

## EXCLUSIVE NEGOTIATION AGREEMENT

THIS EXCLUSIVE NEGOTIATION AGREEMENT (“**ENA**” or “**Agreement**”), dated as of March 3, 2017, for reference purposes only, is by and between THE CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation acting by and through the MAYOR’S OFFICE OF ECONOMIC AND WORKFORCE DEVELOPMENT (“**OEWD**”) and the GENERAL SERVICES AGENCY, REAL ESTATE DIVISION (“**RED**”) (collectively “**City**”) and the CALIFORNIA HISTORICAL SOCIETY, a California nonprofit public benefit corporation (“**CHS**” or “**Partner**”).

### RECITALS

A. The Old United States Mint (“**Old Mint**” or “**Mint**”) is a National Historic Landmark Building owned by the City located at 88 Fifth Street in San Francisco, as depicted on the attached Exhibit A (“**Site**”). The Old Mint was a federal property from the completion of its construction in 1874, until its transfer to the City in 2003. The Old Mint is significant for both its history and architecture, and is a locally-designated landmark property listed in Article 10 of the City’s Planning Code.

B. Through the Old Mint Restoration Project (“**Project**”), the City desires to rehabilitate the Old Mint and rededicate it as a new, dynamic, multi-use cultural facility. On December 18, 2015, the City issued a Request for Proposals (“**RFP**”) seeking a “Lead Community Partner” for Phase I (due diligence and assessment) of the Project. The RFP described said partner’s role as assisting the City with planning, feasibility-testing, and proposal development in support of the ultimate restoration Project.

C. In response to the RFP, on or about February 3, 2016, CHS submitted a proposal (“**Proposal**”) responsive to the RFP that envisioned the Mint as a California history museum and cultural event center, with CHS as the anchor tenant and steward, and which includes exhibition and collections space, together with accessory uses such as retail, a café and event space. Through the competitive RFP process, the City chose CHS as the selected respondent to serve as the City’s “Lead Community Partner”, pursuant to the terms described in the Proposal and the RFP, and to possibly negotiate a long term stewardship agreement to manage and operate the Site during future phases of the Project, as further described in Section 4(b) of this Agreement.

D. City is willing to enter into this ENA to set forth the terms and conditions of the partnership between City and CHS for CHS to be the “Lead Community Partner” for Phase I as generally set forth in the RFP including: identifying needed various technical and feasibility studies (e.g. cultural viability study, capital campaign feasibility analysis, structural assessment, fundraising plan, design and necessary regulatory approvals); advising the City on the entities best equipped to provide such studies; reviewing and providing analysis of any such studies; culminating in a reuse proposal (supported by the findings and analysis of the studies) which includes plans for a fully retrofitted Old Mint, a defined set of programs for the Old Mint that provides publicly accessible cultural activities, and, houses a tenant or tenants capable of maintaining the Site.

E. CHS desires to enter into this ENA to set forth the duties, obligations, terms and conditions for Phase I of the Project.

F. The City enters into this ENA in its proprietary capacity and not in its regulatory capacity or pursuant to its police powers.

G. CHS understands and agrees that the Site is currently operated pursuant to a City issued permit to Activate San Francisco Events (“**Tenant**”) and will continue to be operated by the Tenant or other tenants during Phase I of the Project and possibly Phase II.

H. This ENA is entered into with the understanding that the Project is fluid, and the parties intend to rely upon the results and data produced during and in Phase I to redefine, if necessary, the deliverables expected during the term of this ENA, development of Phase II and the Project; and, the terms and conditions of Phase I and this ENA may be amended during the term of this ENA and may be subject to further approval by the Board of Supervisors and the Mayor.

## AGREEMENT

NOW, THEREFORE, the parties hereto agree as follows:

**1. Term.** The term of this ENA will commence on the date this ENA is fully executed by the City and CHS, as indicated on the signature page (the “**Commencement Date**”), and will expire at 5:00 p.m. on the second anniversary of the Commencement Date (the “**Expiration Date**”), unless earlier terminated or extended pursuant to this ENA. The period from the Commencement Date through the Expiration Date shall be referred to as the “**Term.**”

If the activities and deliverables, as determined by this ENA and the parties during Phase I of the Project, are not obtained on or before the Expiration Date, and CHS is not in default of this ENA on the Expiration Date, the Expiration Date may be extended by one hundred and eighty (180) days at the option of CHS by providing sixty (60) days advance written notice to City prior to the Expiration Date.

**2. Negotiating Fee.** In consideration of CHS’s agreement to act as the City’s “Lead Community Partner” and provide counsel and advice to the City regarding the selection, coordination, and review of scopes of work and reports from various technical consultants; fundraising activities; and restoration design, the City waives any negotiating fee for this ENA and CHS waives the receipt of any compensation from the City for its activities during Phase I.

**3. Costs.** The cost of completing the Analysis Activities (defined below), and other tasks associated with the Phase I diligence and assessment period, will be borne by both the City and CHS in accordance with the Future Agreement (defined below). Both parties have identified funding, from a variety of sources, to support the costs for this work. In general, it is intended that to the extent OEWD includes funds in its approved budget that are available for Phase 1, the City will pay for a portion of the costs (not to exceed the amount so budgeted) associated with studies related to improvements to the Old Mint, and CHS will cover costs associated with the viability of the proposed use of the Old Mint and philanthropic fundraising and studies related thereto. CHS shall not bear the responsibility to pay costs for services procured and/or retained by City for this Project.

With the City’s assistance, CHS has secured the State Library Grant (as defined below) that will offset some of CHS’s staff-related costs and direct expenses for CHS’s participation in the Phase I due diligence period. The State Grant is also expected to fund the studies related to the viability of a cultural use at the Old Mint, such as: Capital Campaign and Feasibility Study; Financial Investigation and Fiscal Planning Study; Cultural Viability Study; Community Outreach Program; and Facility Programming Plan (including a collections compatibility assessment). CHS intends to pursue philanthropic gifts to fund portions of its Analysis Activities and its role in the Project. The City will not reimburse CHS for any staff time spent or cost incurred by CHS in connection with this Agreement or on the Old Mint Restoration Project.

The City is receiving financial support for its Old Mint work from a previously-negotiated Development Agreement involving the nearby "5M" development project. In general, these funds will support the development of the analysis assessing the building's physical condition and renovation. Additional funds will come from amounts included in the approved OEWD budget and from expected revenue from tenant.

#### 4. Exclusive Negotiations.

(a) City is committed to its working relationship with CHS and supporting the efforts of CHS under this ENA. During the Term, City will negotiate exclusively with CHS, and will not solicit or consider any other proposals or negotiate with any other entities with respect to the future permanent uses and long-term occupancies of the Site, excepting the current Tenant; City is currently negotiating a lease agreement with Tenant for the maintenance and activation of the Old Mint until such time as City is ready to proceed with the Mint's restoration and rededication as a cultural facility, should such a future project be approved. City agrees to provide CHS with prior notice of any new interim tenancy or other occupancy agreements for the Site and that any new interim tenancy or other occupancy agreements will be consistent with this ENA and the Project; and, City will discuss with CHS possible new interim tenants, permitted users, and future City programming partners as set forth and envisioned in this ENA, which list will be developed reviewed, and updated yearly by the parties jointly. Notwithstanding anything to the contrary in this ENA, nothing herein is intended to limit City's ability to enter into any agreement(s) with any person for use or occupancy of the site, provided that the City will use best efforts to balance any interim use with the schedule for and needs of the Project, completion of the Analysis Activities, development of a Future Agreement, and compliance with applicable laws or authorizations.

(b) The City and CHS agree for the period set forth above in Section 1 to negotiate diligently and in good faith to prepare either a long-term lease or management/operating agreement (the "**Future Agreement**") to be entered into between the parties with respect to the Old Mint Site and the Project.

The obligation to negotiate in good faith requires the respective Parties to communicate with each other with respect to those issues for which agreement has not been reached, and in such communication to follow reasonable negotiation procedures, including meetings, telephone conversations, and correspondence. The Parties understand that final accord on all issues may not be reached.

(c) CHS acknowledges that: (i) the Site is subject to an existing permit and (ii) the City has the continuing right to enter into leases and other occupancy agreements during the Term, subject to the provisions of Section 4(a) above.

(d) In order to achieve the purposes of this ENA, during the Term, each party agrees to: (i) act in good faith, reasonably, and diligently in performing its obligations under this Agreement; and (ii) cooperate in good faith and take all steps reasonably requested or required to assist the other party's efforts to satisfy its obligations under this Agreement. In addition, each party will make or give any determinations, findings, requests, responses to requests, approvals, or objections in its reasonable belief, judgment, and discretion and within a reasonable time under the circumstances, except where a different standard or time period is specified in this Agreement. CHS acknowledges that the City's obligation to negotiate in good faith is limited to the actions of the Director of OEWD and OWED staff and the Director of Property and RED staff and does not obligate any regulatory agency or department of the City, state or federal government.

5. **Permit to Enter.** CHS shall execute and deliver to City a permit to enter to allow CHS and its employees, officers, trustees, contractors, consultants, architects, engineers, and agents, entry to the Site, which shall be in the form attached hereto as Exhibit B. CHS expressly agrees and acknowledges that neither CHS nor its employees, officers, directors, contractors, consultants, architects, engineers, and agents (collectively "**Agents**"), shall have the right to enter

or access the Site except pursuant to the terms and conditions of the fully executed and delivered "Permit to Enter."

