liable for damages, by abatement of Rent or otherwise, for failure to provide or diminution of normal access to the Premises to the extent such failure or diminution results from the act or default of City or matters otherwise beyond Landlord's reasonable control to cure; and such failures or diminution that are beyond Landlord's reasonable control to cure shall never be deemed to constitute an eviction or disturbance of City's use and possession of the Premises or relieve City from paying Rent or performing any of its obligations under this Lease.

## **6. LEASEHOLD IMPROVEMENTS**

### **6.1 Construction of Leasehold Improvements Prior to Commencement Date**

Landlord shall perform the work and make the installations described in, and pursuant to the conditions of the Work Letter attached hereto as Exhibit H (the "**Work Letter**"). All work and installations to be performed pursuant to the Work Letter are referred to as "**the Leasehold Improvement Work**" and "**Leasehold Improvements.**"

### **6.2 Installation of Telecommunications and Other Equipment**

(a) Landlord and City acknowledge that the Leasehold Improvement Work shall be completed by Landlord exclusive of the installation of telecommunications, data and computer cabling facilities and equipment. City shall be responsible at its sole cost and expense, for installing such facilities and equipment, provided that Landlord shall furnish access to City

and its consultants and contractors to the main telephone service serving the floor(s) on which the Premises are located and all other parts of the Building for which access is needed for proper installation of all such facilities and equipment including, but not limited to, wiring. City shall have the right, subject to this Section 6.2, to enter the Premises and such other portions of the Building at reasonable times during the course of construction of the Leasehold Improvements in order to install such facilities and equipment. City and Landlord shall use their good faith efforts to coordinate any such activities to allow the Leasehold Improvements and the installation of such facilities and equipment to be completed in a timely and cost-effective manner.

After the Effective Date, any entry into the Premises prior to the Commencement Date shall only be for purposes of installing City's furniture, fixtures and cabling. In no event may City conduct its business or operations from the Premises until after the Commencement Date. Such limited purpose entry and use of the Premises by City shall be at City's sole risk and shall also be subject to the terms and conditions of Sections 5.1, 5.2, 6.2, 7.1, 7.3, 8.2, 8.3, 10.2, 10.3, 15.1, 15.2, 16.1, 16.2, 17.1, 17.3, 18, 21, 23 and Exhibit D of this Lease. City acknowledges and agrees that City's employees, agents, contractors, consultants, workmen, mechanics, suppliers and invitees shall fully cooperate, work in harmony and not, in any manner, interfere with Landlord or Landlord's contractor, agents or representatives in performing work in the Building and the Premises in performing the Initial Base Building Work and the Leasehold Improvement Work, or interfere with the general operation of the Building. If at any time any such person representing City shall not be cooperative or shall otherwise cause or threaten to cause any such disharmony or interference, including, without limitation, labor disharmony, and City fails to immediately institute and maintain corrective actions as directed by Landlord, then Landlord may revoke City's entry rights upon twenty-four (24) hours' prior written notice to City. In addition to the foregoing, Landlord shall have the right to impose such additional conditions on City's early entry as Landlord shall deem reasonably appropriate and necessary to limit interference with the performance of the Initial Base Building Work and the Leasehold Improvement Work or Landlord's use of the Building. If City or its agents, employees or contractors damage any portion of the Premises, Building or Property or any personal property or equipment at the Property through such early entry, City shall repair such damaged portion of the Property, personal property or equipment to the condition it was in immediately prior to such damage, all at City's sole cost.

(b) City shall have the sole right to use the existing small cooling tower (Baltimore Air cool unit, model number VT0-065/J) and two associated condenser pumps (each Paco units, model number 10-30707) located on the roof of the Building (collectively, the "**Existing Equipment**") and to keep the Existing Equipment at its current location at the Property throughout the Term. City shall have the non-exclusive right, at City's sole expense, to install additional communications and other equipment on the roof ("**Communication Equipment**") and secure fiber through the Building basement wall into the Muni underground transit or vaults adjacent to the Property, provided that Landlord reasonably determines that such additional equipment will not interfere with the Landlord's operations or telecommunications or other equipment presently installed on the Building roof or the existing rights of other tenants or third parties to use the roof or basement of the Building. The size, number and locations of such additional equipment and wiring shall be determined during space planning and detailing and shall be subject to Landlord's reasonable approval, with the understanding that Landlord is entitled to reserve a proportionate amount of rooftop space for future tenants and space for use by Landlord and third parties. City will be responsible, at its sole cost, for the installation, maintenance and removal of any such additional communications or other equipment installed by or for City. City will be responsible, at its sole cost, for the repair and restoration of all damage to the Building and/or Premises to the extent arising in connection therewith.

(c) Installation of any Communication Equipment contemplated in this Section 6.2 shall be conducted by licensed contractors approved by Landlord. If any roof penetration is required, unless Landlord elects to perform such penetrations at City's sole cost

and expense, City shall retain Landlord's designated roofing contractor to make any necessary penetrations and associated repairs to the roof in order to preserve Landlord's roof warranty. All plans and specifications for the Communication Equipment shall be subject to Landlord's prior review and approval and the prior review and approval of all other tenants or occupants of the Building maintaining or operating rooftop equipment and related equipment at the Building. Upon Landlord's request, City shall prepare and submit a detailed set of plans and specifications for the proposed Communication Equipment, methods of installation and proposed locations thereof to all tenants and occupants having a right to review City's proposed Communication Equipment. City, at City's sole cost and expense, shall be responsible for any modifications to the rooftop, risers, utility areas or other facilities or portions of the Building which may be necessary to accommodate the Communication Equipment. It is expressly understood that Landlord retains the right to use the roof of the Building for any purpose whatsoever (including granting rights to third parties to utilize any portion of the roof not utilized by City). For the purposes of determining City's obligations with respect to its use of the roof of the Building herein provided, all of the provisions of the Lease relating to compliance with requirements as to insurance, indemnity, and compliance with laws shall apply to the installation, use and maintenance of the Communication Equipment. Landlord shall not have any obligations with respect to the Communication Equipment. Landlord makes no representation that the Communication Equipment will function properly and City agrees that Landlord shall not be liable to City therefor. City shall (i) be solely responsible for any damage caused as a result of the Communication Equipment, except to the extent caused by the gross negligence or willful misconduct of Landlord or its agents or invitees, and (ii) promptly pay any tax, license or permit fees charged pursuant to any Laws in connection with the installation, maintenance or use of the Communication Equipment and comply with all laws pertaining to the use of the Communication Equipment. All Communication Equipment shall be properly screened from view for aesthetic reasons, and must not be visible from street level. Any Communication Equipment on the roof may not protrude above a height equal to the highest point of the Building structure. City, at City's sole cost and expense, shall install and maintain such fencing and other protective equipment and/or visual screening on or about the Communication Equipment as Landlord may reasonably determine.

### 6.3 Tenant Improvement Allowances and Costs

(a) Subject to the terms of the Work Letter attached hereto as Exhibit H, Landlord shall provide an allowance of \$25.00 per square foot of the Premises for the Leasehold Improvement Work ("**Leasehold Improvement Allowance**"). Such allowance shall be applied to the Leasehold Improvement Work costs, including related architectural fees, engineering fees, and construction supervision costs. The Leasehold Improvement Allowance shall not be applied to any Base Building Improvements costs or used to offset any payment of Rent.

(b) Landlord's construction supervision costs for the Leasehold Improvement Work shall be a percentage of the costs of labor and materials expended for the Leasehold Improvement Work, at a rate of 8% for the initial \$35.00 per square foot of such costs, a rate of 1% for the amount of such costs between \$35.00 per square foot and the maximum amount of such costs set forth in the ROM Budget (as defined in the Work Letter), and then at a rate of 4% of the amount of such costs, if any, above the maximum amount of such costs set forth in the ROM Budget.

### 6.4 Additional Tenant Improvement Costs and Amortization

If the cost of the Leasehold Improvement Work exceeds the Tenant Improvement Allowance, City shall have the right request the Landlord to pay for such excess cost in an amount specified by City (the "**Additional Allowance**"), provided, however, that the Additional Allowance shall not exceed \$35.00 per square foot of the Premises. The Additional Allowance, if any, shall be amortized on a straight line basis over the Initial Term at 8% interest,

compounded annually, and each month in the Initial Term, City shall deliver the applicable amount amortized for such month to Landlord at the same time that City delivers the installment of Base Rent payable for such month.

#### **6.5 LEED Certification**

Landlord acknowledges that City intends to either seek LEED Commercial Interiors Gold certification of the Leasehold Improvements, if applicable, or LEED Gold Core & Shell by Landlord, and/or provide similar sustainable improvements without USGBC certification. During design and construction of the Leasehold Improvements and the Initial Base Building Work, Landlord, at no cost or liability to Landlord (except to the extent such requirements are mandated by applicable building codes), shall reasonably cooperate with City to obtain such LEED certification or its equivalent. However, substantial completion of the Leasehold Improvements and the Initial Base Building Work shall not be conditioned upon LEED certification or completion of improvements outside the Premises. The costs for improvements to the Premises or the Building for such certification(s) shall be paid from the Tenant Improvement Allowance (to the extent funds are available) or the Additional Allowance.

### **7. ALTERATIONS**

#### **7.1 Alterations by City**

City shall not make or permit any alterations, installations, additions or improvements (collectively, "**Alterations**") to the Premises without first obtaining Landlord's written consent, which Landlord shall not unreasonably withhold or delay. However, the installation of furnishings, fixtures, equipment or decorative improvements, none of which affect the Building Systems or structural integrity of the Building or require permits or roof penetrations, and the repainting and recarpeting of the Premises (collectively, the "**Decorative Work**") shall not constitute Alterations nor require Landlord's consent, provided that City shall notify Landlord in advance of any such Decorative Work. Any Alterations permitted hereunder shall be made at City's cost in compliance with applicable Laws (as defined below) and Tenant shall pay Landlord a supervision fee of five percent (5%) of the cost of the Alterations. Landlord shall, without cost to itself, cooperate with City in securing building and other permits and authorizations needed in connection with any permitted Alterations. City shall not be required to remove any Alterations upon the expiration or sooner termination of this Lease unless Landlord notifies City in writing at the time Landlord approves such Alterations that they must be removed at the Expiration Date. City shall first notify Landlord at least fifteen (15) days prior to commencing any Alterations so that Landlord may post a Notice of Non-Responsibility on the Premises.

#### **7.2 Title to Improvements**

Except for City's Personal Property (as defined in the next Section) and the Leasehold Improvements, all appurtenances, fixtures, improvements, equipment, additions and other property permanently installed in the Premises as of the Commencement Date or during the Term shall be and remain Landlord's property. City may not remove such property unless Landlord consents thereto. Furthermore, Landlord may require that City remove any Alterations (including any cabling and wiring) upon the expiration or early termination of the Lease Term, and repair any damage to the Premises and Building caused by such removal; provided Landlord shall advise City at the time of granting consent if Landlord requires such Alterations to be removed at the expiration or earlier termination of the Lease.

### 7.3 City's Personal Property

All furniture, furnishings, equipment, trade fixtures and articles of movable personal property installed in the Premises by or for the account of City and that can be removed without structural damage to the Premises (collectively, "**City's Personal Property**") shall be and remain City's property. At any time during the Term or at the expiration thereof, City may remove any of City's Personal Property, provided City shall repair any damage to the Premises resulting therefrom. Upon the expiration or earlier termination of this Lease, City shall remove City's Personal Property from the Premises in accordance with Section 20 (Surrender of Premises), below. Landlord acknowledges that some of City's Personal Property may be financed by an equipment lease financing otherwise subjected to a security interest, or owned by an equipment company and leased to City. Landlord, upon City's reasonable request, shall execute and deliver any reasonable document required by any supplier, lessor, or lender in connection with the installation in the Premises of any items of City's Personal Property, pursuant to which Landlord waives any rights it may have or acquire with respect to City's Personal Property, so long as the supplier, equipment lessor or lender agrees that it (i) will remove the Property from the Premises within fifteen (15) days after the Expiration Date or any earlier termination of the Lease (but if it does not remove City's Personal Property within such time it shall have waived any rights it may have had to City's Personal Property), and (ii) will repair any damage caused by the removal of City's Personal Property. Landlord shall recognize the rights of any supplier, lessor or lender who has an interest in any items of City's Personal Property to enter the Premises and remove such property at any time during the Term or within fifteen (15) days after the Expiration Date or any earlier termination of the Lease.

### 7.4 Alteration by Landlord

Landlord shall use commercially reasonable efforts to minimize interference with or disruption to City's use and occupancy of, and access to, the Premises during any alterations, installations, additions or improvements to the Building performed by Landlord, including without limitation any leasehold improvement work performed by Landlord for other tenants in the Building. Landlord shall promptly remedy any such commercially unreasonable interference or disruption upon receiving City's notice thereof.

## 8. REPAIRS AND MAINTENANCE

### 8.1 Landlord's Repairs

Landlord shall repair and maintain, at its cost and in first-class condition, the exterior and structural portions of the Building, including, without limitation, the roof, foundation, bearing and exterior walls and subflooring, and the heating, ventilating, air conditioning, plumbing, electrical, fire protection, life safety, security and other mechanical and electrical and communications systems of the Building to the extent not exclusively serving the Premises (collectively, the "**Building Systems**") and the Common Areas, and, subject to Section 8.2, the Existing Equipment. Notwithstanding the foregoing, to the extent that such maintenance and repairs are caused in part or in whole by the act, neglect, fault of or omission of any duty by City, its agents, servants, employees or invitees, City shall pay to Landlord as additional rent, the reasonable cost of such maintenance and repairs.

In performing such repair and maintenance work, Landlord shall (i) perform such work, or cause such work to be performed, in a workmanlike manner that reasonably minimizes interference with City's use of the Premises, (ii) comply with all applicable laws, (iii) provide City with no less than twenty-four (24) hours prior notice (except in the event of an emergency, for which no notice shall be required) of the planned date and time of entry to the Premises for such work, and (iv) diligently pursue the work to completion. Except as set forth in the immediately following sentence, there shall be no abatement of Rent by reason of any injury to

or interference with City's business arising from the making of any repairs, alterations or improvements in or to any portion of the Property, Building or the Premises or in or to fixtures, appurtenances and equipment therein. If, in the performance of any work by Landlord pursuant to this Section 8.1, City is prevented from using any portion of the Premises for three (3) or more consecutive business days, then Base Rent shall be proportionately abated during such period that City is so prevented from using such portion of the Premises. Except to the extent otherwise expressly provided in this Lease, City hereby waives and releases its right to make repairs at Landlord's expense under Sections 1941 and 1942 of the California Civil Code; or under any similar law, statute, or ordinance now or hereafter in effect.

Without limiting the foregoing, Landlord shall maintain the Building in a condition that is comparable to other first-class office buildings in the vicinity of the Building, shall provide exterior graffiti removal with reasonable frequency.

## **8.2 City's Repairs**

Subject to any construction warranties or guaranties received in connection with Landlord's completion of the Leasehold Improvements, and Landlord's repair and maintenance obligations hereunder, City shall repair and maintain at its cost the interior portions of the Premises and all Building Systems exclusively serving the Premises (including the Existing Equipment; provided, however, upon receipt of City's written request, Landlord shall repair and maintain the Existing Equipment at City's sole cost and expense in accordance with Section 9.5 below) and shall keep the same in good working order and in a safe and sanitary condition, except for ordinary wear and tear and damage by casualty. City shall make any such required repairs and replacements that Landlord specifies in writing (i) at City's cost, (ii) by contractors or mechanics selected by City and reasonably approved by Landlord, (iii) so that same shall be at least substantially equal in quality, value and utility to the original work or installation prior to damage thereof, (iv) in a manner and using Building standard equipment and materials, and (v) in compliance with all applicable Laws, including, without limitation, any applicable contracting requirements under City's Charter and Administrative Code, provided however, that, at Landlord's option, or if City fails to make such repairs, Landlord may, but need not, make such repairs and replacements after providing City with at least five (5) business days' prior written notice of such Landlord election, and City shall pay Landlord the cost thereof, including a percentage of the cost thereof (to be uniformly established for the Building) sufficient to reimburse Landlord for all overhead, general conditions, fees and other costs or expenses arising from Landlord's involvement with such repairs and replacements forthwith upon being billed for same. At all times during the Term of this Lease, Landlord shall, upon reasonable notice by City, afford City and its Agents with access to those portions of the Building which are necessary to maintain or repair the Existing Equipment, Communications Equipment, and any other telecommunications and data and computer cabling facilities and equipment installed by City, subject to the Building rules and regulations.

## **8.3 Liens**

City shall keep the Premises free from liens arising out of any work performed, material furnished or obligations incurred by City during the Term. Landlord shall have the right to post on the Premises any notices permitted or required by law or that are needed for the protection of Landlord, the Premises, or the Building, from mechanics' and material suppliers' liens. City shall give Landlord at least fifteen (15) days' prior written notice of commencement of any repair or construction by City on the Premises. In case of any such lien attaching or notice of any lien, City covenants and agrees to cause it to be immediately released and removed of record or to provide a bond for the removal of such lien. Notwithstanding anything to the contrary set forth in this Lease, if any such lien is not released and removed, or bonded, on or before the date notice of such lien is delivered by Landlord to City, Landlord, at its sole option, after providing at least five (5) days' prior written notice to City, may immediately take all action



necessary to release and remove such lien, without any duty to investigate the validity thereof, and all sums, costs and expenses, including reasonable attorneys' fees and costs, incurred by Landlord in connection with such lien shall be deemed Additional Rent under this Lease and shall immediately be due and payable by City.

## 9. UTILITIES AND SERVICES

### 9.1 Landlord's Provision of Utilities

Landlord shall furnish the following utilities and services to the Premises: (a) heating, air conditioning and ventilation in amounts standard for first-class office buildings in the vicinity of the Building, during the period from 7:30 a.m. to 5:00 p.m., Monday through Friday, except holidays generally recognized in San Francisco; (b) electric current in amounts required for normal lighting and for the operation of personal computers and other normal office machines and equipment, on a twenty-four (24) hours-a-day, three hundred sixty-five (365) days-a-year basis ("**Daily Basis**"); (c) elevator service on a Daily Basis; and (d) water for lavatory, kitchen and drinking purposes on a Daily Basis. During the Term, Landlord shall provide freight elevator service upon City's reasonable request. Without limiting Landlord's obligations hereunder, Landlord shall furnish all utilities and services required under this Lease in a manner consistent with such utilities and services normally provided in other first class buildings similar to the Building in the San Francisco Mid-Market District.

### 9.2 Services

City shall provide at its cost any janitorial service required for the Premises. Landlord shall provide at its cost security for the Building, providing security guards at the Building, on a 24 hours a day, 7 days a week, 52 weeks a year basis comparable with other first class office buildings in the vicinity of the Building and consistent with the standards set forth on Exhibit G.

### 9.3 Conservation

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

### 9.4 Disruption in Essential Utilities or Services

In the event of any failure, stoppage or interruption of any utilities or services to be furnished by Landlord hereunder, City shall immediately notify Landlord of such failure, stoppage or interruption, and Landlord shall diligently attempt to restore service as promptly as possible and shall keep City apprised of its efforts. In the event Landlord is unable to supply any of the Building's sanitary, electrical, heating, air conditioning, water, elevator, fire protection and security, audio, video or electronic communications, hazard detection and alarm, or other essential services serving the Premises (collectively, "**Essential Services**") and such inability of Landlord prevents City from carrying on its business in the Premises for a period of three (3) or more consecutive business days if such failure is in the reasonable control of Landlord or a period of twenty (20) or more consecutive calendar days if such failure is not within the reasonable control of Landlord, then Base Rent shall be proportionately abated during such period of interruption based upon the portion of the Premises City is unable to use as a result thereof. Landlord shall use its commercially reasonable efforts to restore disrupted Essential Services as soon as possible. City shall not be entitled to any abatement of Rent or right to terminate if Landlord's inability to supply Essential Services to City is due solely to the acts, omissions or negligence of City and its Agents.

## 9.5 Additional Services by Landlord

City reserves the right to request that Landlord, at City's cost, perform lease related services or incur additional expenses not covered under the Lease that the City may require from time to time as requested by the Real Estate Division. If Landlord agrees to perform such services, which agreement shall not be unreasonably withheld or delayed, City shall reimburse Landlord for such expenses, at rates agreed-upon in advance, together with an administration fee of five percent (5%) of such costs. Landlord shall deliver an invoice, with reasonable backup documentation, of the costs incurred by Landlord for additional services or expenses and administration fee, and City shall deliver payment of such amount when making the next monthly payment of Base Rent.

## 9.6 Overstandard City Use

If City uses water or heat or air conditioning in excess of that supplied by Landlord pursuant to this Lease, or if City's consumption of electricity shall exceed two (2) watts connected load per rentable square foot of the Premises, calculated on an monthly basis for the hours described above, City shall pay to Landlord, within thirty (30) days after billing (with reasonable documentation) and as Additional Rent, the cost of such excess consumption, the cost of the installation, operation, and maintenance of equipment which is installed in order to supply such excess consumption, and the cost of the increased wear and tear on existing equipment caused by such excess consumption.