**6. Deliverables.** Phase I of the Project involves the investigation, pre-development, and due diligence work to support and inform the creation of a full reuse proposal for the Mint, which includes, without limitation, a defined program for the Site, Capital Campaign Feasibility Analysis, Cost Estimates, Structural (Building) Assessments, Schedule, Cultural (Users and Tenants) Viability Study, Fundraising Plan and Operations Plan. The list of deliverables for CHS and Phase I of the Project is attached hereto as Exhibit C (the "**Deliverables**"). The parties acknowledge that CHS's submitted Proposal, project concept, and list of deliverables is preliminary and will be refined and defined by the investigation and studies conducted during Phase I. CHS and City shall cooperatively modify, refine, add and delete the Deliverables as warranted throughout the Term. City shall maintain the right, in its sole discretion, to waive or extend the times for performance of any of the Deliverables.

OEWD has assembled a City Advisory Group ("**Advisory Group**") consisting of City Departments Directors and Staff who have specific knowledge and expertise that will help guide and advance the Phase I work. OEWD, and CHS as appropriate, will keep the Advisory Group apprised of the Phase I progress, and will seek the review and input from the group on key deliverables.

**7. Performance Dates.** CHS and the City desire and intend to work together to complete the Deliverables on or before the dates (each, a "**Performance Date**") specified in Exhibit C. Failure to meet the Deliverables by their Performance Date shall allow CHS to submit a request for an extension of the Performance Date for the Deliverable, within sixty days of the listed Performance Date, which City will not unreasonably deny if: (a) City is satisfied that CHS is proceeding diligently and making reasonable progress towards satisfying the Deliverable; and (b) CHS is not otherwise in default of this Agreement. The City, at its sole discretion, shall have the right to grant or deny any additional requests to extend a Performance Date for the same Deliverable.

**8. Process for Consultant Selection and Request for Interest.** The City and CHS will collaborate on the search for and selection of any consultants used to support the development of the activities listed in Exhibit C (the "**Analysis Activities**"). All relevant City contracting provisions will apply to any consultants paid by the City's funds, as discussed in Section 3 of this Agreement.

In developing the final proposed reuse program, it is likely that the City and CHS will facilitate a Request for Interest ("**RFI**") process to identify potential programmatic and/or financial partners to participate in the Old Mint's restoration.

**9. CHS's Obligations.** CHS agrees as follows:

(a) CHS shall commit the funds granted by the California State Library on September 22, 2016 (the "**State Library Grant**") in accordance with the provisions of said State grant and CHS's personnel resources reasonably necessary to perform its obligations under this ENA.

(b) CHS shall diligently and in good faith advise and collaborate with the City to develop, implement, review, and analyze, Phase I of the Old Mint Restoration Project as it is defined in this ENA, the Deliverables, and as the parties revise throughout the Term of this ENA.

(c) CHS shall endeavor, in coordination with the City, to complete the Analysis Activities, including without limitation due diligence and pre-development work, and the "Deliverables" set forth on Exhibit C which may be revised in writing by the parties.

(d) CHS shall assist with the selection of the consultants, engineers and architects who will prepare the studies and reports as set forth or arising from the Deliverables and provide advice on the information desired and needed from the studies, reports, and plans.

(e) CHS shall work with the City to obtain any and all permits and regulatory approvals necessary to perform the Deliverables. CHS shall not seek any permits and regulatory approvals from any entity without first obtaining the City's prior authorization, which authorization may not be unreasonably withheld or delayed. The City may reasonably withhold or delay its authorization if CHS's request or proposal does not substantially conform to the City's vision for the Site as set forth in the RFP.

(f) CHS shall be solely responsible for the costs and expenses it incurs that are related to or arise from this ENA, except for those costs and fees the City agrees to pay or share in the cost of pursuant to a duly authorized and approved budget. CHS shall have no claims against the City for reimbursement for any monies expended. CHS shall not be responsible for the cost and fees that the City agrees to pay pursuant to such duly authorized and approved budget, provided, however, the City shall not be responsible for any cost or fee that exceeds such budget. The City will use best efforts to clarify in writing with any third-party service provider regarding the role of CHS and that CHS bears no fiscal responsibility to such service provider.

(g) CHS shall provide copies of all reports, studies, plans and writings, prepared by third parties for CHS or the City with respect to the Site, after execution of this ENA, to the City.

(h) CHS shall develop, plan, and activate the Site with interim programming such as occasional cultural activities, sponsored by CHS, its Agents, other partners, or sub-permittees, so long as they do not interfere with the City's or Tenant's calendared events at the Site. Any use and occupancy of the Site during Tenant's term shall be approved and agreed to by the City and by Tenant in writing prior to any commitment by CHS. The City shall not unreasonably withhold such approval.

(i) As part of the activities referred to in (h) above, CHS may develop, plan, and implement fundraising activities at the Site during the Term to raise funds.

(j) To the fullest extent permitted by law, CHS agrees to indemnify and hold the City and its respective commissions, boards, departments, agencies, subdivisions, officers, agents and employees (collectively, the "**City Indemnified Parties**"), harmless from and against any loss, expense, cost, lost profit, damage (including foreseeable and unforeseeable consequential damages), attorneys' fees, penalties, claims, liens, obligations, injuries, penalties, fines, lawsuits and other proceedings, judgments, awards, or liabilities of whatever kind or nature, known or unknown, contingent or otherwise (collectively, "**Losses**"), which the Indemnified Parties may incur as a result of CHS's gross negligence, omission, default and failure to comply with the terms and conditions of this ENA.

(k) CHS shall submit in a timely manner to the City and any regulatory agencies having approval over the Project, all specifications, descriptive information, studies, reports, disclosures and any other information required to satisfy the application filing and review requirements of those agencies to the extent CHS and the City specifically agree, in writing, to file an application.

(l) CHS shall not pay, or agree to pay, any fee or commission, or any other thing of value contingent on the entering of this ENA or any other document arising from this ENA entered into with the City related to the Project or the Site, to any City employee or official or to any contracting consultant hired by the City for purposes of the Project without the express approval of the City in writing, which approval will not be unreasonably withheld. By entering into this ENA, CHS certifies to the City that it has not paid, nor agreed to pay, any fee or

commission, or any other thing of value contingent on the entering of this ENA or any other document arising from this ENA, or any other agreement with the City related to the Project, to any City employee or official or to any contracting consultant hire by the City for purposes of the Project.

(m) CHS must prepare and submit to the City no later than the first day of each quarter during the Term a meaningful summary of major activities during the previous quarter to achieve each Performance Benchmark, including the status of any Regulatory Approvals, plans for community outreach, and public relations activities for the subsequent quarter, in an agreed format. On a quarterly basis, CHS will report its expenditures. This report will also identify the costs and scope of any planning, engineering, or other work by discipline that CHS proposes to be reimbursed by future public financing or fundraising activities.

(n) CHS shall meet with City representatives as-needed, but no less than monthly, to discuss Project coordination, progress, costs, issues, and other Project-related matters, unless the meeting is waived or rescheduled by agreement.

**10. Project Related Materials.** As used in this ENA, “**Project Materials**” means all studies, reports, permits, plans, drawings, and similar work product prepared by or for CHS or the City at the request of CHS, regarding the Project, fundraising, or Site, including accountants, architects, engineers, contractors, and other consultants engaged by CHS (collectively, “**Consultants**”). CHS shall provide original Project Materials from all Consultants to the City upon receipt. Upon termination of this ENA and if the City terminates this ENA prior to the Expiration Date, CHS shall, within thirty (30) days of written notice from the City:

(a) Satisfy any outstanding fees relating to the Project Materials that are then due and payable or will become due and payable by CHS, if any, for services relating to the Project rendered by any of the Consultants, and provide written evidence of such satisfaction to the City; and

(b) Deliver or have delivered from the appropriate parties copies of the Project Materials to the City.

## **11. City’s Obligations and Rights.**

### **11.1 Rights Reserved.**

(a) The City shall have the right to negotiate with another party to be the City’s “Lead Community Partner,” steward, anchor tenant, and fundraiser and to perform the Analysis Activities and Deliverables as set forth in this ENA as desired by the City for the Project and Site if this ENA is terminated in accordance with its terms for any reason prior to the Expiration Date, including but not limited to, issuing a request for proposals.

(b) The City shall have the right, in its sole discretion, to approve of any reuse plan and its components, studies, work, schedule, expense, and tenant as proposed by CHS.

(c) The City shall have the right to waive, extend or conditionally extend the Analysis Activities and Deliverable Dates for any or all of the Deliverables.

(d) The City shall have the right to expand or contract the scope of the Project, including committing or withholding public financing, or otherwise altering the Project concept from that initially proposed, but only as necessary to respond to new information, community or environmental issues, or opportunities to enhance public benefits, but if the City takes any action described in this Subsection (d), (1) the parties shall together revise Exhibit C accordingly, and (2) CHS will have the right to terminate this ENA upon written notice to the City as CHS’s sole remedy.

**11.2 Obligations.** The City shall cooperatively work with CHS and support CHS in its efforts to accomplish the Deliverables throughout the Term of this ENA.

**12. No Representation or Warranty.** CHS acknowledges and agrees that the City has made no representation or warranty that any necessary Regulatory Approvals can be obtained. CHS further acknowledges and agrees that although OEWD and RED are City departments, they have no authority or influence over other City, state, or federal officials, departments, boards, commissions, or agencies or any other Regulatory Agency responsible for issuing required Regulatory Approvals and that the City is entering into this Agreement in its capacity as a landowner with a proprietary interest in the Site and not as a Regulatory Agency. Accordingly, no guarantee or presumption exists that any of required Regulatory Approvals will be issued by the appropriate Regulatory Agency, and having the City as a party to this ENA does not limit any requirement to obtain Regulatory Approvals from appropriate Regulatory Agencies.

**13. Public Relations and Community Outreach.** The City and CHS shall develop a coordinated outreach program and narrative regarding the Project, including appropriate and necessary marketing materials, to educate the community and public stakeholders about the Project, including without limitation, potential local, state and federal partners, funders, and regulatory approvers.

(a) CHS shall present to the City for its review, comment, and approval CHS's proposed strategy for conducting outreach to various organizations and individuals involved with cultural programming and the arts, communicating with community groups and stakeholders in the vicinity of the Project, educating the public with respect to the Project, and informing the City, including the Board of Supervisors and Mayor, and Regulatory Agencies about the Project (the "**PR & Community Outreach Program**"). The PR & Community Outreach Program must include: (i) a budget for publicizing the Project (i.e., mailers, brochures, Press Releases, and forums educating the public); (ii) proposed source of funds for budget including fundraising opportunities; (iii) CHS's proposed strategy for publicizing the Project; (iv) a schedule of presentations to community groups and key stakeholders during the Term; and (v) a proposed strategy for the City to keep the appropriate regulatory agencies apprised of the Project.

(b) Following the City's approval of the PR & Community Outreach Program, it will govern CHS's media contacts.

(c) CHS may not issue, or authorize any other party to issue, any written press release, advertisement, or other formal communication regarding the Project (individually and collectively, "**Press Release**") to any media outlet (including newspapers, radio and television stations, and web sites) relating to the Project, Site, or this ENA and CHS's negotiations with the City, including the public release or description of any of proposed development concepts and plans, phasing, or uses for the Site (individually and collectively, "**Press Matters**") that have not been approved by the City for public release. The City will have the right to issue separate Press Releases. Nothing in this Agreement limits CHS's right, at all times, to issue any Press Release (or other notification) necessary to satisfy any governmental or regulatory requirements.

(d) CHS will provide the City with a draft copy of any CHS's Press Release no less than 2 full business days before the proposed release of the Press Release. The City will promptly review the Press Release and advise CHS of any comments or approval by the end of the business day before the proposed release of the Press Release. The City will use best efforts to provide CHS with a draft copy of any City Press Release at least 2 full business days before the proposed release of the Press Release. CHS will provide any proposed comments or revisions by the end of the business day before the proposed release of the City Press Release and the City, at its sole discretion, may incorporate them, but has no obligation to do so.

(e) CHS agrees not to hold any press conference relating to Press Matters without City approval and a City representative present at the press conference. CHS must provide the City with no less than 2 full business days' prior notice of the date and time of any proposed press conference and state in detail the purpose of the press conference and the topics to be discussed ("**Conference Summary**"). The City agrees to review the Conference Summary promptly and advise CHS of any comments by 5:00 p.m. on the day before the press conference. CHS and the City will use their best efforts to schedule all press conferences to accommodate the schedules of staff of both parties. The City in its sole discretion may permit CHS to proceed with a press conference if it determines that rescheduling is infeasible.

**14. Early Termination of ENA.** If there is not adequate funding from the City or CHS and CHS's fundraising activities to support the Analysis Activities, Deliverables and Phase I as set forth in this ENA, or a Terminating Event (defined below) occurs, CHS and City shall have the option, in their respective sole discretion, to terminate this ENA by delivering written notice of termination to the other party.

**14.1 Events Causing Termination.** The occurrence of any of the following events (each, a "**Terminating Event**") will cause early termination of and extinguish this ENA ("**Termination**"), without an opportunity to cure or further action by either party:

- (a) CHS voluntarily withdraws from the Project; or
- (b) CHS abandons the Project; or
- (c) CHS fails to comply with Section 16 (No Assignment); or
- (d) City exercises its right to Terminate following a default by CHS of any provision of this Agreement; or
- (e) The Board of Supervisors or the Mayor fail to approve capital funding for the renovation project; or
- (f) CHS exercises its right to terminate this Agreement pursuant to Section 11.1(d) (City's Reserved Rights); or
- (g) CHS exercises its right to terminate this Agreement following an event of default by the City.

**14.2 Effect of Termination.** Following Termination, CHS and the City will be released from all further obligations under this ENA except for any obligations that expressly survives Termination or expiration of this ENA.

**15. CHS's Risk and Remedies.** CHS acknowledges and agrees that it is entering into this ENA at its own risk and expense, subject to the terms and conditions of this ENA, and without any assurance that the Project will be completed or the Board of Supervisors and Mayor will approve any funds, lease agreements or other documents related to CHS's use and occupancy of the Site. Except for the provisions of Section 11 and notwithstanding anything to the contrary in this ENA, CHS agrees that its only remedies under this ENA are (a) to pursue a cause of action for specific performance, to the extent applicable and available, or (b) terminate this ENA. CHS expressly waives any and all rights it may now or later have to pursue any other remedy or recover any other damages on account of any City breach or default, including loss of bargain, special, punitive, compensatory or consequential damages.

**16. Non-Assignment.** The parties acknowledge that the City is entering into this ENA on the basis of CHS's special skills, capabilities, experience and knowledge of the Site. This ENA is personal to CHS and is non-assignable without the City's prior written approve, which may be withheld in the City's sole and absolute discretion. Any attempted assignment of this ENA, or the dissolution, merger, consolidation or other reorganization of CHS without City's prior



written consent, shall, at the City's sole option, be considered a default by CHS and the City may choose to terminate this ENA at its discretion.

## 17. Releases.

### 17.1 CHS's Releases.

(a) CHS, on behalf of itself and its Agents, successors and assigns (collectively, the "**CHS Parties**"), fully, unconditionally and irrevocably releases, discharges, and forever waives (collectively, "**releases**") any and all claims, demands, rights, and causes of action (collectively, "**claims**") against, and covenants not to sue or to pay the attorneys' fees and other litigation costs of any party to sue, the City or any of its Agents, successors and assigns (collectively, the "**City Parties**"), for any loss, expense, cost, compensation, damages (including foreseeable and unforeseeable loss of bargain, special, punitive, compensatory, and consequential damages, "**Monetary Damages**"), attorneys' fees, claims, liens, obligations, injuries, interest, penalties, fines, lawsuits and other proceedings, judgments, awards, or liabilities of any kind, known or unknown, contingent or otherwise, equitable relief, mandamus relief, specific performance, or any other relief (collectively, "**Losses**") arising from, accruing from, or due to, directly or indirectly: (i) the facts or circumstances of or alleged in connection with the Project to the extent arising before the Commencement Date; and (ii) any failure by any Regulatory Agency to issue any required Regulatory Approval.

(b) CHS understands that if any facts concerning the claims released in this ENA should be found to be other than or different from the facts now believed to be true, CHS expressly accepts and assumes the risk of the possible difference in facts and agrees that the release in this ENA will remain effective. By placing its initials below, CHS specifically acknowledges and confirms the validity of the release made above and the fact that CHS was represented by or had the opportunity to consult with counsel, who explained the consequences of the above release at the time this ENA was made.

INITIALS: CHS:     JL    

## 18. Notices.

Any notice given under this ENA shall be in writing and given by delivering the notice in person, by commercial courier, or by registered, certified mail, or express mail, return receipt requested, with postage prepaid, to the mailing addresses below or any other address notice of which is given in writing at least five (5) business days prior to the effective date of the change. All notices under this ENA will be deemed given, received, made, or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt. For the convenience of the parties, copies of notices may also be given by email, facsimile, or telephone, but email, telephonic, or facsimile notice will not be binding on either party. The effective time of a notice will not be affected by the time that email, telephonic, or facsimile notice was delivered.

CITY: Office of Economic and Workforce Development  
City Hall  
1 Dr. Carlton B. Goodlett Place, Room 448  
San Francisco, CA 94102  
Attn: Jon Lau  
Re: CHS - Old Mint

Director of Property  
Real Estate Division  
25 Van Ness Avenue, #400  
San Francisco, CA 94102  
RE: CHS – Old Mint

CHS: California Historical Society  
678 Mission Street  
San Francisco, CA 94105  
Attn: Anthea M. Hartig  
Re: Old Mint

**19. Day-to-Day Communications.** CHS and the City agree that day-to-day communications will be directed as follows to:

(a) Jon Lau, Project Manager, (415) 554-6123, [jon.lau@sfgov.org](mailto:jon.lau@sfgov.org) and Claudia J. Gorham, (415) 554-9871, [Claudia.gorham@sfgov.org](mailto:Claudia.gorham@sfgov.org) for the City; and

(b) Anthea Hartig, Executive Director and CEO, (415) 357-1848, [ahartig@calhist.org](mailto:ahartig@calhist.org) and Katherine Petrin, Project Manager, (415) 333-0342, [petrin.katherine@gmail.com](mailto:petrin.katherine@gmail.com) for CHS

**20. City Requirements.** CHS has reviewed, understands, and is ready, willing, and able to comply with the terms and conditions of this Section, which summarizes special City and requirements as of the Commencement Date, each of which is fully incorporated by reference. CHS acknowledges that City requirements in effect if and when other property or transaction agreements are executed will be incorporated into such agreements, as applicable, and will apply to all contractors, subcontractors, subtenants, and any other CHS parties, as applicable. City requirements of general applicability will apply to the Project even if not summarized below.