# 10. COMPLIANCE WITH LAWS; PREMISES CONDITION

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

Except as expressly set forth in this Lease and in the Work Letter attached hereto, Landlord shall not be obligated to provide or pay for any improvement, remodeling or refurbishment work or services related to the improvement, remodeling or refurbishment of the Premises, and City shall accept the Premises in its "AS IS" condition on the Commencement Date. Landlord shall at all times during the Term maintain, subject to the other terms of this Lease, the Property, Building, Common Areas and the Building Systems serving the Premises in compliance with applicable present or future federal, state, local and administrative laws, rules, regulations, orders and requirements (collectively, "Laws"), including, without limitation, Disabilities Laws, Seismic Safety Laws, and Life Safety Laws. Notwithstanding the foregoing, Landlord represents and warrants that, to Landlord's knowledge, Landlord has delivered to City an environmental site assessment and a property condition report, which are all of the material reports in its possession regarding the physical condition of the Building. For purposes of the foregoing sentence, "**Landlord's knowledge**" shall mean the current actual (as opposed to constructive) knowledge of Charles Russo ("**Landlord's Representative**"). No duty of inquiry or investigation on the part of Landlord or Landlord's Representative will be required or implied by the making of any representation or warranty which is so limited to matters within Landlord's actual knowledge, and in no event shall Landlord's Representative have any personal liability therefor.

## 10.2 City's Compliance with Laws; Indemnity

City shall keep and maintain the Premises during the Term in compliance with applicable Laws, except that City shall not be required to make any structural alterations, additions or other modifications in order to comply therewith unless such modifications are necessary solely because of any Alterations to the Premises made by City pursuant to Section 7 hereof or arising due to City's use of the Premises for any non-office purposes. City shall be responsible for complying with any requirement of the Disabilities Laws relating to the placement of City's furniture or other City Personal Property and the operation of any City

programs in the Premises.

### 10.3 City's Compliance with Insurance Requirements

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

## 11. SUBORDINATION

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

(b) In the event any mortgage or deed of trust to which this Lease is subordinate is foreclosed or a deed in lieu of foreclosure is given to the mortgagee or beneficiary, or in the event any ground lease or underlying lease to which this Lease is subordinate is terminated, this Lease shall not be barred, terminated, cut off, or foreclosed nor shall the rights and possession of City hereunder be disturbed if City shall not then be in default in the payment of rental or other sums due hereunder or otherwise be in default under the terms of this Lease. City shall attempt to and become the tenant of the successor-in-interest to Landlord, provided that City has received proper written notice of such succession and the name and address of the successor landlord. City's covenant under subsection (a) above to subordinate this Lease to any Encumbrance or other hypothecation hereafter executed is conditioned upon each such senior instrument containing the commitments specified in this subsection (b). The provisions of this Section shall be self-operative and no further instrument shall be required other than as provided in this Section. City agrees, however, to execute upon request by Landlord and in a form reasonably acceptable to City and the holder of an Encumbrance, any additional documents evidencing the priority or subordination of this Lease with respect to any such Encumbrance as provided herein (an "Additional SNDA"). If Landlord delivers a proposed Additional SNDA to City for review, on or before the fifteenth (15<sup>th</sup>) day immediately following such delivery, City shall either execute and return such Additional SNDA or deliver written notice to Landlord if it has any proposed changes thereto.

(c) Landlord shall use commercially reasonable efforts to deliver to City, within ninety (90) days after the Effective Date, a subordination, non-disturbance and attornment agreement in the form attached hereto as Exhibit J (which agreement City shall execute and notarize concurrent with the Lease) duly signed and acknowledged by the mortgagee under the existing deed of trust on the Property, but Landlord shall not be in default under this Lease nor shall City have any rights or remedies against Landlord if Landlord is unable to obtain same within such 90-day period.

## 12. DAMAGE AND DESTRUCTION

(a) If the Premises, the Building or any Building Systems are damaged by fire or other casualty, Landlord shall repair the same without delay (and if Landlord is then carrying insurance on the Leasehold Improvements or if City at its sole option makes funds available to Landlord, Landlord shall also repair the Leasehold Improvements), provided that such repairs can be made under applicable laws within sixty (60) days after Landlord obtains all necessary permits for such repairs but not later than one hundred eighty (180) days after the date of such damage (the "**Repair Period**"). In such event, this Lease shall remain in full force and effect, except that City shall be entitled to an equitable abatement of Rent while such repairs are being made. Such abatement in Rent shall be based upon the extent to which such damage and the making of such repairs prevents City from operating its business from the Premises. Landlord's repairs shall not include, and the Rent shall not be abated as a result of, any damage by fire or other cause to City's Personal Property or any damage caused by the negligence or willful misconduct of City or its Agents.

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

(c) Notwithstanding the foregoing, in the event the Premises or Building are damaged or destroyed by reason of any casualty, and such damage or destruction is not fully covered by insurance proceeds payable under the insurance policies Landlord carries for the Property (excluding any deductible, for which Landlord shall be responsible), or the holder of any first priority mortgage on the Property shall require that all such insurance proceeds or any substantial portion thereof be used to retire the mortgage debt, Landlord may terminate this Lease by written notice to City within sixty (60) days of the date of such casualty. If Landlord does not elect to terminate this Lease as provided above, this Lease shall remain in full force and effect, and Landlord shall repair and restore the Premises as provided above.

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

(e) The parties intend that the provisions of this Section govern fully their rights and obligations in the event of damage or destruction, and Landlord and City each hereby waives and releases any right to terminate this Lease in whole or in part under Section 1932,

subdivision 2, Section 1933, subdivision 4, and Sections 1941 and 1942 of the Civil Code of California or under any similar law, statute or ordinance now or hereafter in effect, to the extent such rights are inconsistent with the provisions hereof.

### **13. EMINENT DOMAIN**

#### **13.1 Definitions**

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

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

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

#### **13.2 General**

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

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

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

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

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

(b) In the case of a partial taking of a substantial portion of the Building, and if subsection (a) above does not apply, City and Landlord shall each have the right to terminate this Lease by written notice to the other within thirty (30) days after the Date of Taking, provided that, as a condition to City's right to terminate, the portion of the Building taken shall, in City's reasonable judgment, render the Premises unsuitable for continued use by City for its intended purposes or otherwise materially adversely affect City's normal operations in the Premises.

(c) Either party electing to terminate under the provisions of this Section 13.4 shall do so by giving written notice to the other party before or within thirty (30) days after the

Date of Taking, and thereafter this Lease shall terminate upon the later of the thirtieth (30<sup>th</sup>) day after such written notice is given or the Date of Taking.

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

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

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

If there is a partial Taking of the Premises under circumstances where this Lease is not terminated in its entirety under Section 13.4 above, then this Lease shall terminate as to the portion of the Premises so taken, but shall remain in full force and effect as to the portion not taken, and the rights and obligations of the parties shall be as follows: (a) Rent shall be reduced by an amount that is in the same ratio to the Rent as the area of the Premises taken bears to the area of the Premises prior to the Date of Taking, and (b) Landlord shall be entitled to the entire Award in connection therewith, provided that City shall receive any Award made specifically for City's relocation expenses or the interruption of or damage to City's business or damage to City's Personal Property.

### **13.7 Temporary Taking**

Notwithstanding anything to contrary in this Section, if a Taking occurs with respect to the Premises for a limited period of time not in excess of sixty (60) consecutive days, this Lease shall remain unaffected thereby, and City shall continue to pay Rent and to perform all of the terms, conditions and covenants of this Lease. In the event of such temporary Taking, City shall be entitled to receive that portion of any Award representing compensation for the use or occupancy of the Premises during the Term up to the total Rent owing by City for the period of the Taking.

## **14. ASSIGNMENT AND SUBLETTING**

City shall have the right to sublease all or part of the Premises, or assign all or any portion of City's interest in the Lease, to any third party (each, a "Transfer") during the Term with Landlord's prior written consent, which shall not be unreasonably withheld or delayed. If any Transfer results in City receiving sublease or assignment payments that exceed the total Rent payable for such period (or the amount thereof proportionate to the portion of the Premises subject to such sublease or assignment), City shall deliver sixty percent (60%) of such excess amount, less any brokers' commissions, attorneys' fees, or leasehold improvement costs incurred by City in connection with a Transfer (provided leasehold improvements have been approved in advance by Landlord) with respect to such Transfer, to Landlord; provided, however, that City shall not be required to deliver any portion of any excess sublease or assignment payments it receives for a Transfer of all or any portion of the Commercial Space (as defined in Section 22.2(b)). Notwithstanding the foregoing, Transfers shall not include the use of all or any part of the Premises by (i) any City departments, commissions or agencies, or (ii) any vendors or contractors of City, or any non-profit organizations providing services to the public or City, without separately demising such space from City and without compensation being paid by such occupants to City for use of such space (including, but not limited to, use of a portion of the Premises at no cost by American Legion Department of California (collectively, "Approved Parties"). Except as otherwise provided in this Section, City shall not directly or indirectly sell,

assign, encumber, pledge or otherwise transfer or hypothecate all or any part of its interest in or rights with respect to the Premises.

Notwithstanding anything to the contrary contained in this Section 14, Landlord shall have the option, by giving written notice to City within thirty (30) days after receipt of any request for a Transfer of either (a) fifty percent (50%) or more of the Premises or (b) for a term of fifty percent (50%) or more of the then remaining Term, to recapture the Premises. Such recapture notice shall cancel and terminate this Lease with respect to the Premises as of the date stated in the Landlord's notice exercising its recapture rights and Landlord and City will enter into an amendment confirming such terms. If Landlord consents to a Transfer, (i) the terms and conditions of this Lease shall in no way be deemed to have been waived or modified, (ii) such consent shall not be deemed consent to any further Transfer by either City or a transferee, (iii) City shall deliver to Landlord, promptly after execution, an original executed copy of all documentation pertaining to the Transfer in form reasonably acceptable to Landlord, and (iv) no Transfer relating to this Lease or agreement entered into with respect thereto, whether with or without Landlord's consent, shall relieve City from liability under this Lease. Landlord or its authorized representatives shall have the right at all reasonable times to audit the books, records and papers of City relating to any Transfer, and shall have the right to make copies thereof.

## **15. DEFAULT; REMEDIES**

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

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

- (a) City's failure to make any timely payment of Rent, City shall have five (5) days to cure any such nonpayment after written notice thereof from Landlord;
- (b) City's abandons the Premises (within the meaning of California Civil Code Section 1951.3); or
- (c) City's failure to perform any other covenant or obligation of City hereunder (not involving the payment of money or a default under Sections 19 or 23.13 of the Lease) and to cure such non-performance within thirty (30) days of the date of receipt of written notice thereof from Landlord, provided that if more than thirty (30) days are reasonably required for such cure, no event of default shall occur if City commences such cure within such period and diligently prosecutes such cure to completion.

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

Upon the occurrence of any event of default by City that is not cured within the applicable grace period as provided above, Landlord shall have all rights and remedies available pursuant to law or granted hereunder, including, without limitation, the following:

- (a) The rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate City's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that City proves could be reasonably avoided, as computed pursuant to subsection (b) of such Section 1951.2.
- (b) The rights and remedies provided by California Civil Code Section 1951.4 (continuation of lease after breach and abandonment), which allows Landlord to continue this Lease in effect and to enforce all of its rights and remedies under this Lease, including the right

to recover Rent as it becomes due, for so long as Landlord does not terminate City's right to possession, if City has the right to sublet or assign, subject only to reasonable limitations.

### 15.3 Landlord's Default

If Landlord fails to perform any of its obligations under this Lease, then (without limiting any of City's other cure rights under this Lease) City may, at its sole option, cure such default at Landlord's expense if such default continues after thirty (30) days from the date City gives written notice to Landlord of City's intention to perform such cure. However, in the case of a default which cannot with due diligence be cured within such thirty (30)-day period, such thirty (30)-day period shall be extended if Landlord, promptly upon receipt of City's written notice, advises City of Landlord's intention to take all steps required to cure such default, and Landlord promptly commences such cure and diligently prosecutes the same to completion.

If City performs its right to cure any Landlord default pursuant to this Section, then City will perform such cure (i) in compliance with all Applicable Laws and requirements to which Landlord would be subject under this Lease (if Landlord were performing such cure), (ii) in a good workmanlike manner using Building standard materials, if applicable, (iii) without unreasonably interfering with the rights of other tenants of the Building, and (iv) in compliance with the terms and provisions of Section 7 hereof, as applicable. City will promptly assign to Landlord any warranties or guaranties received by City in respect of any cure. If City so performs its cure rights hereunder, the full amount of the fair and reasonable costs and expenses incurred by City shall be owing by Landlord to City, and Landlord shall pay to City the full undisputed amount thereof within sixty (60) days of Landlord's receipt of City's written demand therefor together with reasonable evidence verifying the amount of such costs and expenses.

## 16. INDEMNITIES

### 16.1 City's Indemnity

City shall indemnify, defend and hold harmless ("**Indemnify**") Landlord and its Agents from and against any and all claims, costs and expenses, including, without limitation, reasonable attorneys' fees (collectively, "**Claims**"), incurred as a result of: (a) City's use of the Premises, (b) any default by City in the performance of any of its material obligations under this Lease, or (c) any negligent acts or omissions of City or its Agents in, on or about the Premises or the Property; provided, however, City shall not be obligated to Indemnify Landlord or its Agents to the extent any Claim arises out of the gross negligence or willful misconduct of Landlord or its Agents. In any action or proceeding brought against Landlord or its Agents by reason of any Claim Indemnified by City hereunder, City may, at its sole option, elect to defend such Claim by attorneys in City's Office of the City Attorney, by other attorneys selected by City, or both. City shall have the right to control the defense and to determine the settlement or compromise of any action or proceeding, provided that Landlord shall have the right, but not the obligation, to participate in the defense of any such Claim at its sole cost. In addition to the foregoing, City hereby assumes all risk of damage to property and injury to persons, in, on, or about the Premises from any cause whatsoever (other than as a result of any breach of Landlord's obligations under this Lease or the negligent acts or omissions of Landlord or its Agents) and agrees that Landlord and its Agents shall not be liable for, and are hereby released from any responsibility for, any damage to property or injury to persons or resulting from the loss of use thereof, which damage or injury is sustained by City or by other persons claiming through City. City's obligations under this Section shall survive the termination of the Lease.

### 16.2 Landlord's Indemnity

Landlord shall Indemnify City and its Agents against any and all Claims incurred as a result of the gross negligence or willful misconduct of Landlord or its Agents; provided,



however, Landlord shall not be obligated to Indemnify City or its Agents to the extent any Claim arises out of the negligence or willful misconduct of City or its Agents or any loss or damage to City's property to the extent City has waived such loss pursuant to Section 17.3 below. In any action or proceeding brought against City or its Agents by reason of any Claim Indemnified by Landlord hereunder, Landlord may, at its sole option, elect to defend such Claim by attorneys selected by Landlord. Landlord shall have the right to control the defense and to determine the settlement or compromise of any action or proceeding, provided that City shall have the right, but not the obligation, to participate in the defense of any such Claim at its sole cost. Landlord's obligations under this Section shall survive the termination of this Lease.

## 17. INSURANCE

### 17.1 City's Insurance

(a) Landlord acknowledges that City maintains a program of self-insurance and agrees that City shall not be required to carry any insurance with respect to this Lease. City assumes the risk of damage to any of City's Personal Property, except for damage caused by Landlord or its Agents.

(b) If City assigns all or any portion of its interest in this Lease, or sublets all or any portion of the Premises, to any party other than any Approved Parties, such assignee or sublessee shall carry the following policies of insurance at its sole cost during the remainder of the Term:

(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).

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

(iii) 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 such assignee or sublessee uses automobiles in connection with its use of the Premises.

(iv) All risk property insurance covering the full replacement cost of City's property and improvements installed or placed in the Premises by City.

(v) Loss-of-income, business interruption and extra-expense insurance, in such amounts as will reimburse City for direct or indirect loss of earnings for a period of twelve (12) months and attributable to all perils commonly insured against by prudent tenants or attributable to prevention of access to the Premises or to the Building as a result of such perils.

(c) Should any of the insurance required to be carried by an assignee or sublessee be provided under a claims-made form, such assignee or sublessee shall maintain such coverage continuously throughout the Term and, without lapse, for a period of three (3) years beyond the expiration or termination of this Lease, to the effect that, should occurrences during the Term give rise to claims made after expiration or termination of this Lease, such claims shall be covered by such claims-made policies.

(d) Should any of the required insurance to be carried by an assignee or sublessee be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.

(e) All liability insurance policies to be carried by an assignee or sublessee shall be endorsed to provide the following:

(i) Name as additional insured the Landlord, its officers and employees and the beneficiary of the first-priority deed of trust secured by the Property.

(ii) That such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Lease, and that insurance applies separately to each insured against whom claim is made or suit is brought.

(f) Each insurance policy required to be carried by an assignee or sublessee pursuant to this Section shall be issued by an insurance company licensed in the State of California and with a general policyholders' rating of "A-" or better and a financial size ranking of "Class VIII" or higher in the most recent edition of Best's Insurance Guide.

(g) All insurance policies required to be carried by an assignee or sublessee pursuant to this Section shall be endorsed to provide thirty (30) days' prior written notice of cancellation for any reason, intended non-renewal, or reduction in coverage to both such assignee or sublessee and Landlord.

(h) Any assignee or sublessee required to carry insurance pursuant to this Section shall deliver to Landlord certificates of insurance and additional insured policy endorsements from insurers in a form satisfactory to Landlord, evidencing the coverage required hereunder.

## 17.2 Landlord's Insurance

At all times during the Term, Landlord shall keep the Building (excluding the land upon which it is located) insured against damage and destruction by fire, vandalism, malicious mischief, sprinkler damage and other perils customarily covered under a cause of loss-special form property insurance policy in an amount equal to one hundred percent (100%) of the full insurance replacement value (replacement cost new, including, debris removal and demolition) thereof. Landlord shall, upon request by City, provide to City a certificate of insurance issued by the insurance carrier, evidencing the insurance required above. The certificate shall expressly provide that the policy is not cancelable or subject to, reduction of coverage or otherwise subject to modification except after thirty (30) days prior written notice to City.

In addition, Landlord, subject to reimbursement by City as a component of Operating Costs, shall procure and keep in effect at all times during the Term 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 (b) at all times that Landlord has any employees, Worker's Compensation Insurance with Employer's Liability Limits not less than One Million Dollars (\$1,000,000) each accident). All insurance policies required to be maintained by Landlord hereunder shall be endorsed to provide for thirty (30) days' prior written notice of cancellation for any reason, intended non-renewal, or reduction in coverage to City.

### 17.3 Waiver of Subrogation

Notwithstanding anything to the contrary contained herein, Landlord hereby waives any right of recovery against City for any loss or damage sustained by Landlord with respect to the Building or the Premises or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of City, to the extent such loss or damage is covered by insurance which Landlord is required to purchase under this Lease or is otherwise actually recovered from valid and collectible insurance covering Landlord. Landlord agrees to obtain a waiver of subrogation endorsement from each insurance carrier issuing policies relative to the Building or the Premises; provided, Landlord's failure to do so shall not affect the above waiver. If City self-insures any of the risks to which coverage would otherwise be required under Section 17.1(b)(i)-(iv) or Section 17.1(c)-(h) above, City's self-insurance protection shall be deemed to include (and City's self-insurance shall be deemed to include) the waivers of subrogation and the additional insured status mentioned above. Furthermore, the self-insurance protection shall be equivalent to the coverage required under Section 17.1(b)(i)-(iv) or Section 17.1(c)-(h) above, and City shall not be relieved from the indemnification obligations of this Lease.

### 18. ACCESS BY LANDLORD

Landlord reserves for itself and any designated Agent the right to enter the Premises at all reasonable times (except in cases of emergency in which event Landlord shall give any reasonable notice), after giving City at least twenty-four (24) hours' advance written or oral notice (except in the event of an emergency, for which no notice shall be required) for the purpose of (a) inspecting the Premises, (b) supplying any service to be provided by Landlord hereunder, (c) showing the Premises to any prospective purchasers or mortgagees at any time during the Term and, during the last twelve (12) months of the Term of this Lease, showing the Premises to prospective tenants, (d) posting notices of non-responsibility, and (e) altering, improving or repairing the Premises and any portion of the Building, and Landlord may for that purpose erect, use and maintain necessary structures in and through the Premises where reasonably required by the character of the work to be performed, provided that the entrance to the Premises shall not be blocked thereby, and further provided that City's use shall not be interfered with. Nothing in the foregoing shall limit Landlord's obligation to give longer prior written notice for any entry to the Premises required in Sections 2.3 and 3.5 above.

### 19. ESTOPPEL CERTIFICATES

Either party, from time to time during the Term upon not less than ten (10) business days' prior written notice from the other party, may reasonably request the other party to execute, acknowledge and deliver to such persons or entities designated by such other party a certificate stating: (a) the Commencement Date and Expiration Date of this Lease, (b) that this Lease is unmodified and in full force and effect (or, if there have been modifications, this the Lease is in full force and effect as modified and stating the modifications), (c) that there are no defaults under this Lease (or if so, specifying the same), and (d) the date to which Rent has been paid. If Landlord delivers an estoppel certificate containing additional factual information related to this Lease or the Premises reasonably requested within fifteen (15) days of receiving such proposed certificate, City shall notify Landlord if City has any proposed changes thereto.