The following summary is for CHS's convenience and CHS is obligated to become familiar with all applicable requirements and to comply with them fully as they are amended from time to time. City ordinances are currently available on the web at [www.sfgov.org](http://www.sfgov.org). References to specific laws in this Article refer to San Francisco municipal codes unless specified otherwise.

**20.1 Sunshine Ordinance.** This ENA is subject to Section 67.24(e) of the San Francisco Administrative Code, also known as the San Francisco Sunshine Ordinance. Information relating to the Project, this ENA, the RFP, and CHS will be made available to the public upon request. The City shall not be responsible under any circumstances for any damages or losses incurred by CHS, CHS Parties, or any other person or entity because of the release of such information.

**20.2 Conflicts of Interest.** Through its execution of this ENA, CHS acknowledges that it is familiar with the provisions of Article III, Chapter 2 of the 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 CHS becomes aware of any such fact during the term of this ENA CHS shall immediately notify the City.

**20.3 Non-Liability of City Officials, Employees and Agents.** No elective or appointive board, commission, member, officer, employee or other Agent of the City shall be personally liable to CHS, its successors and assigns, in the event of any default or breach by the City or for any amount which may become due to CHS, its successors and assigns, or for any obligation of the City under this ENA.

**20.4 Non-Discrimination in City Contracts and Benefits Ordinance.**

**(a) Covenant Not to Discriminate.** In the performance of this ENA, CHS agrees not to discriminate against any employee of ENA, any City employee working with ENA, or applicant for employment with ENA, or 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) Subleases and Other Subcontracts.** CHS shall include in all Subleases and other subcontracts relating to the Site a non-discrimination clause applicable to such Subtenant or other subcontractor in substantially the form of subsection (a) above. In addition, CHS shall incorporate by reference in all subleases and other 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 subtenants and other subcontractors to comply with such provisions.

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

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

this ENA, (i) CHS executed and submitted to the CMD Form CMD-12B-101 with supporting documentation, and (ii) the CMD approved such form.

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

**20.6 Tropical Hardwood and Virgin Redwood Ban.** 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 product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Tenant shall not provide any items to the construction of Tenant Improvements or the Alterations, or otherwise in the performance of this Lease which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Tenant fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Tenant shall be liable for liquidated damages for each violation in any amount equal to Tenant's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

**20.7 Restrictions on the Use of Pesticides.** Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or "IPM Ordinance") describes an integrated pest management ("IPM") policy to be implemented by all City departments. Tenant shall not use or apply or allow the use or application of any pesticides on the Site or contract with any party to provide pest abatement or control services to the Site without first receiving the City's written approval of an IPM plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that CHS may need to apply to the Site during the term of this ENA, (ii) describes the steps CHS will take to meet the City's IPM Policy described in Section 300 of the IPM Ordinance, and (iii) identifies, by name, title, address and telephone number, an individual to act as CHS's primary IPM contact person with the City. CHS shall comply, and shall require all of CHS's contractors to comply, with the IPM plan approved by the City and shall comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if CHS were a City department. Among other matters, such provisions of the IPM Ordinance: (a) provide for the use of pesticides only as a last resort, (b) prohibit the use or application of pesticides on property owned by the City, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by the City's Department of the Environment), (c) impose certain notice requirements, and (d) require CHS to keep certain records and to report to City all pesticide use at the Site by CHS's staff or contractors.

If CHS or CHS's contractor will apply pesticides to outdoor areas at the Site, CHS must first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation ("CDPR") and any such pesticide application shall be made only by or under the supervision of a person holding a valid, CDPR-issued Qualified Applicator certificate or Qualified Applicator license. City's current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website, <http://sfenvironment.org/ipm>.

**20.8 Requiring Health Benefits for Covered Employees.** Unless exempt, CHS agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Lease as though fully set forth. The text of the HCAO is available on the web at <http://www.sfgov.org/olse/hcao>. Capitalized terms used in this Section and not defined in this Lease shall have the meanings assigned to such terms in Chapter 12Q.

(a) For each Covered Employee, CHS shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If CHS chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

(b) Notwithstanding the above, if CHS is a small business as defined in Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with subsection (a) above.

(c) CHS's failure to comply with the HCAO shall constitute a material breach of this ENA. City shall notify CHS if such a breach has occurred. If, within thirty (30) days after receiving City's written notice of a breach of this ENA for violating the HCAO, CHS fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, CHS fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue the remedies set forth in Section 12Q.5(f)(1-5) or terminate this ENA or both. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

(d) Any Subcontract entered into by CHS shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. CHS shall notify City's Purchasing Department when it enters into such a Subcontract and shall certify to the Purchasing Department that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. CHS shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against CHS based on the Subcontractor's failure to comply, provided that the City has first provided CHS with notice and an opportunity to obtain a cure of the violation.

(e) CHS shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying the City with regard to CHS's compliance or anticipated compliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) CHS represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

(g) CHS shall keep itself informed of the current requirements of the HCAO.

(h) CHS shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

(i) CHS shall provide the City with access to records pertaining to compliance with HCAO after receiving a written request from the City to do so and being provided at least five (5) business days to respond.

(j) The City may conduct random audits of CHS to ascertain its compliance with HCAO. CHS agrees to cooperate with the City when it conducts such audits.

(k) If CHS is exempt from the HCAO when this Agreement is executed because its amount is less than Fifty Thousand Dollars (\$50,000), but CHS later enters into an agreement or agreements that cause CHS's aggregate amount of all agreements with the City to reach Seventy-Five Thousand Dollars (\$75,000), all the agreements shall be thereafter subject to the HCAO. This obligation arises on the Commencement Date of the agreement that causes the cumulative amount of agreements between Tenant and the Contracting Department to be equal to or greater than Seventy-Five Thousand Dollars (\$75,000) in the fiscal year.

**20.9 Notification of Limitations on Contributions.** CHS acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. CHS 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. CHS further acknowledges that the prohibition on contributions applies to each CHS; each member of CHS's board of directors, and CHS's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in CHS; any subcontractor listed in the contract; and any committee that is sponsored or controlled by CHS. Additionally, CHS acknowledges that CHS must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. CHS further agrees to provide to City the name of each person, entity or committee described above.

**20.10 Preservative-Treated Wood Containing Arsenic.** CHS may not purchase preservative-treated wood products containing arsenic in the performance of this ENA 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. CHS 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 CHS 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.

**20.11 First Source Hiring Agreement.** CHS and the City are parties to the First Source Agreement attached to this ENA as Exhibit C pursuant to San Francisco Administrative Code, Chapter 83 (the "First Source Agreement"). Any default by CHS under the First Source Agreement shall be a default under this ENA.

**20.12 Drug-Free Workplace.** CHS acknowledges that pursuant to the Federal Drug Free Workplace Act of 1989, the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City premises. CHS agrees that any violation of this prohibition by CHS, its Agents or assigns shall be deemed a material breach of this Lease.

**20.13 Prohibition of Tobacco Sales and Advertising.** CHS acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of Landlord or the City, including the Premises and the Property. This advertising prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking

**20.14 Prevailing Wages and Working Conditions.**

(a) Any undefined, initially-capitalized term used in this subsection shall have the meaning given to such term in San Francisco Administrative Code Section 23.61. CHS shall require its Contractors and Subcontractors performing (i) labor in connection with a "public work" as defined under California Labor Code Section 1720 *et seq.* (which includes certain construction, alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) or (ii) Covered Construction, at the Site to (1) pay workers performing such work not less than the Prevailing Rate of Wages, (2) provide the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, and (3) employ Apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, "Prevailing Wage Requirements"). CHS agrees to cooperate with the City in any action or proceeding against a Contractor or Subcontractor that fails to comply with the Prevailing Wage Requirements.

CHS shall include, and shall require its subtenants, and Contractors and Subcontractors (regardless of tier) to include, the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract with specific reference to San Francisco Administrative Code Section 23.61. Each such Construction Contract shall name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any Contractor or Subcontractor in accordance with San Francisco Administrative Code Section 23.61. CHS's failure to comply with its obligations under this Section shall constitute a material breach of this Lease. A Contractor's or Subcontractor's failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.61 against the breaching party. For the current Prevailing Rate of Wages, see [www.sfgov.org/olse/prevailingwages](http://www.sfgov.org/olse/prevailingwages) or call the City's Office of Labor Standard Enforcement at 415-554-6235

(b) CHS shall also pay, and shall require its subtenants, and contractors and subcontractors (regardless of tier) to pay, prevailing wages, including fringe benefits or the matching equivalents thereof, to persons performing services for the following activity on the Premises to the extent required by San Francisco Administrative Code Chapter 21C: a Public Off-Street Parking Lot, Garage or Storage Automobile Facility (as defined in Section 21C.3), a

Show (as defined in Section 21C.4), a Special Event (as defined in Section 21C.8), and Broadcast Services (as defined in Section 21C.9).