### 20. SURRENDER OF PREMISES

Upon the expiration or sooner termination of this Lease, City shall surrender the Premises to Landlord in good order and condition, ordinary wear and tear and damage by fire or other casualty excepted and City shall have removed from the Premises all of City's Personal Property, City's telecommunications, data and computer facilities and any Improvements (including the Existing Equipment) and Alterations unless Landlord has previously specified in

writing that such items may remain at the Premises. City shall repair or pay the cost of repairing any damage to the Premises or the Building resulting from such removal. City's obligations under this Section shall survive the expiration or earlier termination of this Lease. Notwithstanding the foregoing, (i) Landlord shall advise City at the time of approval of the construction drawings of Leasehold Improvements or at the time of approval of any requested Alterations that City shall be required to remove upon the expiration or earlier termination of the Lease and (ii) Landlord shall advise City in writing at least thirty (30) days prior to expiration of the Term whether City shall be required to remove the Existing Equipment on surrender of the Premises.

## 21. HAZARDOUS MATERIALS

### 21.1 Definitions

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

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

(b) "**Hazardous Material**" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "**hazardous substance**" or "**pollutant**" or "**contaminant**" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("**CERCLA**", also commonly known as the "**Superfund**" law), as amended (42 U.S.C. Section 9601 et seq.), or pursuant to Section 25316 of the California Health & Safety Code; any "**hazardous waste**" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of the Building or are naturally occurring substances on or about the Property; and petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids.

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

### 21.2 Landlord's Representations and Covenants – Intentionally deleted

### 21.3 Exculpation of City

City shall not be liable to Landlord for nor otherwise obligated to Landlord under any provision of the Lease with respect to the following: (i) any claim, remediation, obligation, investigation, liability, cause of action, attorneys' and experts' fee or cost, consultants' cost, loss, penalty, judgment or damage (collectively, "**Hazardous Materials Costs**") resulting from any Hazardous Materials introduced or released in, on or about the Premises prior to the Effective Date; or (ii) any Hazardous Materials Costs resulting from any Hazardous Materials introduced or released in, on or about the Premises after the Effective Date to the extent not released, directly or indirectly, by City or City's Agents from and after the Effective Date; or (iii) the removal, investigation, monitoring or remediation of any Hazardous Material introduced or released in, on or about the Premises released by any source, including third parties, other than City or City's Agents from and after the Effective Date; provided, however, City shall be fully liable for and otherwise obligated to Landlord under the provisions of this Lease for all Hazardous Materials Costs to the extent (a) City or any of City's Agents introduces or releases

such Hazardous Materials or exacerbates the conditions caused by such previously-released Hazardous Materials (unless Landlord had prior knowledge of such previously-released Hazardous Materials and failed to disclose the presence thereof to City), or (b) City and/or City's Agents allows or permits persons over which City or any of City's Agents has control, and/or for which City or any of City's Agents are legally responsible for, to cause such Hazardous Materials to be introduced or released in, on, under, through or about any portion of the Premises from and after the Effective Date, or (c) City and/or any of City's Agents does not take all reasonably appropriate actions to prevent such persons over which City or any of City's Agents has control and/or for which City or any of City's Agents are legally responsible from introducing or releasing the Hazardous Materials in, on, under, through or about any portion of the Premises from and after the Effective Date.

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

Neither City nor its Agents shall cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or the Property, or transported to or from the Premises or the Property, provided that City may use such substances in such limited amounts as are customarily used in offices so long as such use is in compliance with all applicable Environmental Laws.

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

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

### **22. SPECIAL PROVISIONS**

#### **22.1 One Time Expansion Right**

Floor 6 of the Building (the "**Additional Space**") is currently vacant. During the period commencing on the Effective Date and ending on February 1, 2013, City shall have a one-time option to lease all of the Additional Space (but not only a portion thereof) (the "**One Time Expansion Option**") by delivering written notice of its exercise thereof (the "**Expansion Notice**") to Landlord on or before February 1, 2013. If City timely delivers the Expansion Notice to Landlord, Landlord shall deliver possession of the Additional Space in the condition described below on August 1, 2013, or any earlier date mutually agreed to by the parties in writing (the "**Expansion Date**"). As of the Expansion Date, this Lease shall be adjusted as follows:

(a) The definition of Premises in Section 1 shall be amended to include the Additional Space, and the number of reserved parking stalls that City has the right to lease in the Building garage pursuant to Section 2.4 shall increase from fourteen (14) to fifteen (15) parking stalls, and the definition of City's Percentage Share in Section 1 shall be amended to reflect the increase thereof as a result of including the Additional Space as part of the Premises.

(b) For the first twelve (12) month period immediately following the Expansion Date, Base Rent for the Additional Space shall be an amount equal to the rentable square footage of the Additional Space multiplied by \$31.67. On the first anniversary of the Expansion Date, the Base Rent for the Additional Space shall be increased by an amount equal to the square footage of the Additional Space multiplied by the rental rate then being paid for the

balance of the Premises and thereafter, the rental rate shall be adjusted at the same time and in the same amounts as base rent for the Premises.

(c) Prior to the Expansion Date, Landlord shall perform the leasehold improvements in the Additional Space requested by City in writing and approved by Landlord (the "**Additional Space Improvements**"). Landlord shall provide City with an allowance in the amount equal to the product of \$25.00 per square foot of the Additional Space and a fraction, the numerator of which is the number of months remaining in the initial Lease Term as of the Expansion Date and the denominator of which is 120 (the "**Additional Space Allowance**") to use against the costs of the Additional Space Improvements. Construction of the Additional Space Improvements, including use of the Additional Space Allowance (and Landlord's construction supervision costs in connection therewith) shall all be as provided in the Work Letter attached hereto.

(d) If the cost of the Additional Space Improvements exceeds the Additional Space Allowance, City shall have the right request the Landlord to pay for such excess cost in an amount specified by City (the "**Excess Additional Space Allowance**"), provided, however, that the Excess Additional Space Allowance shall not exceed an amount equal to the product of \$35.00 per square foot of the Premises and a fraction, the numerator of which is the number of months remaining in the initial Lease Term as of the Expansion Date and the denominator of which is 120. The Excess Additional Space Allowance, if any, shall be amortized on a straight line basis over period between the Expansion Date and the expiration of the Initial Term at 8% interest, compounded annually, and each month in the Initial Term, City shall deliver the applicable amount amortized for such month to Landlord at the same time that City delivers the installment of Base Rent payable for such month.

(e) Notwithstanding anything in the foregoing to the contrary, the One Time Expansion Option shall terminate automatically and be of no further force or effect and City shall not be deemed to be properly exercised such right if City has failed to timely or properly exercise the One Time Expansion Option in strict accordance with the provisions of this Section 22.1 on or before February 1, 2013.

## 22.2 Right of First Offer to Lease

(a) City shall have the option to lease Floor 10 or Floor 11 of the Building (the "**Available Space**") as such floor becomes vacant and available for lease (the "**Right of First Offer to Lease**"); provided, however, that if City does not exercise the One Time Expansion Option on or before February 1, 2013, the "Available Space" shall mean Floors 6, 10 and 11 of the Building. Prior to offering any floor of the Available Space for lease to third parties, Landlord shall first give City written notice that such floor of the Available Space is or will become available (the "**Vacancy Notice**"). City shall have the right, not later than fifteen (15) days after receipt of a Vacancy Notice, to deliver written notice to Landlord electing to lease one or more entire floors (but only in full floor increments) of the Available Space specified in such Vacancy Notice. City's notice may be conditioned upon subsequent approval by the Board of Supervisors and the Mayor, such approval to be received no later than forty-five (45) days after receipt of the Vacancy Notice.

(b) City's lease of any floor of the Available Space pursuant to its Right of First Offer to Lease (a "**Subsequent Lease**") shall be on the same terms and conditions as this Lease, with the term of such Subsequent Lease coterminous with the Term and with the definition of City's Percentage Share in Section 1 amended to reflect the increase thereof as a result of including the Available Space as part of the Premises, except that (i) Tenant shall not be offered any tenant improvement allowance for the Available Space as provided in this Lease, (ii) the annual base rent for the premises under such Subsequent Lease shall be the then Fair Market Value as determined by the same process used to determine the FMV Rent in Section 4.2(c) and

(iii) if City elects to lease all of the Available Space, then the Premises shall also be deemed to include the remaining available space located on the ground floor of the Building and consisting of approximately 127 square feet of space (the "**Commercial Space**") and City shall be deemed a full building user and the square footage of the Premises shall be adjusted to reflect such full building user determination in accordance with BOMA.

(c) The City's Right of First Offer to Lease with respect to any floor of the Available Space described in a Vacancy Notice shall expire upon the first occurrence of the following: (a) City fails to exercise its Right of First Offer to Lease within fifteen (15) days after receipt of the applicable Vacancy Notice; or (b) for any reason the City's Board of Supervisors and/or the Mayor fail to approve the authorizing legislation for the Subsequent Lease of such space within forty-five (45) days of City's exercise of its Right of First Offer to Lease for such space. City's exercise of the Right of First Offer to Lease during the final two (2) years of the Term will be deemed City's exercise of the Extension Option for an Extended Term, unless City exercises the Right of First Offer to Lease during the final two years of the second Extended Term.

(d) Landlord shall not grant a right of first refusal to lease any floor of the Available Space during the Term to any other party unless such right of first refusal is subordinate to the Right of First Offer to Lease.

### **22.3 Right of First Offer to Purchase**

At any time during the Term, including any Extended Term, if Landlord decides to sell the Building, then City shall have the right to offer to purchase the Building pursuant to the terms attached as Exhibit F ("**Right of First Offer to Purchase**").

### **22.4 Termination Option**

City will have the right to terminate the Lease as of the last day of the sixtieth (60<sup>th</sup>) month of the Initial Term (the "**First Termination Option**") or of the ninety-second (92<sup>nd</sup>) month of the Initial Term (the "**Second Termination Option**") by providing written notice of such early termination (a "**City Termination Notice**") not less than twelve (12) months but no more than eighteen (18) full calendar months prior to the applicable early termination date. Should City terminate the Lease pursuant to this Section, concurrent with delivery of the City Termination Notice, City will reimburse Landlord for the unamortized cost (amortized in accordance with Section 6.4) of all Leasehold Improvements plus a termination fee as described in the following sentences. If City exercises the First Termination Option, such termination fee will be equal to the unamortized costs of all Leasehold Improvements (amortized in accordance with Section 6.4) plus three (3) months of monthly Base Rent at the rate applicable upon the effective date of Lease termination. If City exercises the Second Termination Option, such termination fee will be equal to the unamortized cost of all Leasehold Improvements (amortized in accordance with Section 6.4) plus two (2) months of monthly Base Rent at the rate applicable upon the effective date of Lease termination. City's exercise of the First Termination Option or the Second Termination Option shall be void if City is then in monetary or other material default (beyond expiration of applicable cure periods) of its obligations under this Lease either on the date of delivery of a City Termination Notice or on the applicable early Lease termination date.

## **23. GENERAL PROVISIONS**

### **23.1 Notices**

Except as otherwise specifically provided in this Lease, any notice given under this Lease shall be in writing and given by delivering the notice in person or by commercial courier, or by sending it by first-class mail, certified mail, return receipt requested, or Express

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

### **23.2 No Implied Waiver**

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

### **23.3 Amendments**

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

### **23.4 Authority**

Each party represents and warrants to the other that the execution and delivery of this Lease by such party has been duly authorized and does not violate any provision of any agreement, law or regulation to which such party is subject.



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

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

### **23.6 Interpretation of Lease**

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

### **23.7 Successors and Assigns**

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

### **23.8 Brokers**

Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the lease contemplated herein, except for the broker, if any, identified in the Basic Lease Information, whose commission, if any is due, shall be the sole responsibility of Landlord pursuant to a separate written agreement between Landlord and such broker, and City shall have no liability therefor. In the event that any other broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes his claim shall be responsible for such commission or fee and shall indemnify the other party from any and all Claims incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Lease.

### **23.9 Severability**

If any provision of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Lease shall be valid and be enforceable to the full extent permitted by law.

### **23.10 Governing Law**

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

### **23.11 Entire Agreement**

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

### **23.12 Attorneys' Fees**

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

### **23.13 Holding Over**

Should City hold over in possession of the Premises after the expiration of the Term, such holding over shall not be deemed to extend the Term or renew this Lease, but such tenancy thereafter shall continue as a tenancy at sufferance only, and either party shall have the right to terminate such tenancy at any time by delivering written notice of such termination to the other party. Such tenancy shall be on all the terms and conditions set forth in this Lease, except the Base Rent during such holdover shall be 140% of the Base Rent applicable at the expiration or earlier termination of the Lease. The provisions of this Section 23.13 shall not be deemed to limit or constitute a waiver of any other rights or remedies of Landlord provided herein or at law. If City fails to surrender the Premises upon the termination or expiration of this Lease, in

addition to any other liabilities to Landlord accruing therefrom, City shall protect, defend, indemnify and hold Landlord harmless from all loss, costs (including reasonable attorneys' fees) and liability resulting from such failure, including, without limiting the generality of the foregoing, any claims made by any succeeding City founded upon such failure to surrender, and any lost profits to Landlord resulting therefrom.

#### **23.14 Cumulative Remedies**

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

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

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

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

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

#### **23.17 Signs**

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

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

Landlord covenants and represents that it has full right, power and authority to grant the leasehold estate hereunder, and covenants that City, upon paying the Rent hereunder and performing the covenants hereof, shall peaceably and quietly have, hold and enjoy the Premises and all appurtenances during the full Term of this Lease as against all persons or entities claiming by and through Landlord or on account of any action, inaction or agreement of Landlord or its Agents.

#### **23.19 Bankruptcy**

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

right to (a) contract directly with any third-party provider of such services, facilities or amenities to obtain the same, and (b) offset against the Base Rent or other charges payable hereunder any and all reasonable costs and expenses incurred by City in obtaining such services, facilities or amenities.

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

Landlord shall have the right to transfer its interest in the Property, the Building or this Lease without the consent or approval of City. In the event of any such transfer of this Lease, Landlord shall be relieved, upon notice to City of the name and address of Landlord's successor, of any obligations accruing hereunder from and after the date of such transfer provided the transferee agrees to assume Landlord's obligations under the Lease in writing and the transferee acquires fee ownership in the Property at the time of such assumption and release.

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

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

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

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

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

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

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

Landlord agrees that any person performing labor in the construction of the Leasehold Improvements or other improvements to the Premises, which Landlord provides under this Lease, shall be paid not less than the highest prevailing rate of wages as required by Section 6.22(E) of the San Francisco Administrative Code, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco, California. Landlord shall include, in any contract for

construction of such Leasehold Improvements or other improvements to the Premises, a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Landlord shall require any contractor to provide, and shall deliver to City upon request, certified payroll reports with respect to all persons performing labor in the construction of any Leasehold Improvements or other improvements to the Premises.

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

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

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

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

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

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

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

#### **(d) HRC Form**

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

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

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

#### 23.26 Tropical Hardwood and Virgin Redwood Ban

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

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

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

#### 23.27 Bicycle Storage Facilities

Article 1.5, Section 155.2, of the San Francisco Planning Code (the "Planning Code") requires the provision of bicycle storage at the Building garage pursuant to the requirements specified therein.

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

Landlord acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 707 relating to resource-efficient and green building requirements for buildings leased or owned by City. Landlord hereby agrees that it shall comply with all applicable provisions of such code sections.

#### 23.29 Counterparts

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

#### 23.30 Effective Date

The date on which this Lease shall become effective (the "Effective Date") is the date upon which (a) City's Mayor and Board of Supervisors, in their sole and absolute discretion,

adopt a resolution approving this Lease in accordance with all applicable laws and (b) this Lease is duly executed by the parties hereto.

### **23.31 Certification by Landlord**

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

### **23.32 Acceptance of Lease by City**

If City does not deliver a fully executed copy of this Lease to Landlord within the sixty (60) day period immediately following Landlord's execution of this Lease, Landlord shall have the option, at its sole discretion, to rescind the Lease and declare it to be null and void.

### **23.33 Memorandum of Lease**

On the Effective Date, Landlord and City shall execute the memorandum of lease in the form attached hereto as Exhibit I-1 (the "**Memorandum of Lease**"), and City shall cause the Memorandum of Lease to be recorded in the Official Records of the City and County of San Francisco at City's sole cost. Within two (2) business days after the expiration or earlier termination of the Lease, City shall execute, acknowledge and deliver the quitclaim of leasehold interest in the form attached hereto as Exhibit I-2 (the "**Leasehold Quitclaim**"), and Landlord may cause, at Landlord's sole cost, the Leasehold Quitclaim to be recorded in the Official Records of the City and County of San Francisco.

### **23.34 Sunshine Ordinance**

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

### **23.35 Conflicts of Interest**

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

### **23.36 Notification of Limitations on Contributions**

Through its execution of this Lease, Landlord acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Landlord acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Landlord further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Landlord's board of directors, chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Landlord; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Landlord. Additionally, Landlord acknowledges that Landlord must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Landlord further agrees to provide to City the names of each person, entity or committee described above.

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

Landlord may not purchase preservative-treated wood products containing arsenic in the performance of this Lease unless an exemption from the requirements of Environment Code, Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "**preservative-treated wood containing arsenic**" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Landlord may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Landlord from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "**saltwater immersion**" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

### **23.38 Cooperative Drafting**

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

### **23.39 Landlord Exculpation**

It is expressly understood and agreed that notwithstanding anything in this Lease to the contrary, and notwithstanding any applicable law to the contrary, the liability of Landlord hereunder (including any successor landlord) and any recourse by City against Landlord shall be limited solely and exclusively to an amount which is equal to the ownership interest of Landlord in the Property (including any proceeds thereof), and neither Landlord, nor any of Landlord's



Agents shall have any personal liability therefor, and City hereby expressly waives and releases such personal liability on behalf of itself and all persons claiming by, through or under City.

#### **23.40 Force Majeure**

Any material prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain services, labor, or materials or reasonable substitutes therefor, governmental actions, civil commotions, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform, except with respect to the obligations imposed with regard to Rent (subject to any applicable Rent abatement) and other charges to be paid by City pursuant to this Lease and except with respect to City's obligations under the Work Letter (collectively, the "**Force Majeure**"), notwithstanding anything to the contrary contained in this Lease, shall excuse the performance of such party for a period equal to any such prevention, delay or stoppage and, therefore, if this Lease specifies a time period for performance of an obligation of either party, that time period shall be extended by the period of any delay in such party's performance caused by a Force Majeure.