If CHS, or its subtenants, contractors, and subcontractors fail to comply with the applicable obligations in San Francisco Administrative Code Chapter 21C, City shall have all available remedies set forth in Chapter 21C and the remedies set forth in this Lease. The City may inspect and/or audit any workplace, job site, books and records pertaining to the applicable services and may interview any individual who provides, or has provided, such services. CHS shall provide to the City (and to require any subtenant, contractor or subcontractor who maintains such records to provide to the City) immediate access to all workers' time sheets, payroll records, and paychecks for inspection on request to the extent they relate to such services.

- The types of covered services related to a Show includes individuals engaged in theatrical or technical services, including rigging, sound, projection, theatrical lighting, videos, computers, draping, carpentry, special effects, and motion picture services.
- The types of covered services related to a Special Event includes individuals engaged in on-site installation, set-up, assembly, and dismantling of temporary exhibits, displays, booths, modular systems, signage, drapery, specialty furniture, floor coverings, and decorative materials in connection with trade shows, conventions, expositions, and other special events on City property.
- The types of covered services related to Broadcast Services includes individuals engaged in the electronic capture and/or live transmission of on-site video, digital, and/or video content for commercial purposes through the use of a remote production or satellite trust on-site, including any technical director, video controller, assistant director, and stage manager, and individuals engaged in audio, camera, capture and playback, graphics and utility functions.

**20.15 Resource-Efficient City Buildings.** CHS acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 713 relating to green building requirements for the design, construction, and operation of buildings owned or leased by the City. CHS hereby agrees that it shall comply with all applicable provisions of such code sections and design the Project to comply with Chapter 7.

**20.16 Food Service Waste Reduction.** CHS agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in the San Francisco Environment Code, Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this ENA as though fully set forth. This provision is a material term of this ENA and by entering into this ENA, CHS agrees that if it breaches this provision, Landlord will suffer actual damages that will be impractical or extremely difficult to determine; further, CHS agrees that the sum of One Hundred Dollars (\$100.00) liquidated damages for the first breach, Two Hundred Dollars (\$200.00) liquidated damages for the second breach in the same year, and Five Hundred Dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that Landlord will incur based on the violation, established in light of the circumstances existing at the time this ENA was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by Landlord because of CHS's failure to comply with this provision.

**20.17 Bottled Drinking Water.** Unless exempt, CHS agrees to comply fully with and be bound by all of the provisions of the San Francisco Bottled Water Ordinance, as set forth in San Francisco Environment Code Chapter 24, including the administrative fines, remedies, and implementing regulations provided therein, as the same may be amended from time to time. The



provisions of Chapter 24 are incorporated herein by reference and made a part of this ENA as though fully set forth.

**20.18 Sugar-Sweetened Beverage Prohibition.** CHS agrees that it will not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this ENA.

**20.19 Vending Machines; Nutritional Standards.** CHS understands and acknowledges that installation of any vending machine on the Site is prohibited without the prior written consent of the Director of Property. Any permitted vending machine must comply with the food nutritional and calorie labeling requirements set forth in San Francisco Administrative Code section 4.9-1(c), as may be amended from time to time (the "Nutritional Standards Requirements"). CHS agrees to incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the Site or for the supply of food and beverages to that vending machine. Without limiting the City's other rights and remedies under this ENA, the City shall have the right to require the immediate removal of any vending machine on the Site that is not permitted or that violates the Nutritional Standards Requirements. In addition, any restaurant located on the Site will be encouraged to ensure that at least 25% of Meals offered on the menu meet the nutritional standards set forth in San Francisco Administrative Code section 4.9-1(e), as may be amended.

#### **20.20 All-Gender Toilet Facilities**

If applicable, CHS shall comply with San Francisco Administrative Code Section 4.1-3 requiring at least one all-gender toilet facility on each floor of any new building on City-owned land and within existing buildings leased by the City where extensive renovations are made. An "all-gender toilet facility" means a toilet that is not restricted to use by persons of a specific sex or gender identity by means of signage, design, or the installation of fixtures, and "extensive renovations" means any renovation where the construction cost exceeds 50% of the cost of providing the toilet facilities required by this section. If CHS has any question about applicability or compliance, CHS should contact the [Director of Property] for guidance.

#### **20.21 Criminal History in Hiring and Employment Decisions.**

(a) Unless exempt, CHS agrees to comply with and be bound by all of the provisions of San Francisco Administrative Code Chapter 12T (Criminal History in Hiring and Employment Decisions; "Chapter 12 T"), which are hereby incorporated as may be amended from time to time, with respect to applicants and employees of CHS who would be or are performing work at the Premises.

(b) CHS shall incorporate by reference the provisions of Chapter 12T in all subleases of some or all of the Premises, and shall require all subtenants to comply with such provisions. CHS's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

(c) CHS and subtenants shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

(d) CHS and subtenants shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection (c) above. CHS and subtenants shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

(e) CHS and subtenants shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with CHS or subtenant at the Site, that CHS or subtenant will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(f) CHS and subtenants shall post the notice prepared by the Office of Labor Standards Enforcement ("OLSE"), available on OLSE's website, in a conspicuous place at the Premises and at other workplaces within San Francisco where interviews for job opportunities at the Premises occur. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the Premises or other workplace at which it is posted.

(g) CHS and subtenants understand and agree that upon any failure to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T or this ENA, including but not limited to a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Lease.

(h) If CHS has any questions about the applicability of Chapter 12T, it may contact the City's Real Estate Division for additional information. The City's Real Estate Division may consult with the Director of the City's Office of Contract Administration who may also grant a waiver, as set forth in Section 12T.8.

**20.22 Local Hiring Requirements for Improvements and Alterations.** Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.62 (the "Local Hiring Requirements"). Improvements and Alterations are subject to the Local Hiring Requirements unless the cost for such work is (i) estimated to be less than \$750,000 per building permit or (ii) meets any of the other exemptions in the Local Hiring Requirements. CHS agrees that it shall comply with the Local Hiring Requirements to the extent applicable. Before starting any Improvement Work or any Alteration, CHS shall contact the City's Office of Economic Workforce and Development ("OEWD") to verify if the Local Hiring Requirements apply to the work (i.e., whether the work is a "Covered Project").

CHS shall include, and shall require its subtenants to include, a requirement to comply with the Local Hiring Requirements in any contract for a Covered Project with specific reference to San Francisco Administrative Code Section 23.62. Each such contract shall name the City and County of San Francisco as a third party beneficiary for the limited purpose of enforcing the Local Hiring Requirements, including the right to file charges and seek penalties. CHS shall cooperate, and require its subtenants to cooperate, with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Local Hiring Requirements when required. CHS's failure to comply with its obligations under this Section shall constitute a material breach of this Lease. A contractor's or subcontractor's failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.62 against the breaching party.

## 21. Miscellaneous Provisions.

**21.1 Authority.** Each of the persons executing this ENA on behalf of CHS hereby covenants and warrants that CHS is a non-profit in good standing in California, qualified to do business in California, and has full right and authority to enter into this ENA, and that each and all of the persons signing on behalf of CHS are authorized to do so. Upon the City's request, CHS shall provide the City with evidence reasonably satisfactory to the City confirming the foregoing representations and warranties.

**21.2 Severability.** Except as otherwise specifically provided in this ENA, a judgment or court order invalidating any provision of this ENA, or its application to any other person, entity or circumstance, will not affect any other provision or the remainder of this ENA, or its application to any other persons, entities or circumstances, and the remaining provisions of this ENA shall be valid and be enforceable to the fullest extent permitted by law, except to the extent that enforcement of this ENA without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this ENA.

**21.3 Governing Law.** This ENA shall be construed and enforced in accordance with the laws of the State of California and the City's Charter.

**21.4 Entire Agreement.** This Agreement, including the exhibits hereto, which are made a part of this ENA, contains the entire agreement between the parties and all prior written or oral negotiations, understandings and agreements are merged herein. The parties further intend that this ENA 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 ENA. If there is any conflict between the terms and conditions of this ENA and the Project Terms or the Performance Benchmarks, the terms and conditions of this ENA shall control.

**21.5 Attorneys' Fees.** If there is any action nor proceedings at law or in equity between the City and CHS to enforce any provision of this NEA or to protect or establish any right or remedy of either party to this ENA, 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 ENA, the terms "court costs and reasonable attorneys' fees" shall mean the fees 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, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The term "court costs and attorneys' fees" shall also include, without limitation, all such fees and expenses incurred with respect to appeals, mediation, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees and costs were incurred. For the purposes of this ENA, reasonable fees of attorneys 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.

**21.6 Time of Essence.** Time is of the essence with respect to all provisions of this ENA, including, without limitation, performance of the Performance Benchmarks.