#### **23.41 Landlord's Construction**

It is specifically understood and agreed that Landlord has no obligation and has made no promises to alter, remodel, improve, renovate, repair or decorate the Premises, Building, Property, or any part thereof and that no representations or warranties respecting the condition of the Premises, the Building or the Property have been made by Landlord to City, except as specifically set forth in this Lease. City acknowledges that prior to and during the Lease Term, Landlord will be completing construction and/or demolition work pertaining to various portions of the Building, Premises, and/or Property, including without limitation landscaping and City improvements for premises for other tenants and, at Landlord's sole election, such other buildings, parking facilities, improvements, landscaping and other facilities within or as part of the Property as Landlord shall from time to time desire (collectively, the "**Construction**"). In connection with such Construction, Landlord may, among other things, erect scaffolding or other necessary structures in the Building, limit or eliminate access to portions of the Property, including portions of the common areas, or perform work in the Building and/or Property, which work may create noise, dust or leave debris in the Building and/or Property. Landlord agrees to perform such Construction in a commercially reasonable, diligent, workmanlike manner that minimizes any material interference with City's rights under this Lease or any material impairment in access to the Premises. Provided that Landlord performs the Construction in compliance with the foregoing sentence, City hereby agrees that such Construction and Landlord's actions in connection with such Construction shall in no way constitute a constructive eviction of City nor entitle City to any abatement of Rent, except to the extent expressly provided in the Lease. Landlord shall have no responsibility or for any reason be liable to City for any direct or indirect injury to or interference with City's business arising from such Construction, nor shall City be entitled to any compensation or damages from Landlord for loss of the use of the whole or any part of the Premises or of City's personal property or improvements resulting from such Construction or Landlord's actions in connection with such Construction, or for any inconvenience or annoyance occasioned by such Construction or Landlord's actions in connection with such Construction.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, LANDLORD ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY HERETO UNLESS AND UNTIL CITY'S BOARD OF SUPERVISORS SHALL HAVE DULY ADOPTED A RESOLUTION APPROVING THIS LEASE AND AUTHORIZING CONSUMMATION OF THE TRANSACTION CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON ADOPTION OF SUCH A RESOLUTION, AND THIS LEASE SHALL BE NULL AND VOID UNLESS CITY'S

MAYOR AND BOARD OF SUPERVISORS APPROVE THIS LEASE, IN THEIR RESPECTIVE SOLE AND ABSOLUTE DISCRETION, AND IN ACCORDANCE WITH ALL APPLICABLE LAWS. APPROVAL OF THIS LEASE BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ADOPTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

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

LANDLORD:

1155 SF PARTNERS, LLC  
a Delaware limited liability company

By: \_\_\_\_\_  
*Arans Seta*

Its: Authorized Representative - 1155 SF Partner, LLC

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

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

CITY:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_  
JOHN UPDIKE  
Acting Director of Property

RECOMMENDED:

\_\_\_\_\_  
*[Department Authority]*

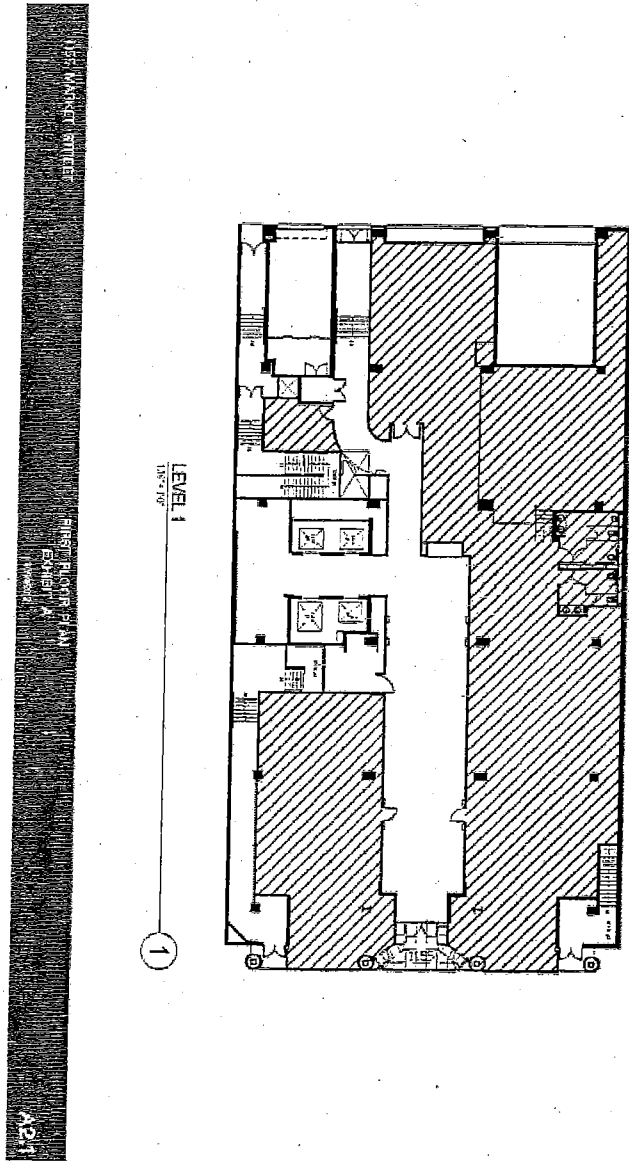
APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

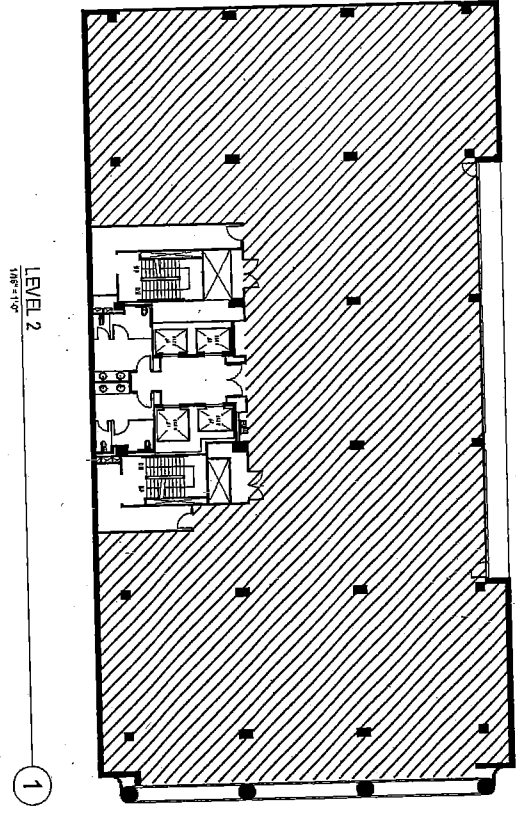
By: \_\_\_\_\_  
Deputy City Attorney

**EXHIBIT A**

**FLOOR PLAN(S) OF PREMISES**



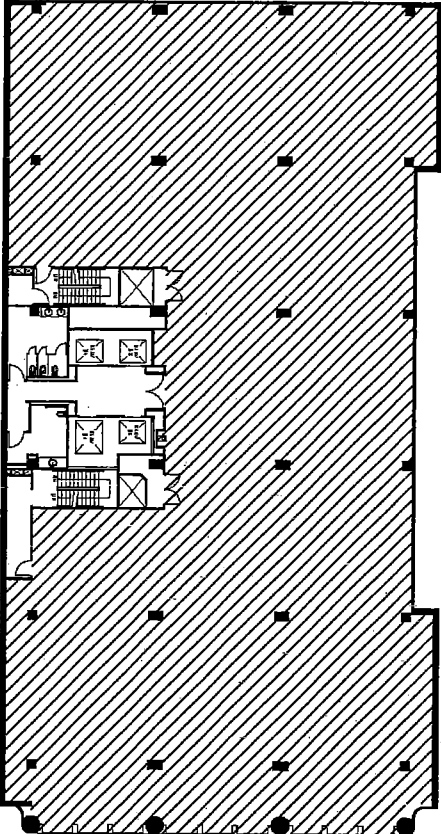
155 MARKET STREET  
3550 CALIFORNIA PLAZA  
EXHIBIT A  
A-2.2



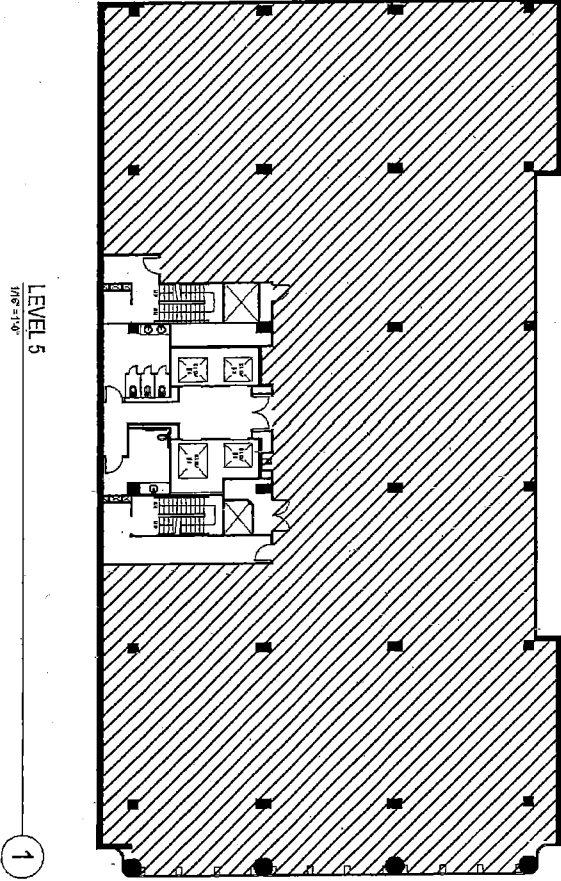


BR MARKET STREET  
PROJECT FOOTPRINT  
LEVEL 4  
A2.4

LEVEL 4  
1/8"=1'-0"  
1

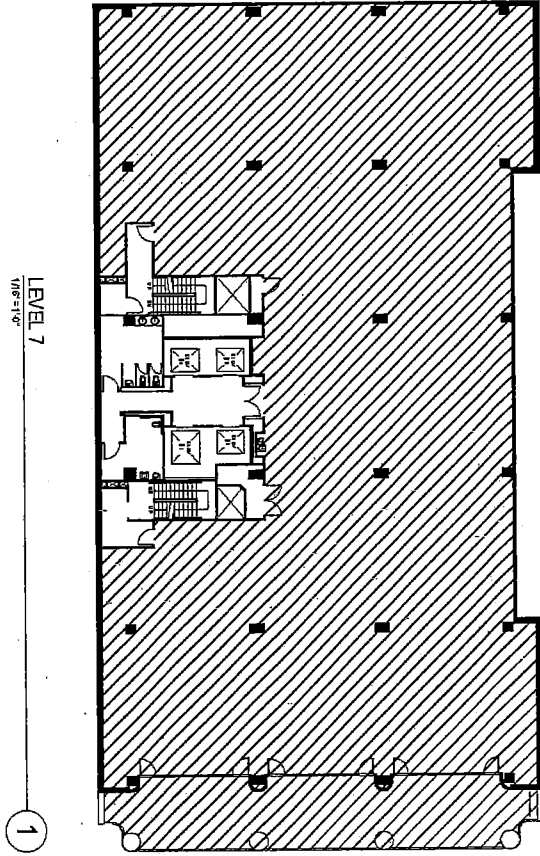


MARKET STREET  
FURNACE BOILER PLANT  
EXHIBIT A  
A215



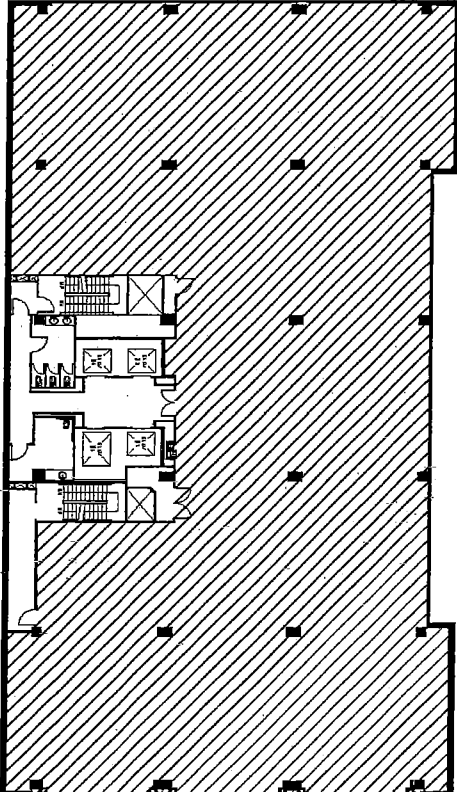


35 MARKET STREET  
SEVENTH FLOOR PLAN  
EXHIBIT A  
A2.7



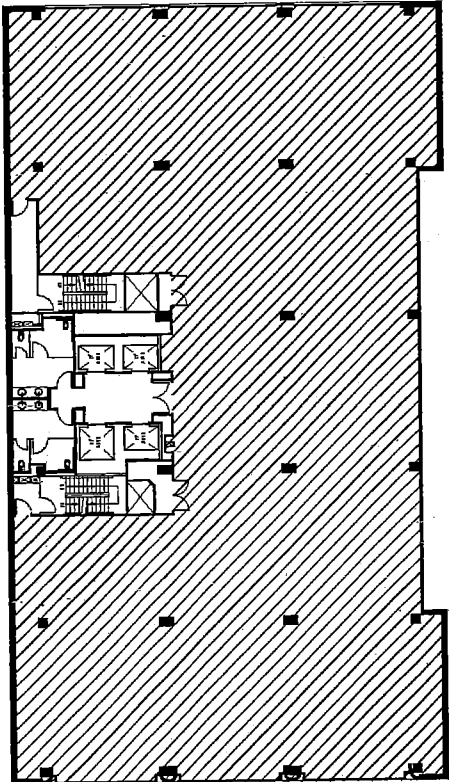
18 AVENUE STREET  
EIGHT FLOOR PLAN  
EXHIBIT A  
A2.8

LEVEL 8  
1/8" = 1'-0"  
1



153 AVENUE STREET  
NINTH FLOOR PLAN  
EXHIBIT  
A29

LEVEL 9  
1/16" = 1'-0"  
1



**EXHIBIT B**

**NOTICE OF COMMENCEMENT DATE**

[Date]

Mr. John Updike  
Acting Director of Property  
Real Estate Division  
City and County of San Francisco  
25 Van Ness Avenue, Suite 400  
San Francisco, CA 94102

RE: Acknowledgement of Commencement Date, Lease Between 1155 SF Partners, LLC (Landlord), and the CITY AND COUNTY OF SAN FRANCISCO (Tenant), for premises known as 1155 Market Street, San Francisco, CA 94103 [Ground Floor, and Floors five through 11].

Dear Mr. Updike:

This letter will confirm that for all purposes of the Lease, the Commencement Date (as defined in Section 3.2 of the Lease) is \_\_\_\_\_, 2013.

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

Very truly yours,

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

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

Accepted and Agreed:

By: \_\_\_\_\_  
John Updike  
Acting Director of Property

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

## EXHIBIT C

### EXCLUSIONS FROM OPERATING COSTS

1. Costs of capital repairs, capital improvements and equipment, except for those permitted under Section 4.4(e) of the Lease;
2. Rentals and other related expenses for items (except when needed in connection with normal repairs and maintenance of permanent systems) which if purchased rather than rented, would constitute a capital improvement which is specifically excluded in item 1 above (excluding, however, equipment not affixed to the Building which is used in providing janitorial or similar services);
3. Costs incurred by Landlord for the repair of damage to the Building, to the extent that Landlord is reimbursed by insurance proceeds (excluding any deductible) and costs occasioned by the exercise of the right of eminent domain;
4. Costs, including, without limitation, permit, license and inspection costs, incurred with respect to 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 space for other tenants or occupants in the Building;
5. Depreciation, amortization and interest payments, except to the extent provided herein pursuant to items 1(i) and 1(ii) 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 such depreciation, amortization and interest payments would otherwise have been included in the charge for such third party's services, all as determined in accordance with commercial real estate accounting principles, consistently applied, and when depreciation or amortization is permitted or required, the item shall be amortized over its reasonably anticipated useful life (as reasonably determined by Landlord);
6. 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 or the defense of Landlord's title to the Building or the real property on which it is located;
7. Expenses in connection with services or other benefits which are not offered to City or for which City is charged directly but which are provided to another tenant or occupant of the Building;
8. Costs incurred by Landlord due to violation by Landlord or any other tenant or occupant of the Building of applicable laws, rules or regulations, the terms and conditions of any lease, ground lease, mortgage or deed of trust, or other covenants, conditions or restrictions encumbering the Building or the real property on which it is located;
9. Overhead and profit increments paid to Landlord or to subsidiaries or affiliates of Landlord, or to any party as a result of a non-competitive selection process, for management, or other services, supplies or materials, to the extent the same exceed the costs of such goods and/or services rendered by unaffiliated third parties on a competitive, arms-length basis;
10. Any ground lease rental or rental under any other underlying leases;

11. Except as specifically permitted by items 1(i) and 1(ii) 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 real property on which it is located;
12. Any compensation paid to clerks, attendants or other persons in commercial concessions operated by Landlord or in the parking garage in the Building;
13. All items and services for which City or any other tenant or occupant of the Building separately reimburses Landlord (other than through such tenant's or occupant's proportionate share of operating expenses); or which Landlord provides selectively to one or more other tenants or occupants without reimbursement, or which are not provided in reasonable proportion to the space leased by City but which Landlord provides to another tenant or other occupant of the Building;
14. 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 exclusively identifying any other tenant or occupant of the Building;
15. Electric power costs for which any tenant or occupant directly contracts with the local public service company (provided that the charge for such services shall be computed for purposes of the gross-up provision of the Lease (i.e., expenses to be grossed up to reflect full occupancy of the Building) to reflect an average charge for power costs);
16. Intentionally deleted;
17. Costs incurred in connection with upgrading the Building to comply with disabled access, life, fire and safety codes and costs incurred in connection with upgrading the Building to comply with the Americans with Disabilities Act of 1990 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 all to the extent such laws, regulations, ordinances and codes are in effect and interpreted prior to the date of this Lease;
18. Tax penalties incurred solely as a result of Landlord's negligence, inability or unwillingness to make payments when due;
19. Costs arising from the presence of Hazardous Material in or about the Building including, without limitation, groundwater or soil conditions, except if such Hazardous Material costs are the responsibility of Tenant as provided in this Lease;
20. Landlord's charitable or political contributions;
21. To the extent the following costs arise during any applicable warranty periods, costs as a result of repairs of latent defects in the Building core and shell or improvements installed by Landlord or in the Building Systems, and any 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 pursuant to the terms of the Lease;
22. Capital costs for sculpture, paintings or other objects of art;
23. Costs (including, without limitation, all attorneys' fees and costs of settlement, judgments and payments in lieu thereof) arising from claims, disputes or potential disputes, including, without limitation, tax disputes where the tenants of the Building would receive benefits if Landlord prevails) in connection with potential or actual claims, litigation or arbitrations pertaining to Landlord or the Building;

24. All direct cost of refinancing, selling, exchanging or otherwise transferring ownership of the Building or the real property on which it is located or any interest therein or portion thereof, including broker commissions, attorney's fees and closing costs;
25. Reserves for bad debts, rent loss, capital items or further Operating Costs (except for current year anticipated expenses); and
26. Landlord's general corporate overhead and general and administrative expenses not related to the operation or management of the Building.

## EXHIBIT D

### **BUILDING RULES AND REGULATIONS**

The following rules and regulations shall apply to the Premises, the Building and the Project:

1. Sidewalks, doorways, vestibules, halls, stairways, elevators and other similar areas shall not be obstructed by tenants or used by any tenant for purposes other than ingress and egress to and from their respective leased premises and for going from one to another part of the Building. The halls, passages, exits, entrances, elevators and stairways are not open to the general public, but are open, subject to reasonable regulation, to Tenant's business invitees. Landlord shall in all cases retain the right to control and prevent access thereto of all persons whose presence in the judgment of Landlord would be prejudicial to the safety, character, reputation and interest of the Building and its tenants; provided that nothing herein contained shall be construed to prevent such access to persons with whom any tenant normally deals in the ordinary course of its business, unless such persons are engaged in illegal or unlawful activities.

2. Plumbing, fixtures and appliances shall be used only for the purposes for which designed, and no sweepings, rubbish, rags or other unsuitable material shall be thrown or deposited therein. Damage resulting to any such fixtures or appliances from misuse by a tenant or its agents, employees or invitees, shall be paid by such tenant.

3. Movement in or out of the Building of furniture or office equipment, or dispatch or receipt by tenants of any bulky material, merchandise or materials which require use of elevators or stairways, or movement through the Building entrances or lobby shall be conducted under Landlord's supervision at such times and in such a manner and pursuant to such scheduling procedures as Landlord may reasonably establish from time to time. Tenant's initial move in and subsequent deliveries of bulky items, such as furniture and safes shall, unless otherwise agreed in writing by Landlord, be made during the hours of 6:00 p.m. to 6:00 a.m. or on Saturday or Sunday. Each tenant assumes all risks of and shall be liable for all damage to articles moved and injury to persons or public engaged or not engaged in such movement, including equipment, property and personnel of Landlord if damaged or injured as a result of acts in connection with carrying out this service for such tenant.

4. Landlord may prescribe weight limitations and determine the locations for safes and other heavy equipment or items, which shall in all cases be placed in the Building so as to distribute weight in a manner acceptable to Landlord which may include the use of such supporting devices as Landlord may require. All damages to the Building caused by the installation or removal of any property of a tenant, or done by a tenant's property while in the Building, shall be repaired at the expense of such tenant.

5. Corridor doors, when not in use, shall be kept closed. Nothing shall be swept or thrown into the corridors, halls, elevator shafts or stairways. No birds or animals (other than guide animals) shall be brought into or kept in, on or about any tenant's leased premises. No portion of any tenant's leased premises shall at any time be used or occupied as sleeping or lodging quarters.



6. Tenant shall not make or permit any vibration or improper, objectionable or unpleasant noises or odors in the Building or otherwise interfere in any way with other tenants or persons having business with them.

7. No machinery of any kind (other than normal office equipment) shall be operated by any tenant in its leased premises without Landlord's prior written consent, nor shall any tenant use or keep in the Building any flammable or explosive fluid or substance (other than typical office supplies [e.g., photocopier toner] used in compliance with all Laws).

8. Landlord will not be responsible for lost or stolen personal property, money or jewelry from tenant's leased premises or public or common areas regardless of whether such loss occurs when the area is locked against entry or not.

9. The Premises shall not be used for manufacturing of any kind, nor shall the Premises be used for any improper, immoral or objectionable purpose. No cooking shall be done or permitted on the Premises without Landlord's consent, except that use by Tenant of Underwriter's Laboratory approved equipment for brewing coffee, tea, hot chocolate and similar beverages or use of microwave ovens for employee use shall be permitted, provided that such equipment and use is in accordance with all applicable federal, state and local laws, codes, ordinances, rules and regulations.

10. No vending or dispensing machines of any kind may be maintained in any leased premises without the prior written permission of Landlord, other than those used solely for Tenant's employees.

11. Tenant shall not conduct any activity on or about the Premises or the Building that is disreputable or which may draw pickets, demonstrators, or the like.

12. No tenant may enter into phone rooms, electrical rooms, mechanical rooms, or other service areas of the Building unless accompanied by Landlord or the Building manager.

13. Canvassing, soliciting or peddling in or about the Project is prohibited and Tenant shall cooperate to prevent same.

14. Tenant shall store all its trash and garbage within its Premises or in other facilities provided by Landlord. Tenant shall not place in any trash box or receptacle any material which cannot be disposed of in the ordinary and customary manner of trash and garbage disposal. All garbage and refuse disposal shall be made in accordance with directions issued from time to time by Landlord. Tenant shall comply with the Building's recycling program in effect from time to time.

15. Tenant shall not use in the Premises any hand truck except those equipped with rubber tires and side guards or such other material-handling equipment as Landlord may approve.

16. Tenant shall not place anything against or near the glass storefront or glass doors or windows which may appear unsightly from outside the Premises.

17. The directory of the Building will be provided exclusively for the display of the name and location of tenants only, and Landlord reserves the right to exclude any other names therefrom.

18. Tenant shall not permit its employees, invitees or guests to smoke in the Premises or the lobbies, passages, corridors, elevators, vending rooms, rest rooms, stairways or any other area shared in common with other tenants in the Building. Nor shall the tenant permit its employees, invitees or guests to loiter at the Premises entrance or the Building entrances for the purposes of smoking. Landlord may, but shall not be required to, designate an area for smoking outside the Building.

19. Landlord reserves the right, exercisable without notice and without liability to Tenant, to change the name and street address of the Building.

20. Landlord reserves the right to exclude from the office portion of the Building during non-Normal Business Hours, or such other hours as may be established from time to time by Landlord, and on Saturdays, Sundays and Holidays, any person unless that person is known to the person or employee in charge of the Building and has a pass or is properly identified. Tenant shall be responsible for all persons for whom it requests passes and shall be liable to Landlord for all acts of such persons. Landlord reserves the right to exclude or expel from the Building any person who, in Landlord's judgment, is intoxicated or under the influence of liquor or drugs or who is in violation of any of the Rules and Regulations of the Building. Landlord shall not be liable for damages for any error with regard to the admission to or exclusion from the Building of any person. Landlord reserves the right to prevent access to the Building in case of invasion, mob, riot, public excitement or other commotion by closing the doors or by other appropriate action.

21. All incoming mail and package deliveries shall be received at the area in the Building designated by Landlord for such purposes and distributed through means established by Landlord. No messenger or other delivery personnel shall be permitted to enter into any area of the Building other than the area designated by Landlord for the pick-up and receipt of such deliveries.

22. Tenant shall not install any radio or television antenna, loudspeaker or other devices on the roof or exterior walls of the Premises. Tenant shall not interfere with radio or television broadcasting or reception from or in the Building or elsewhere.

23. Tenant shall not mark, drive nails, screw or drill into the partitions, woodwork or plaster or in any way deface the Premises or any part thereof, except in accordance with the provisions of the Lease pertaining to alterations. Landlord reserves the right to direct electricians as to where and how telephone wires are to be introduced to the Premises. Tenant shall not cut or bore holes for wires. Tenant shall not affix any floor covering to the floor of the Premises in any manner except as approved by Landlord. Tenant shall repair any damage resulting from noncompliance with this rule.

24. Tenant's requirements will be attended to only upon appropriate application to the Building management office by an authorized individual. Employees of Landlord shall not perform any work or do anything outside of their regular duties unless under special instructions from Landlord, and no employee of Landlord will admit any person (Tenant or otherwise) to any office or retail space without specific instructions from Landlord.

25. Landlord may waive any one or more of these Rules and Regulations for the benefit of Tenant or any other tenant, but no such waiver by Landlord shall be construed as a waiver of such Rules and Regulations in favor of Tenant or any other tenant, nor prevent

Landlord from thereafter enforcing any such Rules and Regulations against any or all of the tenants of the Building.

26. These Rules and Regulations are in addition to, and shall not be construed to in any way modify or amend, in whole or in part, the terms, covenants, agreements and conditions of Tenant's Lease of its Premises in the Building.

27. Landlord reserves the right to make such other and reasonable Rules and Regulations as, in its judgment, may from time to time be needed for safety and security, for care and cleanliness of the Building and for the preservation of good order therein. Tenant agrees to abide by all such Rules and Regulations hereinabove stated and any additional rules and regulations which are adopted.

28. Tenant shall be responsible for the observance of all of the foregoing rules by Tenant's employees, agents, clients, customers, invitees and guests.

## EXHIBIT E

### STANDARDS FOR UTILITIES AND SERVICES

Subject to the terms of Article 9 of the Lease, Landlord shall provide the following utilities and services, at cost:

(a) Elevators. Unattended automatic passenger elevator facilities serving the floor(s) on which the Premises are located, on a 24-hours a day, 7-days a week basis. Freight elevator service is available before, during and after business hours during Tenant move-in and move-out and during normal business hours at all other times.

(b) Ventilation; Heating and Air-Conditioning. Ventilation to the Premises, and air-conditioning and heating to the Premises in season, on a 5-day a week basis, Monday through Friday, except holidays generally recognized in the City of San Francisco, from 8:00 a.m. to 5:00 p.m., and at such temperatures and in such amounts as standard for first class office buildings in the vicinity of the Building, subject to applicable governmental laws, ordinances, rules and regulations. In addition to the hours set forth above, Landlord shall provide ventilation to the Premises, and air-conditioning and heating to the Premises in season, after hours or on weekends or during holidays, upon twenty-four (24) hour prior notice from City, provided that City shall reimburse Landlord for Landlord's cost for providing such additional ventilation to the Premises, and air-conditioning and heating to the Premises in season. City shall not alter, adjust or tamper with the installations or facilities supplying climate control to the Building or the Premises.

(c) Electricity. Electric current to the Premises on a 24-hours a day, 7-days a week basis, as required by the Building standard office lighting and for personal computers and other normal fractional horsepower office machines. If Tenant's electrical installation or electrical consumption is in excess of the quantity described above, City shall reimburse Landlord monthly for the additional consumption. City shall not connect any apparatus or device with wires, conduits or pipes, or other means by which the services are supplied, for the purpose of using additional or extraordinary amounts of the services without the prior written consent of Landlord. At all times, City's use of electric current shall not exceed the capacity of feeders to the Building or the risers or wiring installation, except as provided in working drawings to Landlord.

(d) Water. Water available at current points of supply in public areas for drinking and lavatory purposes only, and hot and cold water in the Premises for drinking and kitchen purposes, on a 24-hours a day, 7-days-a-week basis.

## EXHIBIT F

### **RIGHT OF FIRST OFFER TO PURCHASE**

In the event Landlord should decide to sell the Property during the Term of the Lease, including any extension options, City shall have a right of first offer to purchase ("**Right of First Offer to Purchase**") the Property at the purchase price that the Property will be offered to the real estate market. Said purchase price, the required deposit, due diligence period and other material offer terms shall be contained in a written notice ("**Sale Notification**") from Landlord to City and said purchase price shall be subject to adjustment as provided below. The City shall have thirty (30) days from the Sale Notification date by Landlord to submit (i) an offer to purchase at the price contained in Landlord's Sale Notification or (ii) counter offer at a lesser price and/or upon the other business terms contain herein.

City's offer to purchase shall be subject to the approval of the Board of Supervisors and the Mayor within forty five (45) days of execution of a Purchase and Sale Agreement, incorporating the terms herein, and the title company being willing to issue ALTA Title Insurance acceptable to City.

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

Close of escrow shall occur on or before one hundred and fifty-five (155) days (which date shall not be extended for any issuance of debt by City as referenced above) from the date of City's notice of the approval by City's Board of Supervisors and Mayor of the purchase.

At closing, City shall pay for the cost of the premium of the extended coverage title insurance policy, one half the escrow fees, and one half of the other typical closing expenses. Landlord shall pay transfer taxes, one half the escrow fees and one half the other typical closing expenses such as notary fees and overnight express charges. Landlord shall deliver the following (among other customary items) through a mutually agreeable escrow company:

- (i) a grant deed conveying ALTA insurable title subject only to taxes not yet due and payable, and other exceptions acceptable to City,
- (ii) a bill of sale for all personal property in the Building, and
- (iii) a written disclosure of all known facts (including any and all property inspection reports) which would affect the marketability or City's intended use of the Building.

If City does not agree to purchase the Property at the purchase price and upon the other terms contained in the Sale Notification, and does not make any counter offer within the thirty (30) day period, then this Right of First Offer to Purchase shall terminate and Landlord shall be free to sell the Building to any person whomever and upon any terms whatsoever without any obligation to City. If, however, City while not accepting the purchase price set forth in the Sale Notification, has made an all-cash-on-closing counter offer (the "**City's Counter Offer**") within the thirty (30) day period that has not been accepted by Landlord, then Landlord may sell the Property, free of any claim of City, to any potential buyer who is willing to pay a gross purchase

price (an amount determined without regard to any brokerage commission liability, but reduced by any Landlord credits or give backs to the potential buyer for such items as existing building conditions or improvements herein after to referred to as "**Gross Purchase Price**") exceeding ninety five percent (95%) of the amount of City's Counter Offer.

In the event Landlord is unable to sell the Property for more than the City Counter Offer, Landlord may, but shall not be obligated to, give another Sale Notification with a reduced purchase price and the above procedure for City's Right of First Offer to Purchase shall be repeated.

This Right of First Offer to Purchase shall terminate and be of no further effect on the earlier to occur of (1) the consummation of a sale of the Property to an arm's length third party in accordance with the foregoing provisions, (2) City is in monetary or other material default at the time Landlord would otherwise be required to deliver a Sale Notification, (3) the Lease has expired or terminated for any reason, (4) City has assigned the Lease or subleased more than 25% of the rentable square footage of the Premises. This Right of First Offer to Purchase is not applicable in the event that Landlord recapitalizes the Property.

**EXHIBIT G**

**STANDARDS FOR SECURITY SERVICE**

Landlord shall furnish security services as follows:

**SECURITY GUARDS:**

Sufficient number of security guards as  
Landlord shall reasonably determine at 1155  
Market Street, San Francisco, CA on a 24  
hours a day, 7 days a week, 52 weeks a year  
basis.

**OTHER SECURITY SERVICES:**

None

## EXHIBIT H

### WORK LETTER

*(1155 Market Street, San Francisco, CA 94103)*

This Work Letter is part of the Office Lease dated as of October \_\_\_\_, 2012 (the "**Lease**"), executed concurrently herewith, by and between 1155 SF Partners, LLC, as Landlord, and the City and County of San Francisco, as Tenant, covering certain premises described in the Lease. All terms that are capitalized but not defined herein shall have the same meanings given to them in the Lease.

Landlord, through its general contractor approved by City (the "**Contractor**"), shall furnish and install within the Premises the improvements shown on the Construction Documents finally approved by City and Landlord pursuant to paragraph 1 below (the "**Leasehold Improvements**"), in accordance with the provisions of this letter. Notwithstanding anything the contrary contained in this Lease, even though Landlord may assist and facilitate the ordering and installation of City's furniture, fixtures and/or equipment, (i) all fees, costs and expenses incurred by Landlord in connection therewith shall be reimbursed by City to Landlord within thirty (30) days of receipt of an invoice therefor, and (ii) for all purposes under this Lease, the ordering and installation of such furniture, fixtures and/or equipment shall be City's Personal Property and shall not be deemed a part of, or otherwise constitute a component of, the Leasehold Improvements.

#### 1. Plans and Specifications

a. Schematic Design Documents. Landlord has caused its architect or space planner (the "**Architect**") and its qualified and licensed engineer (the "**Engineer**") to prepare plans and specifications describing the schematic design of the Leasehold Improvements (collectively, the "**Schematic Design Documents**"). The Schematic Design Documents have been approved by City and Landlord and are attached hereto as Schedule 1.

b. Construction Documents. Based on the approved Schematic Design Documents and any further adjustments approved by City, on or before November 30, 2012, Landlord shall have caused 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**"). Such Construction Documents shall be subject to approval by City in accordance with Paragraph 1.d below, provided, however, that City may only disapprove the Construction Documents to the extent the same are not (subject to changes reasonably required by Landlord) in substantial conformance with the Schematic Design Documents.

Notwithstanding that any Construction Drawings are reviewed by Landlord or prepared by its Architect, Engineers and consultants, and notwithstanding any advice or assistance which may be rendered to City by Landlord, Landlord shall have no liability whatsoever in connection therewith and shall not be responsible for any omissions or errors contained in the Construction Drawings, and City's waiver and indemnity set forth in the Lease shall specifically apply to the Construction Drawings; provided, however, City shall be a third party beneficiary under any contracts between Landlord and the Architect or Engineers for the Construction Drawings and



shall have the right to proceed directly against such parties for any errors and omissions contained in the Construction Documents.

c. Design in Accordance with City's Requirements. Landlord's Architect shall design the Premises and prepare all plans and specifications hereunder, including the Construction Documents, in substantial conformity with the Schematic Design Documents. Landlord's Architect shall consult and hold periodic meetings with City and its architectural consultants and space planners as needed, in the preparation of the Construction Documents.

d. City's Approval of Plans. The Construction Documents (and any Landlord Change Orders thereto, as described below) shall be subject to approval by City, which approval shall not be unreasonably withheld or delayed, in accordance with the following procedure. After submission of the Construction Documents or proposed Change Order by Landlord to City, City shall have three (3) business days to disapprove any element thereof. If City does disapprove of any such documents, then City shall notify Landlord within such period of its disapproval and of the revisions that City reasonably requires in order to obtain approval consistent with the terms of this Work Letter and all elements of such Construction Documents and Change Orders not expressly disapproved shall be deemed approved. As soon as reasonably possible thereafter, but in no event later than five (5) days after receipt of such notice, Landlord shall submit to City documents incorporating the required revisions and, except for manifest error by Landlord in incorporating such revisions, City shall have no further approval rights over the Construction Documents. If City fails to notify Landlord of any objection within three (3) business days after receipt of the Construction Documents, any Landlord Change Order or any revisions to the foregoing, then City shall be deemed to have approved such applicable submitted documents or revision.

e. Payment for Plans. The costs of preparing the Schematic Design Documents and the Construction Documents shall be paid by Landlord and shall be deducted from the Allowance (as defined in paragraph 4.b below), subject to City's prior approval of such costs as provided in paragraph 4.c below. Landlord shall evidence such costs by invoices and other substantiation as City may reasonably require.

f. 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 shall cause the Architect or Engineer, as applicable, to prepare plans and specifications with respect to such change, addition or alteration. Landlord shall promptly notify City of the cost that would be incurred by reason of such proposed City Change Order and any delay in the anticipated date of Substantial Completion that would result from such City Change Order. If City approves the cost of or anticipated delay in Substantial Completion caused by the City Change Order within three (3) business days of receipt of such information from Landlord, then Landlord's Contractor shall proceed with such City Change Order as soon as reasonably practical thereafter. If City does not approve such cost within the above-mentioned three (3) business day period, construction of the Premises shall proceed in accordance with the original completed and approved Construction Documents. City shall be responsible for all costs actually incurred by Landlord in the preparation of the plans and specifications relating to any City Change Order, as evidenced by invoices or other substantiation reasonably required by City. For City Change Orders, the cost of which are \$10,000 or less ("**Minor City Changes**"), City's Representative (as defined below) shall have the authority to approve such change order costs and, with respect to Minor City Changes, City approval shall be granted or withheld by City's Representative within four (4) hours after receipt of such cost information, and failure to timely approve Minor City Changes shall be deemed disapproval thereof.

ii. Landlord Change Orders. If following City's approval of the Construction Documents, Landlord requests or is required to make any change, addition or alteration thereto relating to the design or specifications of the Leasehold Improvement Work ("**Landlord Change Order**"), Landlord shall provide City with proposed plans and specifications with respect to such change, addition or alteration, together with notice of any delay in the anticipated date of Substantial Completion that would result from such Landlord Change Order. Any such Landlord Change Order shall be subject to City's prior written approval, in accordance with Paragraph 1.d above. No approval by City of any such Landlord Change Order shall relieve or modify Landlord's obligations hereunder to complete the construction of the Leasehold Improvements in accordance with the approved Construction Schedule, nor shall any such approval limit any of City's rights or remedies hereunder or under the Lease. For any Landlord Change Order requested at Landlord's sole election, Landlord shall be solely responsible for the cost of the Landlord Change Order, including, without limitation, the costs of preparing the plans and specifications relating thereto, and no such amount shall be paid or deducted from the Allowance. For any Landlord Change Order requested by Landlord required in order to comply with Laws or the requirements or conditions necessary in order to obtain permits, then the cost of the Landlord Change Order, including, without limitation, the costs of preparing the plans and specifications relating thereto, shall be paid and deducted from the Allowance.

iii. Appointment of Representatives. City and Landlord shall each designate and maintain at all times during the design and construction period a project representative ("**Representative**"), and an alternate for such Representative ("**Alternate**"), each of whom shall be authorized to confer and attend meetings and represent such party on any matter relating to this Work Letter. Landlord and City shall not make any inquiries of or requests to, and shall not give any instructions or authorizations to, any other employee or agent of the other party, including without limitation, the other party's architect, engineers, consultants and contractors or any of their agents or employees, with regard to matters associated with this Work Letter. The initial Representatives and Alternates shall be:

City:	Representative – Brian O'Connor Alternate – John Updike
Landlord:	Representative – Konstantin Daskalov Alternate – Charles Russo

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

g. Restoration. Landlord will inform City of any required restoration upon Landlord's approval of the final Construction Documents and with respect to City Change Orders, upon Landlord's approval any such change order.

## 2. Permits

a. Responsibility for Obtaining Permits. Landlord shall have the responsibility for obtaining all governmental permits and approvals required to commence and complete the Leasehold Improvement Work, and promptly upon receipt thereof shall deliver copies of all of such permits and approvals to City. Landlord shall have the responsibility of calling for all inspections required by City's Bureau of Building Inspection.

b. First Source Hiring Ordinance. The City has adopted a First Source Hiring Ordinance (Board of Supervisors Ordinance No. 264-98) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry level positions. Within thirty (30) days after the City and County of San Francisco Real Estate Division of the Department of Administrative Services adopts a First Source Hiring Implementation and Monitoring Plan in accordance with the First Source Hiring Ordinance, Landlord shall enter into a First Source Hiring Agreement meeting applicable requirements of Section 83.9 of the First Source Hiring Ordinance in connection with certain building permit applications; provided, however, the provisions of this paragraph shall only apply prospectively to contracts for construction entered into by Landlord after implementation of the First Source Hiring Ordinance, and Landlord shall not be required to amend or modify any existing contracts for construction at such time of implementation.

### 3. Construction

a. Construction of Leasehold Improvements. Following the mutual approval of the Construction Documents, Landlord shall 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 Change Orders, and the terms of this Work Letter. City shall not have any obligation with respect to any such work other than as provided herein.

b. Construction Schedule. Landlord shall commence construction of the Leasehold Improvements promptly after approval of all required permits for construction in accordance with the approved Construction Documents and receipt of any Over-Allowance Amount (as defined below) from City, and shall diligently pursue construction to completion, all in accordance with a construction schedule agreed upon by the parties.

c. Status Reports: Inspections. Landlord shall keep City apprised of the status of permit approval and the progress of construction. Landlord or its Contractor shall furnish City with bi-weekly reports on construction in such form as Landlord's Contractor shall typically produce. From time to time during the design and construction of the Leasehold Improvements, City shall have the right upon reasonable advance oral or written notice to Landlord to enter the Premises at reasonable times to inspect the Premises, provided such inspections do not unreasonably interfere with the construction. Landlord or its Representative may accompany City during any such inspection.