**21.7 Amendments.** No amendment to this Agreement or any part thereof shall be valid unless it is in writing and signed by all the parties.

**21.8 Cooperative Drafting.** This ENA has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the ENA reviewed and revised by legal counsel. No party shall be considered the drafter of this ENA, 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 ENA.

**21.9 Interpretation.** The captions preceding the articles and sections of this ENA 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 ENA 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 intents and purposes of the parties, without any presumption against the party responsible for drafting any part of this ENA. Provisions in this ENA 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 ENA, whether or not language of non-limitation, such as "without limitation" or similar words, are used.

**21.10 No Recording.** CHS shall not record this ENA or any memorandum hereof in the public records.

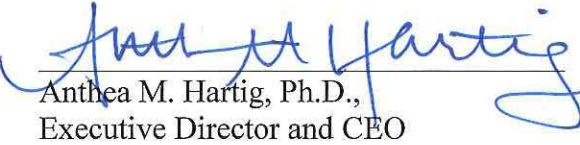
**21.11 Counterparts.** This ENA may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

*[SIGNATURES ON FOLLOWING PAGE]*

City and CHS have executed this ENA as of the date first written above.

**CALIFORNIA HISTORICAL SOCIETY:**  
a California nonprofit public benefit corporation

By:   
Michael J. Sangiacomo,  
President, Board of Trustees

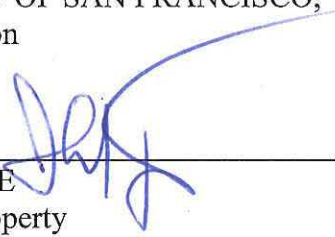
By:   
Anthea M. Hartig, Ph.D.,  
Executive Director and CEO

**CITY:**

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By:   
TODD RUFO  
Director of the Mayor's Office of Economic and  
Workforce Development

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

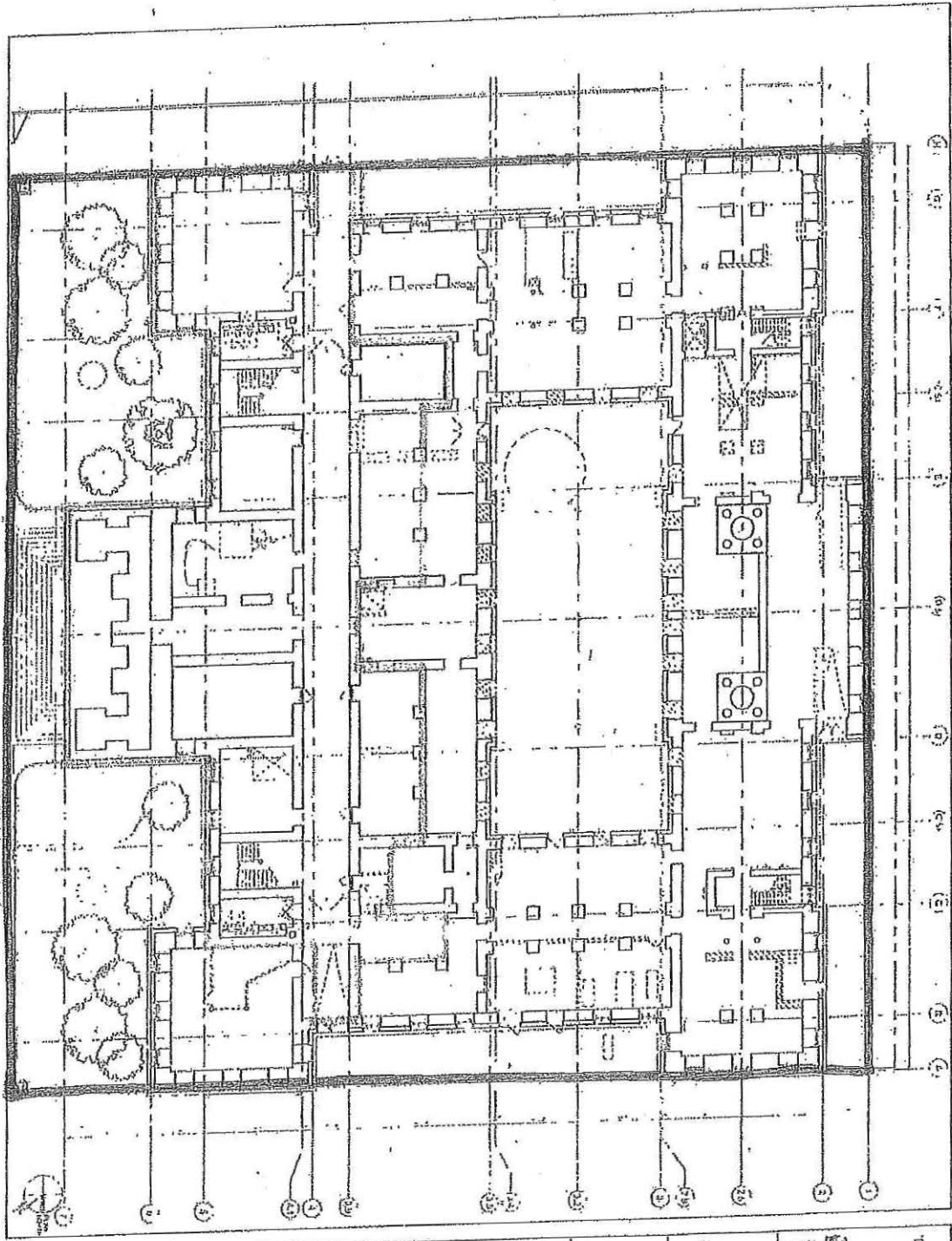
By:   
JOHN UPDIKE  
Director of Property

APPROVED AS TO FORM:  
DENNIS J. HERRERA, City Attorney

By:   
Michelle Sexton  
Deputy City Attorney

**EXHIBIT A**

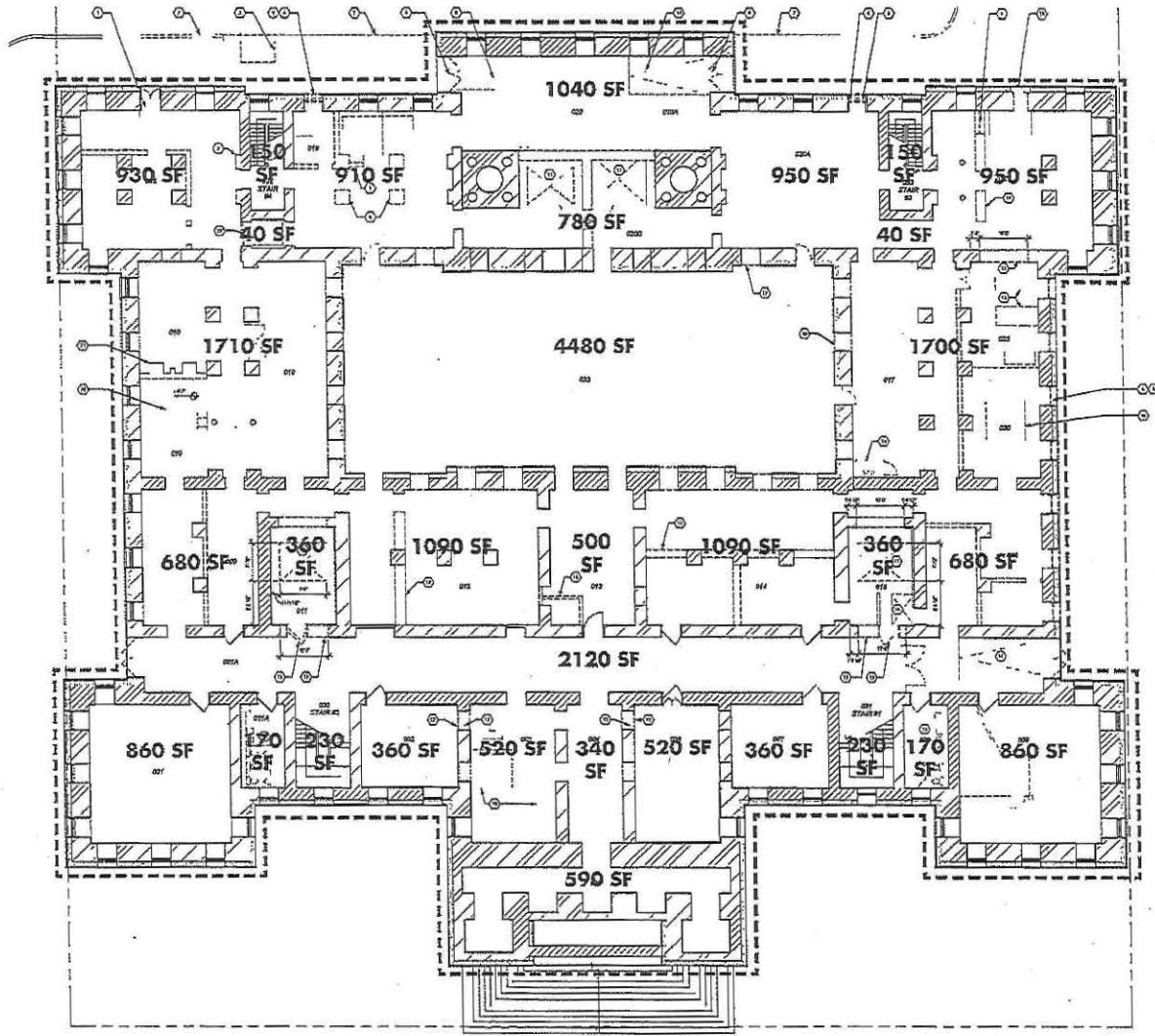
**SITE - THE OLD MINT**



	17th and 18th AIRBORNE DIVISIONS BARRACKS
	100-200-100
DESIGNED BY ENGINEERING DIVISION CORPUS CHRISTI, TEXAS	
DATE: 1950	
SCALE: AS SHOWN	
PROJECT NO. 100-200-100	
DRAWING NO. 100-200-100-100	
SHEET NO. 100-200-100-100	
TOTAL SHEETS 100-200-100-100	
PROJECT NAME: 17th and 18th AIRBORNE DIVISIONS BARRACKS	
PROJECT LOCATION: [illegible]	
PROJECT NO. 100-200-100	
DRAWING NO. 100-200-100-100	
SHEET NO. 100-200-100-100	
TOTAL SHEETS 100-200-100-100	
PROJECT NAME: 17th and 18th AIRBORNE DIVISIONS BARRACKS	
PROJECT LOCATION: [illegible]	
PROJECT NO. 100-200-100	
DRAWING NO. 100-200-100-100	
SHEET NO. 100-200-100-100	
TOTAL SHEETS 100-200-100-100	
PROJECT NAME: 17th and 18th AIRBORNE DIVISIONS BARRACKS	
PROJECT LOCATION: [illegible]	
PROJECT NO. 100-200-100	
DRAWING NO. 100-200-100-100	
SHEET NO. 100-200-100-100	
TOTAL SHEETS 100-200-100-100	
PROJECT NAME: 17th and 18th AIRBORNE DIVISIONS BARRACKS	
PROJECT LOCATION: [illegible]	
PROJECT NO. 100-200-100	
DRAWING NO. 100-200-100-100	
SHEET NO. 100-200-100-100	
TOTAL SHEETS 100-200-100-100	