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

i. All of the Leasehold Improvement Work shall be performed in compliance with all laws, codes, regulations and building requirements (collectively, "Laws") bearing on construction of the Leasehold Improvements;

ii. Without limiting the foregoing, the construction of the Leasehold Improvements shall 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 federal, state, local and administrative laws, rules, regulations, orders and requirements intended to provide equal accessibility for persons with disabilities (collectively, "Disabled Access Laws");

iii. Landlord and its Contractor shall be responsible for all required insurance; and

iv. Landlord shall require at least three (3) competitive bids from subcontractors in each major trade in connection with all work performed by Landlord or its Contractor hereunder.

e. Cooperation. Landlord shall cooperate at all times with City in bringing about the timely completion of the Leasehold Improvements. Landlord shall resolve any and all disputes arising out of the construction of the Leasehold Improvements in a manner which shall allow work to proceed expeditiously. City shall use its reasonable efforts to timely provide all information reasonably required by the Architect, the Engineers, and Landlord to timely complete the permitting process. Landlord acknowledges that City is acting in its proprietary capacity in reviewing and approving any construction documents pursuant to this Work Letter or the Lease, and any such approval by City shall not be deemed to be, or to impact, the regulatory approvals needed from City's Department of Building Inspection or any other City department for such construction documents or the Leasehold Improvements.

f. Telecommunications, Data and Computer Cabling Installation Work to be Performed by City. City, or its consultants and contractors, shall, at City's cost, perform surveys and develop plans and specifications for the installation of telecommunications, data and computer cabling for City's occupancy of the Premises. Landlord shall cause the Contractor to cooperate with City in the installation work and coordinate such work with the Leasehold Improvement Work. Landlord acknowledges that telecommunications, data and computer cabling are provided up to the point where it is stubbed out to the Building's MPOE. Landlord and City acknowledge that, as of the date hereof, there is existing cabling in the Building core and City shall have the right to use such existing cabling; provided, however, Landlord shall provide use of such cabling to City on an "AS-IS, WITH ALL FAULTS" basis and subject to all of the terms of this Lease, without recourse, representation or warranty of any kind or nature, express or implied, including without limitation, habitability, merchantability or fitness for a particular purpose. Beyond the Building's MPOE, City shall be responsible for installing such cabling at its expense and subject to the terms of the Lease and plans approved by Landlord. Landlord agrees to cause Contractor to cooperate reasonably with City and its consultants, contractors and subcontractors during all surveying work and the installation of such telecommunications, data and computer cabling. The foregoing obligation shall include, without limitation, 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 therefor, to enable City to install such telecommunications, data and computer cabling; provided, however, no such work shall interfere with Landlord's construction of the Leasehold Improvements or Base Building Improvements. Such access shall include reasonable access to the elevator in the Building designated for freight use.

g. Asbestos Related Work. City agrees to perform its due diligence as part of the space planning and cost estimating and prior to seeking authorizing legislation from the Board of Supervisors and the Mayor. In the event that 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 shall be responsible for all legally required work or other work necessary relating to the proper containment, abatement, removal and disposal of such ACM and all costs thereof. In no event shall any such costs be deducted from the Tenant Improvement Allowance or otherwise be City's responsibility. Any delay due to the presence of unknown ACM in the Building shall be considered a Landlord Delay.

h. Construction Improvements that Disturb or Remove Exterior Paint. Landlord, on behalf of itself and its agents, employees, officers and contractors, shall comply with all requirements of the San Francisco Building Code Chapter 34 and all other applicable local, state, and Federal laws, including but not limited to the California and United States

Occupational and Health Safety Acts and their implementing regulations, when the work of improvement or alteration disturbs or removes exterior or interior lead-based or "presumed" lead-based paint (as defined below). Landlord, its agents, employees, officers and contractors shall give to City three (3) business days prior written notice of any disturbance or removal of exterior or interior lead-based or presumed lead-based paint. Landlord acknowledges that the required notification to the Department of Building Inspection regarding the disturbance or removal of exterior lead-based paint pursuant to Chapter 34 of the San Francisco Building Code does not constitute notification to City as Tenant under the Lease and similarly that notice under the Lease does not constitute notice under Chapter 34 of the San Francisco Building Code. Further, Landlord and its agents, employees, officers and contractors, when disturbing or removing exterior or interior lead-based or presumed lead-based paint, shall not use or cause to be used any of the following methods: (a) acetylene or propane burning and torching; (b) scraping, sanding or grinding without containment barriers or a High Efficiency Particulate Air filter ("HEPA") local vacuum exhaust tool; (c) hydroblasting or high-pressure wash without containment barriers; (d) abrasive blasting or sandblasting without containment barriers or a HEPA vacuum exhaust tool; and (e) heat guns operating above 1,100 degrees Fahrenheit. Landlord covenants and agrees to comply with the requirements of Title 17 of the California Code of Regulations when taking measures that are designed to reduce or eliminate lead hazards. Under this Paragraph, paint on the exterior or interior of buildings built before January 1, 1979 is presumed to be lead-based paint unless a lead-based paint test, as defined by Chapter 34 of the San Francisco Building Code, demonstrates an absence of lead-based paint on the interior or exterior surfaces of such buildings. Under this Section, lead-based paint is "disturbed or removed" if the work of improvement or alteration involves any action that creates friction, pressure, heat or a chemical reaction upon any lead-based or presumed lead-based paint on a surface so as to abrade, loosen, penetrate, cut through or eliminate paint from that surface.

i. Furniture. Notwithstanding anything in the Lease to the contrary, City's initial installation of furniture and equipment on the second floor of the Premises shall be subject to Landlord's prior approval.

#### 4. Payment for Work; Allowance

a. Accessibility Improvements. Landlord shall, through its approved Contractor, furnish and install all improvements that are required to bring the Premises and the Common Areas serving the Premises, including, without limitation, the lobbies, corridors, telephone banks, drinking fountains, elevators, elevator vestibules, stairs, stair vestibules and restrooms, and signage in all such areas, into full compliance with all Disabled Access Laws. All costs of such work located outside of the Premises shall be performed at Landlord's sole cost and expense, and no such costs shall be deducted from the Allowance (as hereafter defined) and all costs of such work located within the Premises shall be performed by Landlord and the costs thereof shall be deducted from the Allowance.

b. Other Leasehold Improvement Work. Landlord shall pay for the cost of constructing and installing the Leasehold Improvements in the amount of up to, but not exceeding, \$25.00 per square foot of the Premises (the "**Allowance**"); provided, however, that Landlord shall have no obligation to pay all or any portion of the Allowance except with respect to costs of the Leasehold Improvements incurred on or before the date which is six (6) months after the Commencement Date. Such Allowance shall be applied to Architectural and Engineering costs incurred by Landlord, both prior to and after the execution of this Lease, and construction supervision costs for the Leasehold Improvement Work, but not the Base Building Improvements. The Allowance may not be used to offset rent or for any furniture, fixtures or equipment not permanently affixed to the Premises. In the event that the actual costs to construct and install the Leasehold Improvement Work incurred by Landlord exceeds the amount of the Allowance, City shall pay such excess costs upon receipt of required

documentation in accordance with the Lease and this Work Letter. On the date City approves the construction budget (the "**Cost Proposal Date**") as provided below, City shall deliver to Landlord cash in an amount (the "**Over-Allowance Amount**") equal to the difference between (i) the amount of the anticipated costs of construction of the Leasehold Improvements and (ii) the amount of the Allowance. Notwithstanding the foregoing, a portion of the Over-Allowance Amount up to a maximum amount of \$35.00 per square foot of the Premises shall be paid by Landlord in the same manner as the Allowance and such portion of the Over-Allowance Amount will then be amortized over the initial term of the Lease at the rate of eight percent (8%) per annum, compounded annually, and such amortized amount (including interest charges) shall be paid by City to Landlord with, and as part of, the Base Rent for the Premises in accordance with the provisions and requirements of the Lease (the "**Amortized Excess TI Costs**"). Promptly after the Leasehold Improvements have been substantially completed and the actual cost of the Leasehold Improvements are known, the parties shall execute and deliver a written amendment to the Lease, in the form acceptable to the parties, wherein there shall be specified, inter alia, the amount of the Base Rent payable by City during the initial term of the Lease after taking into account the amount of the Amortized Excess TI Costs. In the event that, after the Cost Proposal Date, there are any additional costs which arise in connection with a City Change Order or a Landlord Change Order that is not required to be paid solely by Landlord, then such costs shall be paid by City to Landlord immediately upon Landlord's request to the extent such additional costs increase any existing Over-Allowance Amount or result in an Over-Allowance Amount. Following completion of the Leasehold Improvements, Landlord shall deliver to City a final cost statement which shall indicate the final costs of the Leasehold Improvement, and if such cost statement indicates that City has underpaid or overpaid the Over-Allowance Amount, then within ten (10) business days after receipt of such statement, City shall deliver to Landlord the amount of such underpayment or Landlord shall return to City the amount of such overpayment, as the case may be. In connection with construction of the Leasehold Improvements, Landlord shall be paid a construction supervision fee. Landlord's construction supervision fee shall be 8% of the first \$35.00 psf of the cost of the Leasehold Improvement Work and 1% of the cost of the Leasehold Improvement Work in excess of \$35.00 psf up to an ROM Budget established during pre-lease planning and then 4% of the cost of the Leasehold Improvement Work thereafter. City shall be solely responsible for the costs of the telecommunications, data and computer cabling work described above, except as provided hereinabove.

c. City's Approval of Costs. The Leasehold Improvement Work shall include costs based on a detailed construction budget prepared by Landlord and approved by City. Within three (3) weeks of City's approval (or deemed approval) of the Construction Drawings, Landlord shall provide City with an initial construction budget for its approval. The approved construction budget shall restrict all costs to be included in the Allowance and any other costs to be paid by City hereunder to line items in cost categories of the budget. If the Leasehold Improvements cannot be completed in strict conformity with the most recently approved construction budget and such revised costs would result in an expenditure for the Leasehold Improvements in excess of \$60.00 per square foot of the Premises, then Landlord shall immediately submit to City for its approval a revised construction budget and shall identify to City changes in line items and the reasons for the changes. No costs shall be included in the Allowance, and City shall not be obligated to pay any costs in excess of the Allowance, unless and until it approves the construction budget. City shall approve the initial construction budget within three (3) business days of receipt. Subject to the immediately following sentence, for any changes in the initially approved construction budget that do not result in a total expenditure for the Leasehold Improvements in excess of \$60.00 per square foot of the Premises, then Landlord shall immediately submit to City for its approval a revised construction budget and shall identify to City changes in line items and the reasons for such changes and City shall provide its approval or disapproval within three (3) business days of receipt of such revised construction budget; provided, however, each day (or partial day) that follows the day

that Landlord provides a revised construction budget to City that City takes in responding with its approval or disapproval of any revised construction budget (for changes that do not result in a total expenditure for the Leasehold Improvements in excess of \$60.00 per square foot of the Premises), shall constitute a one day (or partial day, as applicable) Tenant Delay. For example, there will not be any Tenant Delay resulting from City's review of a revised construction budget if City notifies Landlord of its approval of such revised construction budget at or before 6:00 pm of the day that City receives such revised construction budget from Landlord. For any changes in the construction budget that are less than \$4,000, City shall have no right to approve or disapprove such changes, provided Landlord shall advise City as to such changes in line items to the construction budget related thereto and the reasons for such changes.

d. Required Documentation of Costs. In the event City is required to pay an additional Over-Allowance Amount following completion of construction, then Landlord shall provide City with copies of (i) all invoices received by Landlord from the Contractor in connection with the construction of the Leasehold Improvements, and (ii) satisfactory evidence of payment of such invoices substantiating such additional costs.

## 5. Substantial Completion

a. Construction Schedule. Landlord shall use commercially reasonable efforts to complete the Leasehold Improvement Work in accordance with the Construction Schedule delivered to City; provided, however, except as expressly set forth in the Lease, Landlord shall not be subject to any liability nor shall the validity of this Lease nor the obligations of City hereunder be affected in the event that Landlord is not able to meet the target date for Substantial Completion. When construction progress so permits, but not less than fifteen (15) days in advance of completion, Landlord shall notify City of the approximate date on which the Leasehold Improvement Work will be substantially completed in accordance with the approved Construction Documents and the provisions hereof. Landlord shall notify City when the Leasehold Improvement Work is in fact Substantially Completed and the Premises are ready for occupancy by City, and City or its representatives shall be permitted to accompany Landlord or its architect on an inspection of the Premises on such date or other mutually agreeable date (provided, however, such inspection shall not be required to determine "**Substantial Completion**").

b. Substantial Completion. The Leasehold Improvements shall be deemed to be "**Substantially Completed**" for purposes hereof when (i) a temporary certificate of occupancy or final permit card sign offs have been received by the appropriate governmental authority for City's occupancy of the Premises, and (ii) the Architect reasonably determines and certifies in writing to City that the Leasehold Improvements have been Substantially Completed in accordance with the Construction Documents to the extent necessary to enable City to occupy the Premises and to conduct its normal business operations therein without unreasonable impairment or interference, but subject to "punchlist" items, the completion of which will not unreasonably interfere with City's normal business operations therein. Landlord shall diligently pursue to completion all such details. Notwithstanding the foregoing, City shall have the right to present to Landlord within thirty (30) days after acceptance of the Premises, or as soon thereafter as practicable, a written "**punchlist**" consisting of any items that have not been finished in accordance with the Construction Documents and the terms of this Work Letter provided, however, punchlist items shall not include any elements of the Premises, the Leasehold Improvements or Initial Base Building Work damaged by City or its Agents. Landlord shall promptly complete all defective or incomplete items identified in such punchlist after receipt of such list. City's failure to include any item on such list shall not alter Landlord's responsibility hereunder to complete all Leasehold Improvement Work in accordance with the Construction Documents and the provisions hereof, nor constitute a waiver of any latent defects.

6. Delays in Construction

a. Unavoidable Delays. For purposes hereof, "Unavoidable Delays" shall mean any delays by reason of acts of God, accidents, breakage, repairs, strikes, lockouts, other labor disputes, inability to obtain labor or materials or failure to obtain any permits necessary for Landlord's construction within five (5) days of application therefor after using diligent and timely efforts, enemy action, civil commotion, protests, riots, demonstrations, or by any other reason without fault and beyond the reasonable control of the party obligated to perform. In the event of any such delay, the party affected by such delay shall give prompt written notice to the other of the occurrence of such event and the projected delay in performance, and thereafter shall keep the other party regularly informed of the status of such Unavoidable Delay.

b. Tenant Delays. Subject to any Unavoidable Delay, City shall be responsible for any delay in the construction of the Leasehold Improvements to the extent arising from any of the following (collectively, "Tenant Delays"): (i) a delay in granting its reasonable approval of plans and specifications (beyond the period granted therefor), (ii) City Change Orders to the Construction Documents, (iii) City's delay in granting its reasonable approval of any costs to be included in the Allowance (beyond the period granted therefor), (iv) a breach by City of the terms of this Work Letter or the Lease, (v) City's requirement for materials, components, finishes or improvements which are not available in a reasonable time (based upon the anticipated date of the Lease Commencement Date) or which are different from, or not included in, the Building standard specifications, provided, however, Landlord shall notify City promptly of any anticipated delays which are likely to result therefrom, (vi) changes to the Base, Shell and Core required by the Construction Drawings, (vii) any changes in the Construction Drawings and/or the Leasehold Improvements required by applicable laws if such changes are directly attributable to City's use of the Premises or City's specialized tenant improvement(s) (as determined by Landlord), (viii) any interference in construction of the Leasehold Improvements or Base Building Improvements arising from City, or its agents, or employees entry into the Premises or any work performed by such parties prior in the Premises or Building prior to Substantial Completion; and/or (ix) any time City takes in approving or disapproving a revised construction budget (for changes in the construction budget that do not result in a total expenditure for the Leasehold Improvements in excess of \$60.00 per square foot of the Premises) as provided in Section 4.c. above.

Notwithstanding anything to the contrary set forth in the Lease and regardless of the actual date of the Substantial Completion of the Premises, the Commencement Date (as set forth in the Basic Lease Information) shall be deemed to be the date the Commencement Date would have occurred if no Tenant Delay or Delays, as set forth above, had occurred.

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

c. Construction Acceleration. If, through no fault of Landlord, Landlord's construction falls behind the approved construction schedule, upon receipt of written request from City, the Contractor shall notify the Landlord and City of the measures Contractor proposes to regain the lost time. If the measures proposed by Contractor are desired by City, then, upon City's written notice to Landlord, Landlord may require the Contractor to work additional time over regular hours, including Saturdays, Sundays, holidays, to add additional personnel, materials, and equipment to bring the work up to Schedule. All fees, costs and expenses incurred in connection with such work acceleration shall be borne solely by City.



7. General Provisions.

a. Notices. Except as may be otherwise specifically provided herein, any notice given under this Work Letter shall 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

Landlord: Laurus Corporation  
1880 Century Park East  
Suite 1016  
Los Angeles, CA 90067  
Attn: Konstantin Daskalov  
Vice President, Development

With a copy to: Oliver & Associates  
66 Bovet Road, Suite 325  
San Mateo, CA 94402  
Attn: Matthew A. Oliver

or such other address as a party may designate to the others as its new address for such purpose by notice given to the others in accordance with the provisions of this paragraph. Any notice hereunder shall be deemed to have been given and received two (2) days after the date when it is mailed if sent by first class, certified mail, one day after the date when it is mailed if sent by overnight courier, or upon the date personal delivery is made. Neither party may give official or binding notice by facsimile.

b. Landlord's Duty to Notify City. Intentionally deleted.

c. Prevailing Wages for Construction Work. Landlord agrees that any person performing labor in the construction of the Leasehold Improvements which Landlord is obligated to provide under this Work Letter shall be paid not less than the highest prevailing rate of wages and that Landlord shall include, in any contract for construction of the Leasehold Improvements, a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Landlord further agrees that, as to the construction of the Leasehold Improvements under this Work Letter, Landlord shall 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.

d. Tropical Hardwood and Virgin Redwood Ban.

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

The City and County of San Francisco 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.

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

f. Days. Unless otherwise provided herein, all periods specified by a number of days shall refer to business days. Saturdays, Sundays and recognized City holidays shall not constitute business days.

g. Approvals. Landlord understands and agrees that 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 herein, no approval by City of the plans for the Leasehold Improvements (including the Schematic Design Documents or Construction Documents), completion of the Leasehold Improvement Work nor any other approvals by City hereunder shall 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 hereunder may be made by City's Director of Property unless otherwise specified herein.

h. Additional Requirements. Landlord shall (i) comply with the Resource Efficient Building Ordinance (which among other items requires low VOC paints and adhesives, "Green Seal" carpeting, and energy and water efficient fixtures and appliances) and (ii) prior to submittal for permits, submit the permit plans and specifications to the Mayor's Office on Disability for additional ADA review and modification, which approval shall be granted within five (5) business days after delivery of such plans and, in the event such approval is not timely received, then such approval shall be deemed to have been granted.

8. Time of the Essence. Time is of the essence with respect to all provisions of this Work Letter in which a definite time for performance is specified, including, without limitation, the date for Substantial Completion.

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

**LANDLORD:** 1155 SF PARTNERS, L.P.C.,  
a Delaware limited liability company

By: \_\_\_\_\_  
*Andres Szita*

Its: Authorized Representative - 1155 SF Partners, LLC

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

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

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

By: \_\_\_\_\_  
JOHN UPDIKE  
Acting Director of Property

RECOMMENDED:

\_\_\_\_\_  
*[Department Authority]*

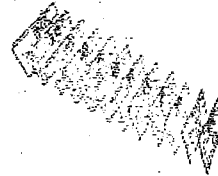
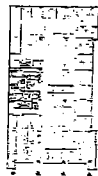
APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

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

Deputy City Attorney

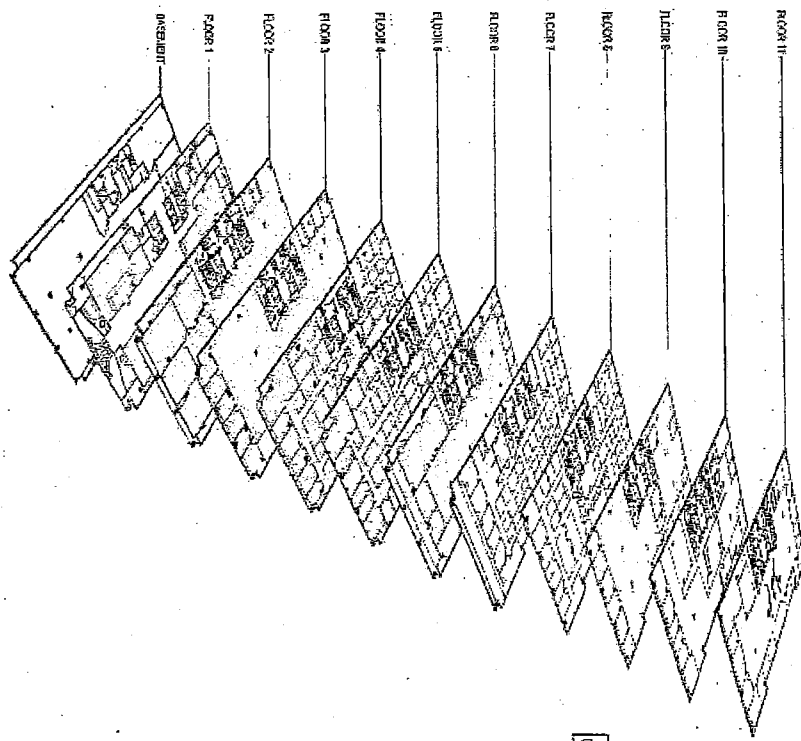
SCHEDULE 1 TO EXHIBIT H  
SCHEMATIC DESIGN DOCUMENTS



**1155 MARKET**  
BUILDING RENOVATIONS &  
TENANT IMPROVEMENTS

**CONCEPTUAL DESIGN**  
OCT 12, 2012

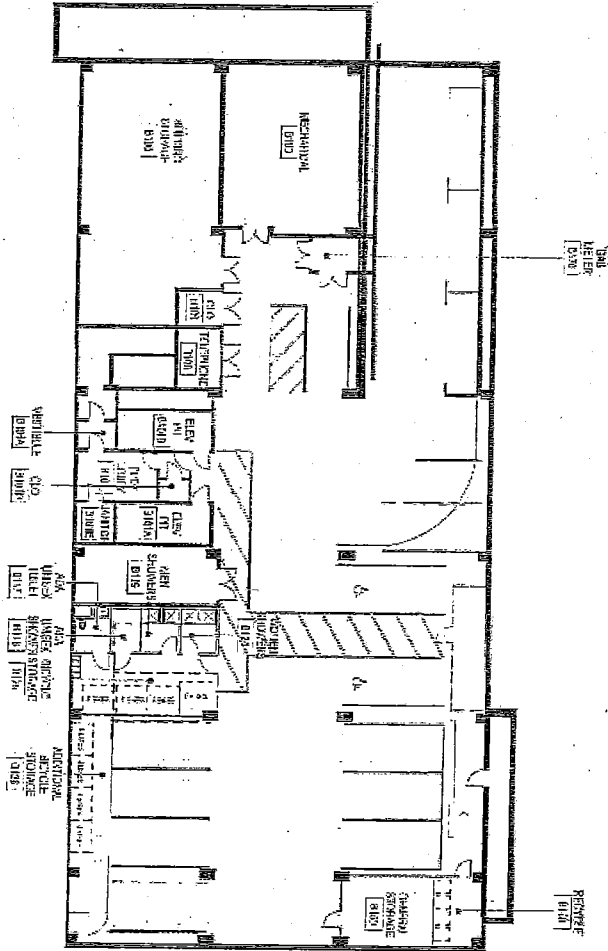
NOTE: FURNITURE LAYOUTS ARE FOR REFERENCE  
AND BASED ON PREVIOUS ERFAS PLANS AND  
ADDITIONAL NEW CLO. FURNITURE.



1155 MARKET STREET STACKING PLAN

Level	Use
11	VACANT
10	VACANT
9	SFP/O
8	Treasurer-Tax Collector
7	Treasurer-Tax Collector
6	Department of Human Resources - (Training/ Training)
5	Assessor/Recorder
4	GSA - Human Resources
3	DPW - (SSM)
2	DPW - (SSM)
1	DPW - (OFF/MA)
0	DPW - (SSM) - Permits
B	Parking Spaces

BASEMENT PLAN  
ANS - 110

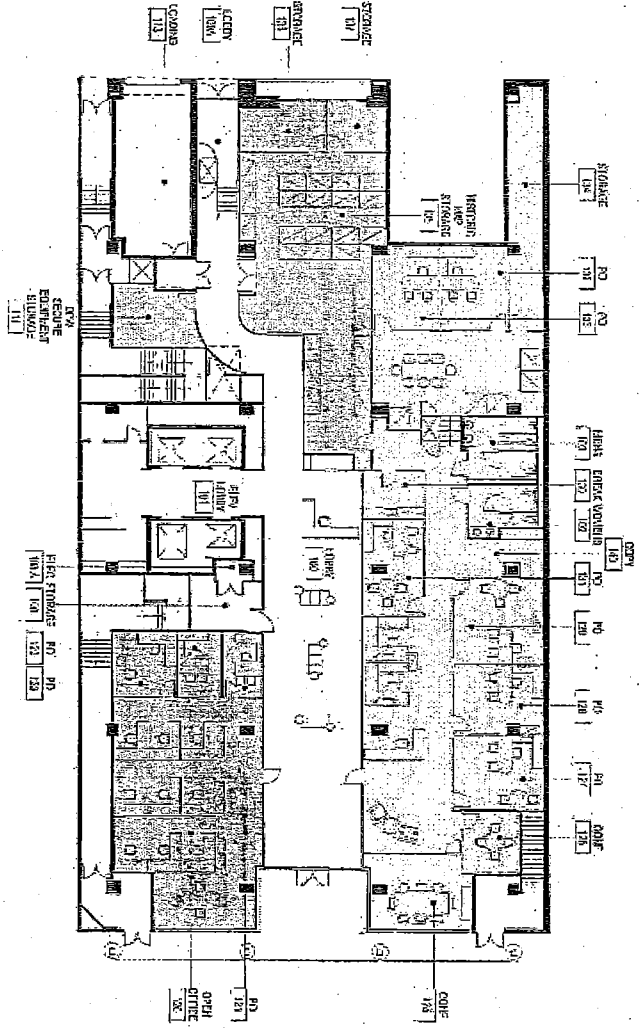


PROPOSED LAYOUT APPROXIMATE  
THE CIVIL AND MECHANICAL CONTRACTORS

*[Signature]*  
ARCHITECT

1

PROGRAM SUMMARY	DPW	MOD
OFFICE	2	3
PRIVATE OFFICE	4	2
PLANT/ENGINEERING	102	1
RECEPTION	18	1
SUBTOTAL BUDGET POSITIONS	18	1
DEPARTMENT SUPPORT AREAS	1	1
CODE 1000A - SUI 64	1	1
CODE 1000B - SUI 64	1	1
CODE 1000C - SUI 64	1	1
CODE 1000D - SUI 64	1	1
CODE 1000E - SUI 64	1	1
CODE 1000F - SUI 64	1	1
CODE 1000G - SUI 64	1	1
CODE 1000H - SUI 64	1	1
CODE 1000I - SUI 64	1	1
CODE 1000J - SUI 64	1	1
CODE 1000K - SUI 64	1	1
CODE 1000L - SUI 64	1	1
CODE 1000M - SUI 64	1	1
CODE 1000N - SUI 64	1	1
CODE 1000O - SUI 64	1	1
CODE 1000P - SUI 64	1	1
CODE 1000Q - SUI 64	1	1
CODE 1000R - SUI 64	1	1
CODE 1000S - SUI 64	1	1
CODE 1000T - SUI 64	1	1
CODE 1000U - SUI 64	1	1
CODE 1000V - SUI 64	1	1
CODE 1000W - SUI 64	1	1
CODE 1000X - SUI 64	1	1
CODE 1000Y - SUI 64	1	1
CODE 1000Z - SUI 64	1	1
STORAGE	101	1
STORAGE	102	1
STORAGE	103	1
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STORAGE	200	1



DPW/BSM/Permits/ MOD  
 101-199

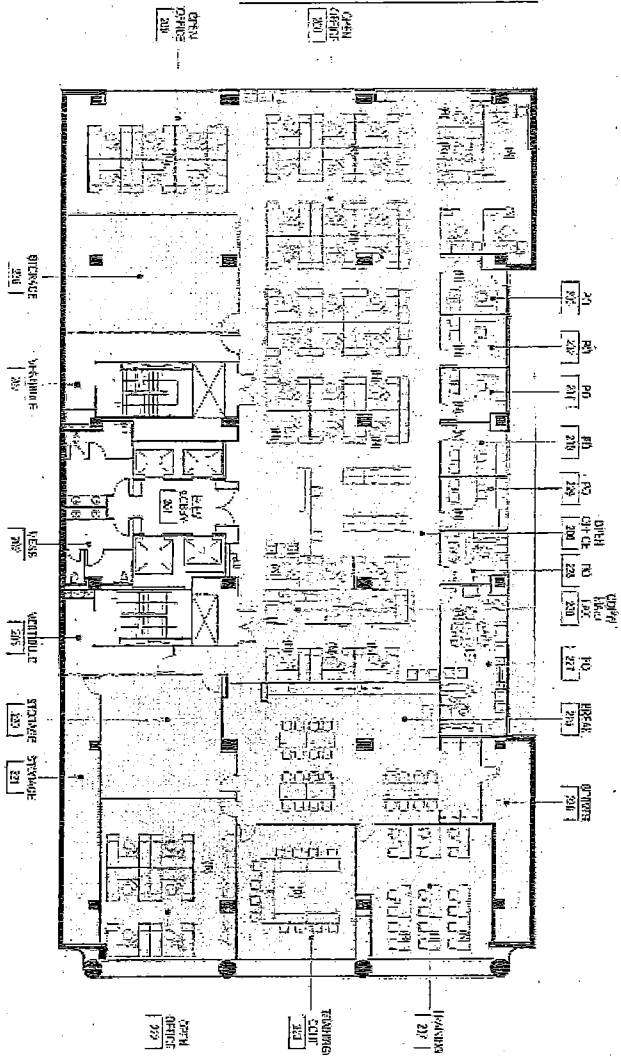
PROHAMA AVENUE II ANNOUNCED FOR  
 THE CITY AND COUNTY OF SAN FRANCISCO

*Handwritten signature*

10/25/12

1

PROGRAM SUMMARY	DPW (BSM)
OFFICE	
PRIVATE OFFICE	7
OPEN OFFICE/WORKSTATION	16
RECEPTION	2
SUPPORT - STAFF RESTROOMS	2
WAREHOUSE	37
DEPARTMENT SUPPORT AREAS	
BREAKROOM	1
MANAGEMENT ROOM	1
SERVER	1
SHARED SUPPORT AREAS	
TRAINING/CONFERENCE	2

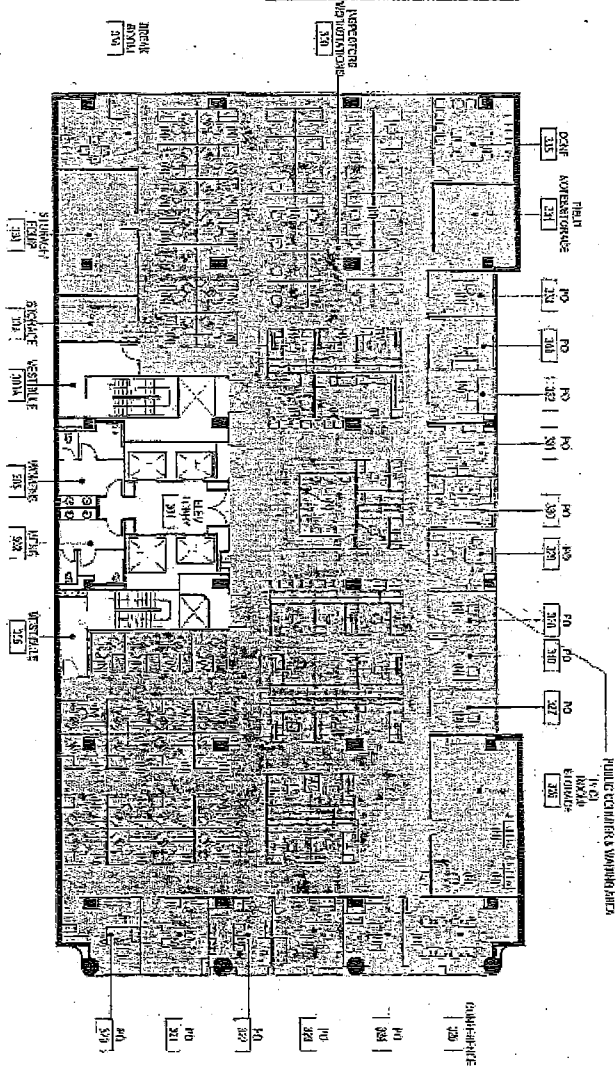


DPW (OFFPLAN)  
108-145





PROGRAM SUMMARY	DPW (BSM)
OFFICE	14
PRIVATE OFFICE	48
CARPOOLING ZONE/STORAGE	27
INSPECTION VEHICLES	6
RECEPTION/STAFF COMMONS	30
SUPPORT STAFF RESTROOMS	
STORAGE	
DEPARTMENT SUPPORT AREAS	
OUTDOOR - LINEN/STORAGE	
RECEPTION	
RESTROOM	
STORAGE	



DPW (BSM)  
198 = 19'

PROVIDE A FULL SCALE APPROVED FOR THE CITY AND COUNTY OF DENVER

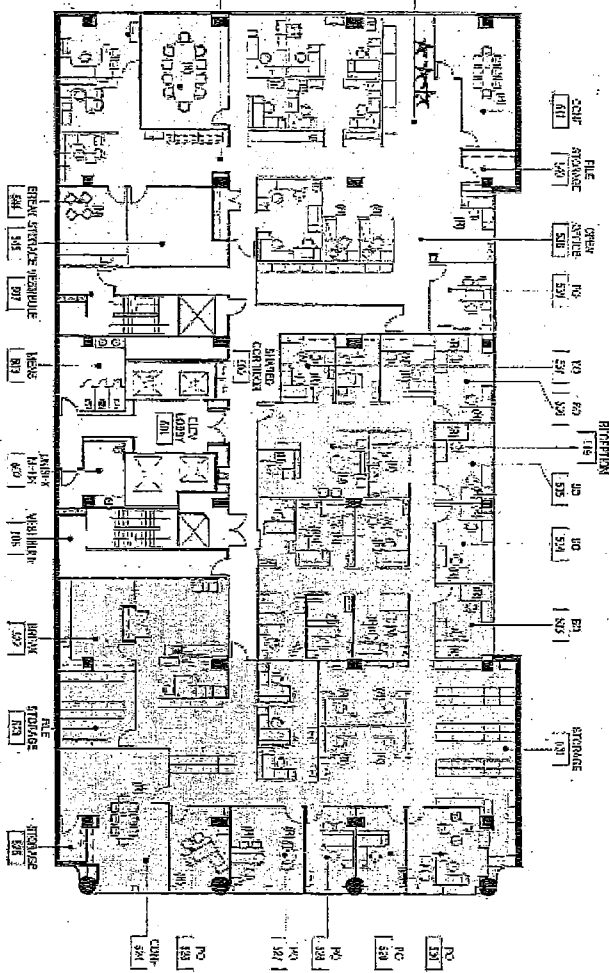
*[Signature]*

*[Signature]*

①



PROGRAM BOUNDARY	ASSESSMENT YEARS
OFFICE	
PRIVATE OFFICE	51
2 PERSON SHARED OFFICE	51/52
OVER OFFICE (WORKS/STAFF)	51
RECEPTION	51
SUBORDINATE CONFERENCE	51
WORKSTATION	51
DEPARTMENT EQUIPMENT AREAS	2
CONF ROOM - ADJACENT TO CONF ROOM	1
CONF ROOM - ADJACENT TO CONF ROOM	1
CONF ROOM - ADJACENT TO CONF ROOM	1
BREAK	1



ASSESSOR & RECORDER/VETERANS

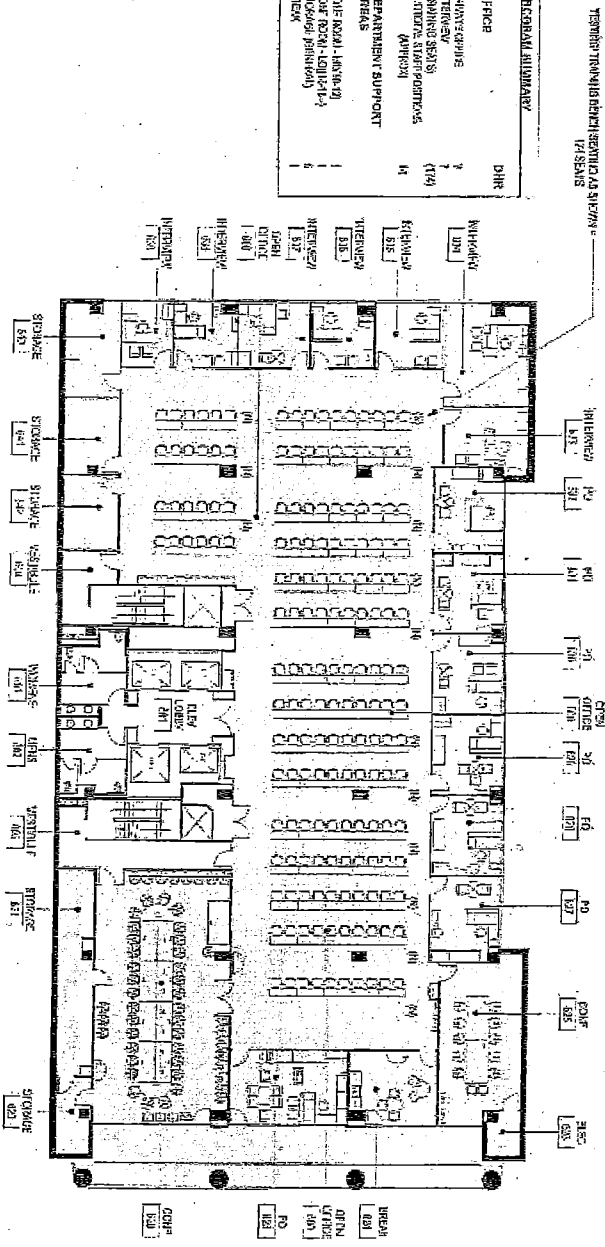
Map # 114

MODIFIED LAND USE ASSIGNMENTS  
 1/4 CITY AND COUNTY OF SAULSBURY CO.

*[Signature]*  
 DATE 10/15/12



DEPARTMENTAL SUPPORT AREAS	DIRK
OFFICE	7
TRAINING CENTER	7
INTERVIEW ROOMS	7
CONFERENCE ROOMS	7
TRAINING SUPPORT AREAS	7
DEPARTMENTAL SUPPORT AREAS	11
OFFICE	1
TRAINING CENTER	1
INTERVIEW ROOMS	1
CONFERENCE ROOMS	1
TRAINING SUPPORT AREAS	1



Department of Human Resources (Training/Training)

1

PROCESSED AND APPROVED FOR THE CITY AND COUNTY OF SAN FRANCISCO

MIA

DATE

**PROPOSAL SUMMARY**

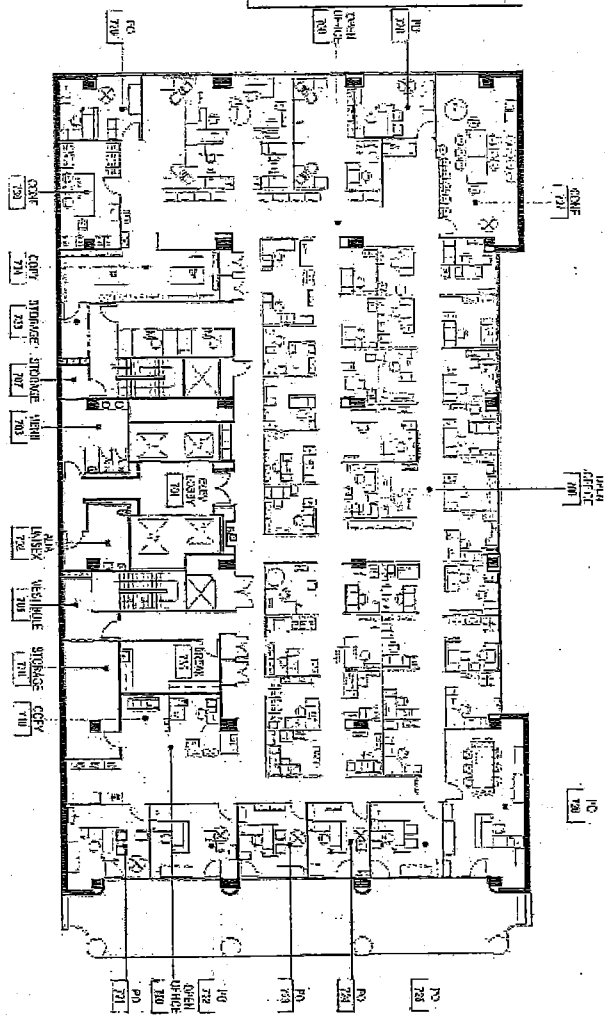
DEPT: TREASURER

PROJECT: HIRVIG OFFICE RELOCATION

DESCRIPTION: HIRVIG OFFICE RELOCATION (4/15/00)

DEPARTMENT SUPPORT AREAS

COPY ROOM - 5110  
COPY ROOM - 5120  
MAIL ROOM  
STORAGE - 5130



Treasurer Tax Collector Group  
 505-114

PROGRAM AND PROJECT INFORMATION  
 THE CITY AND COUNTY OF DENVER

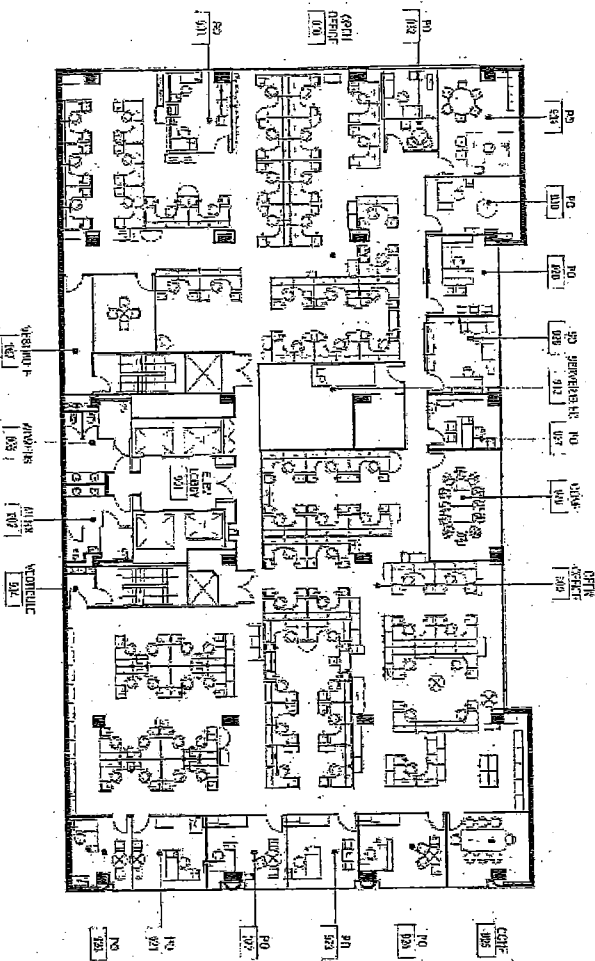
APR 15 2000

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OCCUPIED SIFPUC

REV 1/02



PROGRAM AND LAYOUT APPROVED FOR THE CITY AND COUNTY OF DENVER

*[Handwritten Signature]*  
DATE 10/15/12

**EXHIBIT I-1**

**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 pursuant to Government  
Code Section 27383.

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

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

**MEMORANDUM OF LEASE**

This Memorandum of Lease ("**Memorandum**"), dated for reference purposes as of \_\_\_\_\_, 2012, is by and between 1155 SF Partners, LLC, a California limited liability company] ("**Landlord**"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**").

**Recitals**

A. Concurrently herewith, Landlord and City have entered into that certain Lease, dated \_\_\_\_\_, 2012 (the "**Lease**"), pursuant to which Landlord leased to City and City leased from Landlord the real property more particularly described in the attached Exhibit A (the "**Property**"), which is incorporated by this reference.

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

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

1. Term. Pursuant to the terms of the Lease, Landlord leased the Property to City for a term commencing on the date Landlord delivers possession of the Property to City as set forth in the Lease. The Term of the Lease shall expire on the date that is ten (10) years after the Commencement Date (as such term is defined in the Lease), subject to two (2), five (5) year option to extend (subject to the terms and conditions of the Lease), unless earlier terminated in accordance with the terms of the Lease.



2. Lease Terms. The lease of the Property to City is made pursuant to the Lease, which is incorporated in this Memorandum by reference. This Memorandum shall not be deemed to modify, alter or amend in any way the provisions of the Lease. In the event any conflict exists between the terms of the Lease and this Memorandum, the terms of the Lease shall govern. Except as otherwise defined in this Memorandum, capitalized terms shall have the meanings given them in the Lease.

3. Successors and Assigns. This Memorandum and the Lease shall bind and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject, however, 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 above written.

LANDLORD:

1155 SF Partners, LLC, a California limited liability company

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

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

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

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

CITY:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation,

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

JOHN UPDIKE  
Acting Director of Property

APPROVED AS TO FORM:

DENNIS J. HERRERA  
City Attorney

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

Deputy City Attorney

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 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 California            )  
  )  
County of \_\_\_\_\_)

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

**EXHIBIT I-2**

**FORM OF QUITCLAIM OF MEMORANDUM OF LEASE**

**Recording Requested by and  
When Recorded Mail to:**

Laurus Corporation  
1880 Century Park East  
Suite 1016  
Los Angeles, CA 90067  
Attn: Property Manager

---

Space Above This Line for Recorder's Use

**QUITCLAIM DEED**

No transfer tax due – realty not sold.

**FOR A VALUABLE CONSIDERATION**, receipt of which is hereby acknowledged, the City and County of San Francisco ("Tenant") hereby remises, releases and forever quitclaims unto 1155 SF Partners, LLC (or its sublessors and assigns) ("Landlord"), all of Tenant's rights and interests set forth in that certain Memorandum of Lease which was recorded on \_\_\_\_\_ as Document Number \_\_\_\_\_ in the Official Records of San Francisco County, California.

**IN WITNESS WHEREOF**, Tenant has caused this instrument to be executed as of the date hereinafter written.

DATED: \_\_\_\_\_, \_\_\_\_\_

**TENANT:**

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_  
JOHN UPDIKE  
Acting Director of Property

STATE OF CALIFORNIA  
COUNTY OF \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_ a

Notary Public, 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 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 of Notary Public

(Notary Seal)

**EXHIBIT J**

**FORM OF SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

This SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is entered into as of \_\_\_\_\_, 20\_\_ (the "Effective Date"), between [insert Trustee], as Trustee for the registered holders of [insert Trust] ("Mortgagee"), and \_\_\_\_\_, a \_\_\_\_\_ ("Tenant").

A. [insert Borrower] ("Landlord"), owns the real property located at \_\_\_\_\_ (such real property, including all buildings, improvements, structures and fixtures located thereon, shall be hereinafter referred to as the "Landlord's Premises"), as more particularly described on Exhibit A attached hereto.

B. Mortgagee is the holder of a loan (the "Loan") to Landlord, which Loan is secured, in part, by that certain \_\_\_\_\_ [describe mortgage] dated \_\_\_\_\_, 20\_\_, in favor of Mortgagee (as amended, increased, renewed, extended, spread, consolidated, severed, restated or otherwise changed from time to time, the "Mortgage"), recorded at Book \_\_\_\_\_, Page \_\_\_\_\_, in the [Official Records of the County of \_\_\_\_\_].

C. The Mortgage is part of a mortgage pool known as the \_\_\_\_\_, Series \_\_\_\_\_, for which, pursuant to a Pooling and Servicing Agreement dated \_\_\_\_\_, \_\_\_\_\_ is the Trustee; C-III Asset Management LLC, is the Special Servicer.

D. Pursuant to that certain \_\_\_\_\_ [describe lease], dated as of \_\_\_\_\_, 20\_\_, (the "Lease"), Landlord demised to Tenant a portion of Landlord's Premises as described in the Lease (the "Tenant's Premises").

E. Tenant and Mortgagee desire to agree upon the relative priorities of their interests in Landlord's Premises and their rights and obligations if certain events occur.

NOW, THEREFORE, for good and sufficient consideration, Tenant and Mortgagee agree:

1. **DEFINITIONS**

The following terms shall have the following meanings for purposes of this Agreement.

1.1 **Construction-Related Obligation.** A "Construction-Related Obligation" means any obligation of Landlord under the Lease to make, pay for or reimburse Tenant for any alterations, demolitions or other improvements or work at Landlord's Premises, including Tenant's Premises. "Construction-Related Obligations" shall not include: (a) reconstruction or repair following fire, casualty or condemnation to the extent of insurance proceeds or



condemnation awards actually received by Mortgagee or (b) day-to-day maintenance and repairs.

1.2 Foreclosure Event. A "Foreclosure Event" means: (a) foreclosure under the Mortgage; (b) any other exercise by Mortgagee of rights and remedies (whether under the Mortgage or under applicable law, including bankruptcy law) as holder of the Loan and/or the Mortgage, as a result of which Successor Landlord becomes owner of Landlord's Premises; or (c) delivery by Landlord to Mortgagee (or its designee or nominee) of a deed or other conveyance of Landlord's interest in Landlord's Premises in lieu of any of the foregoing.

1.3 Former Landlord. A "Former Landlord" means Landlord and any other party that was landlord under the Lease at any time before the occurrence of any attornment under this Agreement.

1.4 Offset Right. An "Offset Right" means any right or alleged right of Tenant to any offset, defense claim, counterclaim, reduction, deductions or abatement against Tenant's payment of Rent or performance of Tenant's other obligations under the Lease, arising (whether under the Lease or other applicable law) from Landlord's breach or default under the Lease.

1.5 Rent. The "Rent" means any fixed rent, base rent or additional rent under the Lease.

1.6 Successor Landlord. A "Successor Landlord" means any party that becomes owner of Landlord's Premises or successor to Landlord's interest in the Lease as the result of a Foreclosure Event.

1.7 Termination Right. A "Termination Right" means any right of Tenant to cancel or terminate the Lease or to claim a partial or total eviction, arising (whether under the Lease or under applicable law) from Landlord's breach or default under the Lease.

## 2. SUBORDINATION.

The Lease shall be, and shall at all times remain, subject and subordinate to the Mortgage, the lien imposed by the Mortgages and all advances made under the Mortgage.

## 3. NON-DISTURBANCE; RECOGNITION AND ATTORNMENT

3.1 No Exercise of Mortgage Remedies Against Tenant. So long as the Lease has not been terminated, Mortgagee shall not name or join Tenant as a defendant in any exercise of Mortgagee's rights and remedies arising upon a default under the Mortgage, unless applicable law requires Tenant to be made a party thereto as a condition to proceeding against Landlord or prosecuting such rights and remedies. In the latter case, Mortgagee may join Tenant as a defendant in such action only for such purpose and not to terminate the Lease or otherwise adversely affect Tenant's rights under the Lease or this Agreement in such action.

3.2 Non-Disturbance and Attornment. If the Lease has not been terminated when Successor Landlord takes title to the Landlord's Premises or succeeds to Landlord's interest in the Lease: (a) Successor Landlord shall not terminate or disturb Tenant's possession of Tenant's

Premises under the Lease, except in accordance with the terms of the Lease and this Agreement; (b) Successor Landlord shall be bound to Tenant under all of the terms and conditions of the Lease (except as provided in this Agreement); (c) Tenant shall recognize and attorn to Successor Landlord as Tenant's direct landlord under the Lease as modified by this Agreement; and (d) the Lease shall continue in full force and effect as a direct lease in accordance with its terms (except as provided in this Agreement) between Successor Landlord and Tenant.

3.3 Further Documentation. The provisions of this Article shall be effective and self-operative without any need for Successor Landlord or Tenant to execute any further documents. Tenant and Successor Landlord shall, however, confirm the provisions of this Article in writing upon written request by either of them, provided that any such writing is reasonably acceptable to Tenant and Successor Landlord.

#### 4. PROTECTION OF SUCCESSOR LANDLORD.

Notwithstanding anything to the contrary in the Lease or the Mortgage, Successor Landlord shall not be liable for or bound by any of the following matters:

4.1 Claims Against Former Landlord. Any Offset Right that Tenant may have against any Former Landlord relating to any event or occurrence before the date of attornment, including any claim for damages of any kind whatsoever as the result of any breach by Former Landlord that occurred before the date of attornment.

4.2 Prepayments. Any payment of Rent that Tenant may have made to Former Landlord more than thirty (30) days before the date such Rent was first due and payable under the Lease.

4.3 Payment; Security Deposit. Any obligation: (a) to pay Tenant any sum(s) that any Former Landlord owed to Tenant or (b) with respect to any security deposited with Former Landlord, unless such security was actually delivered to Mortgagee.

4.4 Modification, Amendment or Waiver. Any modification or amendment of the Lease, including any assignment or subletting of the Lease in whole or in part, or any waiver of any terms of the Lease, made without Mortgagee's prior written consent if such matter decreases the amount of Rent payable by Tenant, shortens the term of the Lease, substantially increases the obligations of Landlord, or substantially decreases the obligations of Tenant under the Lease.

4.5 Surrender, Etc. Any consensual or negotiated surrender, cancellations or termination of the Lease, in whole or in part, agreed upon between Landlord and Tenant, unless effected unilaterally by Tenant pursuant to the express terms of the Lease.

4.6 Construction-Related Obligations. Any Construction-Related Obligation of Former Landlord.

4.7 Casualty; Condemnation. Any obligation of Former Landlord to restore the Landlord's Premises, including the Tenant's Premises, except to the extent of insurance proceeds or condemnation awards actually received by Mortgagee after the deduction of all costs and

expenses incurred in obtaining such proceeds or awards, and subject to the terms of the Mortgage with respect to the disposition of such proceeds or awards.

5. EXCLUSION OF SUCCESSOR LANDLORD.

Notwithstanding anything to the contrary in this Agreement or the Lease, upon any attornment pursuant to this Agreement, the Lease shall be deemed to have been automatically amended to provide that Successor Landlord's obligations and liability under the Lease shall never extend beyond Successor Landlord's (or its successors' or assigns') interest, if any, in Landlord's Premises from time to time, Successor Landlord's interest in the Lease and the proceeds from any sale or other disposition of Landlord's Premises by Successor Landlord (collectively, "Successor Landlord's Interest"). Tenant shall look exclusively to Successor Landlord's Interest (or that of its successors and assigns) for payment or discharge of any obligations of Successor Landlord under the Lease as modified by this Agreement.

6. MORTGAGEE'S RIGHT TO CURE.

6.1 Notice to Mortgagee. Notwithstanding anything to the contrary in the Lease, before exercising any Termination Right or Offset Right while the Mortgage remains in effect, Tenant shall provide Mortgagee with notice of the breach or default by Landlord giving rise to same (the "Default Notice") and, thereafter, the opportunity to cure such breach or default as provided for below; provided, however, that Tenant's right to, and the application of the rent credit described in Section 3.3 of the Lease, shall not require any delivery of a Default Notice.

6.2 Mortgagee's Cure Period. After Mortgagee receives a Default Notice, Mortgagee shall have a period of thirty (30) days beyond any cure period provided to Landlord (the "**Mortgagee Cure Period**") under the Lease in which to cure the breach or default by Landlord. Mortgagee shall have no obligation to cure any breach or default by Landlord, except to the extent that Mortgagee agrees or undertakes otherwise in writing.

6.3 Extended Cure Period. In addition, as to any breach or default by Landlord the cure of which requires possession and control of Landlord's Premises, provided that Mortgagee notifies Tenant during the Mortgagee Cure Period of its election to cure such breach or default, Mortgagee's cure period shall continue for such additional time as Mortgagee may reasonably require to either (a) obtain possession and control of Landlord's Premises and thereafter cure the breach or default with reasonable diligence and continuity or (b) obtain the appointment of a receiver and give such receiver a reasonable period of time in which to cure the default with reasonable diligence and continuity. Nothing pursuant to this Section shall be deemed to limit any self-help right or unilateral termination right expressly set forth in the Lease.

7. RENT PAYMENT NOTICES.

From and after Tenant's receipt of written notice from Mortgagee (a "Rent Payment Notice"), Tenant shall pay all Rent to Mortgagee or as Mortgagee shall direct in writing, until such time as Mortgagee directs otherwise in writing. Tenant shall comply with any Rent Payment Notice, notwithstanding any contrary instruction, direction or assertion from Landlord. Mortgagee's delivery to Tenant of a Rent Payment Notice, or Tenant's compliance therewith, shall not be deemed to: (a) cause Mortgagee to succeed to or to assume any obligations or

responsibilities as Landlord under the Lease, all of which shall continue to be performed and discharged solely by Landlord unless and until any attornment has occurred pursuant to this Agreement; or (b) relieve Landlord of any obligations under the Lease.

8. CONFIRMATION OF FACTS.

Tenant represents to Mortgagee and to any Successor Landlord, in each case as of the Effective Date:

8.1 Effectiveness of Lease. The Lease is in full force and effect, has not been modified and constitutes the entire agreement between Landlord and Tenant relating to Tenant's Premises. Tenant has no interest in Landlord's Premises except pursuant to the Lease and that certain lease between Tenant and Landlord predecessor in interest dated as of November 1, 2002, as amended. No unfulfilled conditions exist to Tenant's obligations under the Lease.

8.2 Rent. Tenant has not paid any Rent that is first due and payable under the Lease after the Effective Date.

8.3 No Landlord Default. To the best of Tenant's knowledge, no breach or default by Landlord exists and no event has occurred that, with the giving of notice, the passage of time or both, would constitute such a breach or default.

8.4 No Tenant Default. Tenant is not in default under the Lease and has not received any uncured notice of any default by Tenant under the Lease.

8.5 No Termination. Tenant has not commenced any action nor sent or received any notice to terminate the Lease. Tenant has no presently exercisable Termination Right(s) or Offset Right(s).

8.6 Commencement Date. The "Commencement Date" of the Lease will be the date on which Landlord delivers possession of Tenant's Premises to Tenant in the condition required under Section 3.3 of the Lease.

8.7 No Transfer. Tenant has not transferred, encumbered, mortgaged, assigned, conveyed or otherwise disposed of the Lease or any interest therein.

8.8 Due Authorization. Tenant has full authority to enter into this Agreement, which has been duly authorized by all necessary actions.

9. MISCELLANEOUS.

9.1 Notices. All notices or other communications required or permitted under this Agreement shall be in writing and given by certified mail (return receipt requested) or by nationally recognized overnight courier service (next business day service requested) that regularly maintains records of items and shall be delivered to Mortgagee or Tenant (applicable) at the addresses set forth below. Notices shall be effective upon receipt.

If to Tenant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Mortgagee c/o C-III Asset Management LLC  
5221 N. O'Connor Blvd., Suite 600  
Irving, TX 75039  
Attn: \_\_\_\_\_

With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9.2 Successors and Assigns. This Agreement shall bind and benefit the parties, their successors and assigns, any Successor Landlord and its successors and assigns. If Mortgagee assigns the Mortgage, upon delivery to Tenant of written notice thereof all liability of the assignor shall terminate.

9.3 Entire Agreement. This Agreement constitutes the entire agreement between Mortgagee and Tenant regarding the subordination of the Lease to the Mortgage and the rights and obligations of Tenant and Mortgagee as to the subject matter of this Agreement.

9.4 Interaction with Lease. If this Agreement conflicts with the Lease, then this Agreement shall govern as between the parties and any Successor Landlord, including upon any attornment pursuant to this Agreement.

9.5 Mortgagee's Rights and Obligations. Except as expressly provided for in this Agreement, Mortgagee shall have no obligations to Tenant with respect to the Lease. If an attornment occurs pursuant to this Agreement, all rights and obligations of Mortgagee under this Agreement shall terminate, without thereby affecting in any way the rights and obligations of Successor Landlord provided for in this Agreement.

9.6 Interpretation: Governing Law. The interpretation, validity and enforcement of this Agreement shall be governed by and construed under the internal laws of the state where the Landlord's Premises is located excluding its principles of conflict of laws.

9.7 Amendments. This Agreement may be amended, discharged or terminated, or any of its provisions waived, only by a written instrument executed by the party to be charged.

9.8 Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

9.9 Mortgagee's Authority. Mortgagee represents that Mortgagee has full authority to enter into this Agreement, and Mortgagee's entry into this Agreement has been duly authorized by all necessary actions.

IN WITNESS WHEREOF, this Agreement has been duly executed by Mortgagee and Tenant as of the Effective Date.

MORTGAGEE

[Insert name of Trustee] as Trustee for the registered holders of [insert name of portfolio with Series designation]

By: C-III Asset Management LLC, solely in its capacity  
As Special Servicer

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

TENANT

\_\_\_\_\_

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

Landlord consents and agrees to the terms of the foregoing Agreement, which was entered into at Landlord's request. The foregoing Agreement shall not alter, waive or diminish any of Landlord's obligations under the Mortgage or the Lease. The above Agreement discharges any obligations of Mortgagee under the Mortgage and related loan documents to enter into a non-disturbance agreement with Tenant.

Landlord irrevocably directs Tenant to comply with any Rent Payment Notice, notwithstanding any contrary direction, instructions, or assertion by Landlord. Tenant shall be entitled to rely on any Rent Payment Notice. Tenant shall be under no duty to controvert or challenge any Rent Payment Notice. Tenant's compliance with a Rent Payment Notice shall not be deemed to violate the Lease.

LANDLORD

\_\_\_\_\_

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

Name: \_\_\_\_\_

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

Dated: \_\_\_\_\_, 20\_\_

**EXHIBIT K-1**

**BASE BUILDING WORK PRIOR TO COMMENCEMENT DATE**

- ADA upgrades including path of travel drawings and toilet room upgrades, as further described in memorandum from Brynda Kirk to Gary Koshaba dated August 20, 2012, regarding an accessibility compliance report for 1155 Market
- Fire life-safety systems to meet applicable code; ie. panels etc.
- Restore second basement exit (remove cyclone fence and storage)
- Install backflow valve on water service
- Sustainable Sites: 48 Bike storage spaces in the basement per the City approved space plan dated October 15, 2012 .



**EXHIBIT K-2**

**BASE BUILDING WORK AFTER COMMENCEMENT DATE**

<b>WORK</b>	<b>TIMING FOR COMPLETION</b>
Energy and Atmosphere: Replace building chillers, monitoring systems, CW pump, and Landlord's Building cooling tower, per recommendation contained in the Study Report for Compliance with ASHRAE 90.1 prepared by A&S Engineers Inc. for 1155 Market, dated August 20, 2012.	24 months after the Commencement Date
Powerwash all precast and decks.	180 days after the Commencement Date
Repaint window mullions on W. façade.	240 days after the Commencement Date
Install sprinklers in generator room at roof	90 days after the Commencement Date
Elevator Cabs - Modernization and upgrades – Refurbishment or replacement of walls, ceiling and floor finishes, lighting upgrades and compliance with ADA signage requirements	180 days after the Commencement Date
Restrooms – fixture upgrade for water efficiency; replace faucets, urinals and LAVs for +/- 35% water savings	180 days after the Commencement Date
Energy systems to ASHRAE 90.1 – 2007 for base building systems	90 days after the Commencement Date
Add CO monitoring systems for the parking ventilation system and add VFD for fan	120 days after the Commencement Date
Sustainable Sites: 2 mens, 2 womens, and 1 ADA compliant unisex shower with changing rooms, and 1 ADA compliant unisex toilet in basement per the City approved space plan dated October 15, 2012	120 days after the Commencement Date





Fw: Please transfer File Nos. 121046, 121047, 121048 from Budget to Board of Supervisors

Rick Caldeira

to:

victor.young

10/31/2012 03:18 PM

Hide Details

From: Rick Caldeira/BOS/SFGOV

To: victor.young@sfgov.org,

Please process.

— Forwarded by Rick Caldeira/BOS/SFGOV on 10/31/2012 03:23 PM —

From: Judson True/BOS/SFGOV

To: BOS Legislation/BOS/SFGOV@SFGOV,

Cc: Angela Calvillo/BOS/SFGOV@SFGOV, Rick Caldeira/BOS/SFGOV@SFGOV

Date: 10/31/2012 03:00 PM

Subject: Please transfer File Nos. 121046, 121047, 121048 from Budget to Board of Supervisors

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Thank you.

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Judson True  
Office of Supervisor David Chiu  
City Hall, Room 264  
San Francisco, CA 94102  
415.554.7451 desk  
415.554.7454 fax

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

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

<b>Contractor Information</b> <i>(Please print clearly.)</i>
Name of contractor: 1155 SF Partners, LLC
<i>Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.</i>
1155 SF Partners, LLC – Authorized Representatives are Andres Szita, Jean Paul Szita and Rafael Marcos

<b>Contractor address:</b> c/o Laurus Corporation, LLC, 1880 Century Park East, Suite 1016, Los Angeles, CA 90067
--

Date that contract was approved: <i>(By the SF Board of Supervisors)</i>	<b>Amount of contract:</b> 10 year lease with first year rent of \$3,262,000.
---	--

<b>Describe the nature of the contract that was approved:</b> Lease of an office building for City uses
--

<b>Comments:</b>
------------------

This contract was approved by (check applicable):

the City elective officer(s) identified on this form

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

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

Print Name of Board

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

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

Date Signed

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

Date Signed