D1.00

GROUND FLOOR  
ENCLOSURE  
PLAN

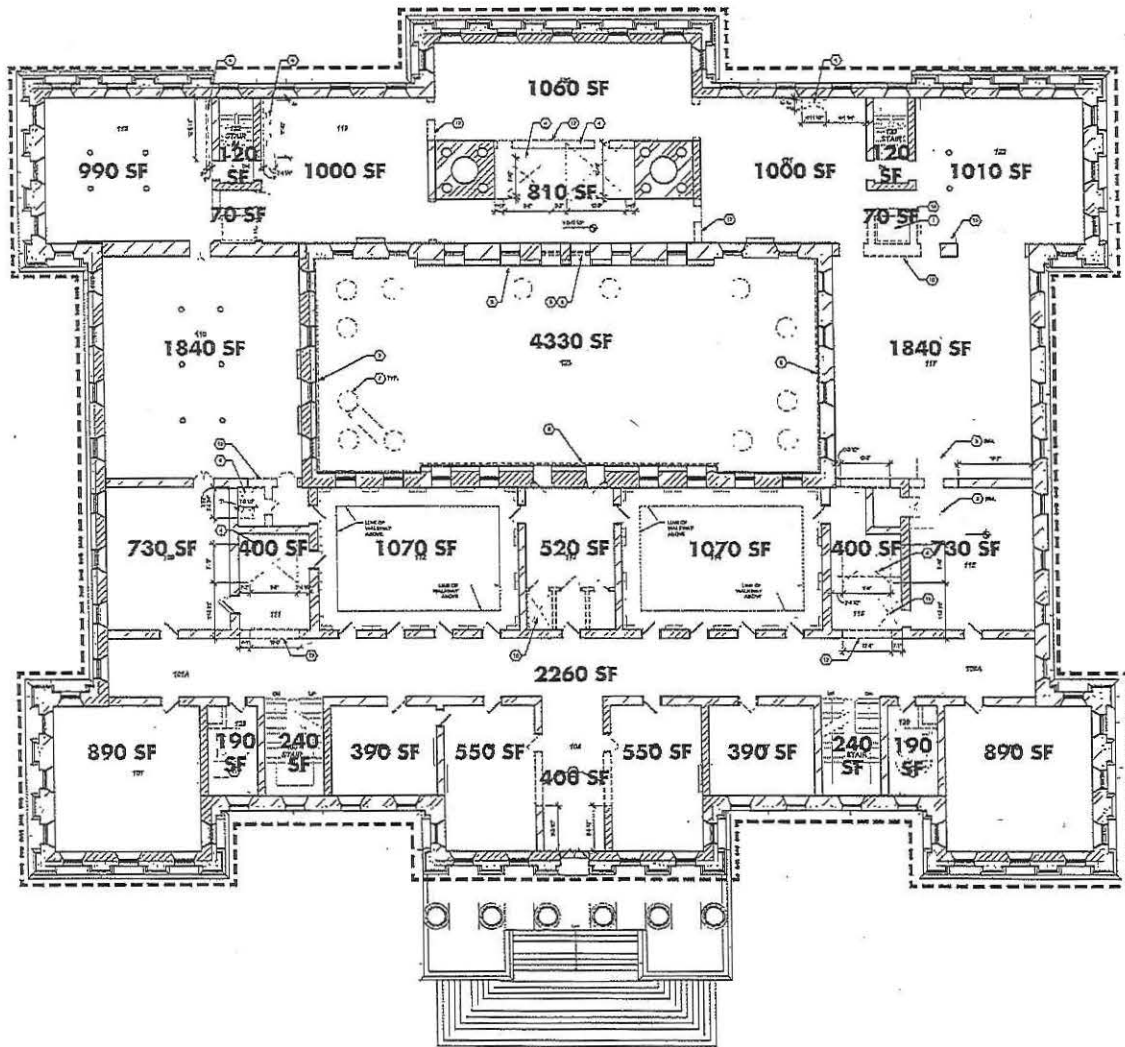


Gross	33,830 SF
ASF	25,920 SF

**GROUND FLOOR PLAN**  
with areas



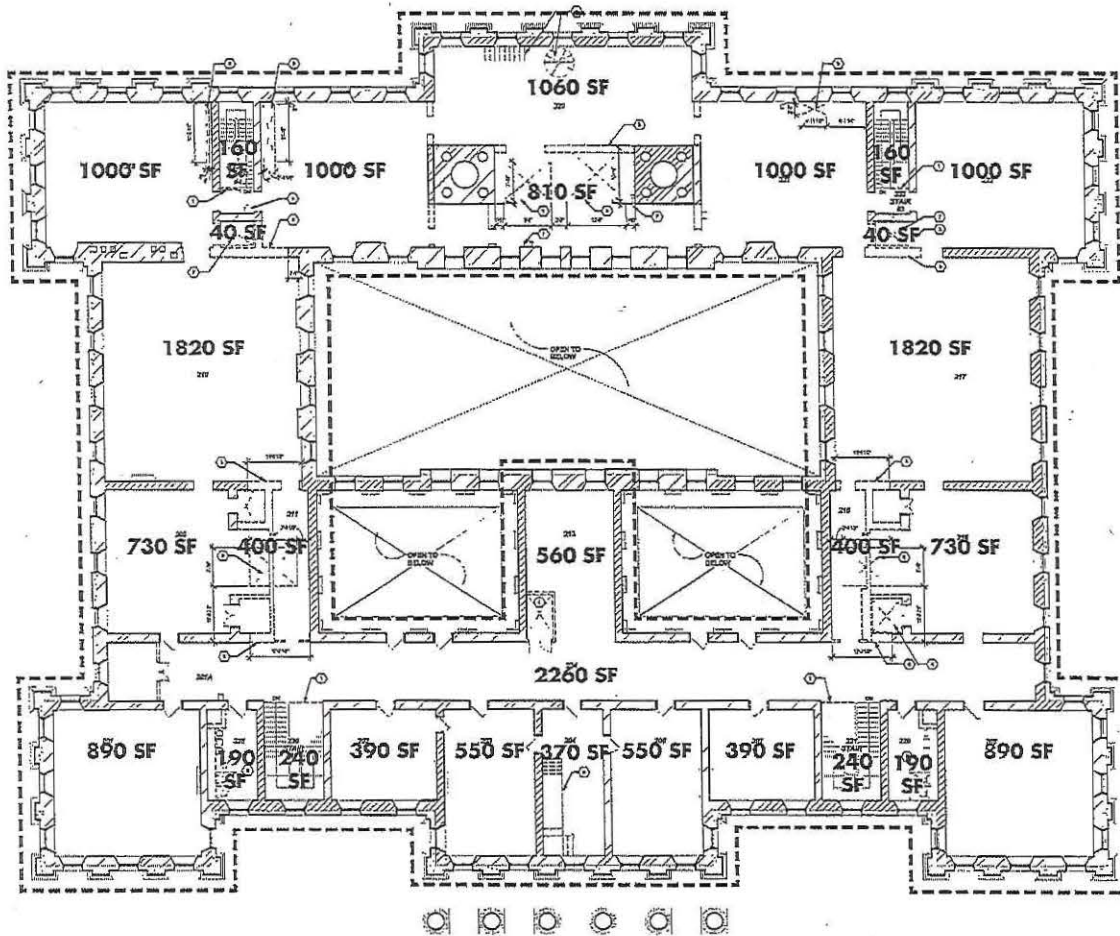




| Gross 33,050 SF |  
 ASF 26,360 SF

**FIRST FLOOR PLAN**  
with areas

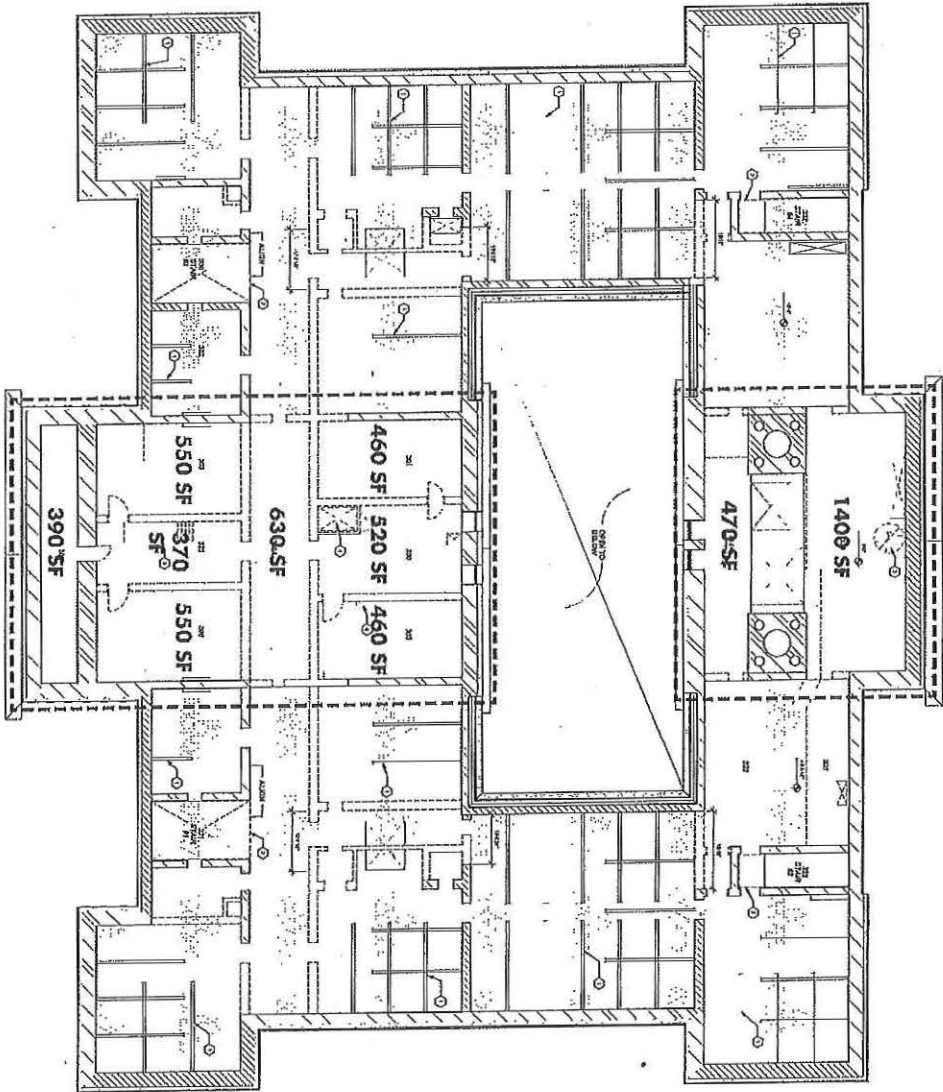




Gross	26,200 SF
ASF	19,880 SF

SECOND FLOOR PLAN  
with areas

architect



Gross	7,940 SF
ASF	5,800 SF

ATTIC FLOOR PLAN

with areas



**EXHIBIT B**

**PERMIT TO ENTER**

REVOCABLE PERMIT TO ENTER AND USE PROPERTY

by and between

CITY AND COUNTY OF SAN FRANCISCO

and the

CALIFORNIA HISTORICAL SOCIETY,  
Permittee

to enter and use property located at  
88 Fifth Street,  
San Francisco, California

March 31, 2017

**CITY AND COUNTY OF SAN FRANCISCO  
REVOCABLE PERMIT  
TO ENTER AND USE PROPERTY  
(88 Fifth Street, San Francisco)**

THIS REVOCABLE PERMIT TO ENTER AND USE PROPERTY (this "Permit"), dated for reference purposes only as of March 3/2017, is made by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, the General Services Agency's Department of Real Estate ("RED") (collectively "City"), and the CALIFORNIA HISTORICAL SOCIETY, a California nonprofit public benefit corporation ("CHS" or "Permittee").

City and Permittee agree as follows:

**1. LICENSE**

City confers to CHS a revocable, personal, unassignable, non-exclusive and non-possessory privilege to enter upon and use that certain real property owned by City located at 88 Fifth Street in the City and County of San Francisco, more particularly described in Exhibit A attached hereto (the "Permit Area"), for the limited purpose and subject to the terms, conditions and restrictions set forth below. The right to enter and use the Permit Area may be exercised by Permittee and its agents and contractors, subject to the terms, conditions and restrictions set forth below. This Permit gives CHS a license only, revocable at any time at the will of City, and notwithstanding anything to the contrary herein, this Permit does not constitute a grant by City of any ownership, leasehold, easement or other property interest or estate whatsoever in the Permit Area, or any portion thereof. The privilege given to CHS under this Permit is effective only insofar as the rights of City in the Permit Area are concerned, and CHS shall obtain any further permission necessary because of any other existing rights affecting the Permit Area.

**2. USE OF PERMIT AREA**

**2.1 Scope of Permitted Use**

CHS may enter and use the Permit Area for the sole purpose of fulfilling its duties and obligations and exercising its rights, related to Project, as defined in the Exclusive Negotiation Agreement ("ENA") between CHS and the City, dated March 3, 2017, and for no other purpose whatsoever. These activities could include performing assessments of the building's structural elements and/or systems, showing the space to potential financial or programming partners, exploring various design scenarios, and conducting site investigations in furtherance of the completion of the Analysis Activities as defined in the ENA.

## **2.2 Existing Lease**

CHS acknowledges that the City currently has an existing agreement with NonPlusUltra Inc. ("NPU"), formerly Activate SF, Inc., as a permittee to occupy the Permit Area for the purposes of sponsoring community events and offering the space for third-party rentals. CHS's access to the premises, for the purposes described in Section 2.1, must be coordinated with NPU prior to entry. CHS's access shall not hinder the set-up or operation of any events organized by NPU pursuant to its agreement with City. Additionally, the timing and calendaring of any building tests and/or site investigations must be scheduled in coordination with NPU, so as not to interfere with events taking place within the Permit Area.

## **3. INSTALLATION OF FACILITIES**

### **3.1 Prevailing Wages and Working Conditions**

Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.61. CHS shall require its contractors and subcontractors performing (i) labor in connection with a "public work" as defined under California Labor Code Section 1720 *et seq.* (which includes certain construction, alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) or (ii) Covered Construction, at the Premises to (1) pay workers performing such work not less than the highest prevailing rate of wages, (2) provide the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, and (3) employ apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, "Prevailing Wage Requirements"). CHS agrees to cooperate with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Prevailing Wage Requirements.

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

CHS shall also pay, and shall require its contractors and subcontractors (regardless of tier) to pay, the Prevailing Rate of Wage for the following activities on the Premises as set forth in and to the extent required by San Francisco Administrative Code Chapter 21C: a Public Off-Street Parking Lot, Garage or Automobile Storage Facility (as defined in Section 21C.3), a Show (as defined in Section 21C.4), a Special Event (as defined in Section 21C.8), and Broadcast Services (as defined in Section 21C.9).

### **3.1 Restoration of Permit Area**

Immediately following completion of any work permitted hereunder, CHS shall remove all debris and any excess dirt and restore the Permit Area to its condition immediately prior to CHS's use hereunder, to the satisfaction of City. CHS shall restore excavated areas with new

vegetation (including irrigation and maintenance until established) and erosion control netting, all as requested by City.

#### **4. RESTRICTIONS ON USE**

CHS agrees that, by way of example only and without limitation, the following uses of the Permit Area by CHS or any other person claiming by or through CHS are inconsistent with the limited purpose of this Permit and are strictly prohibited as provided below:

##### **4.1 Improvements**

CHS shall not construct or place any temporary or permanent structures or improvements on the Permit Area, nor shall CHS alter any existing structures or improvements on the Permit Area, without the written consent of the City.

##### **4.2 Dumping**

CHS shall not dump or dispose of refuse or other unsightly materials on, in, under or about the Permit Area.

##### **4.3 Hazardous Material**

CHS shall not cause, nor shall CHS allow any of its Agents or Invitees (as defined in Section 19 below) to cause, any Hazardous Material (as defined below) to be brought upon, kept, used, stored, generated or disposed of in, on or about the Permit Area, or transported to or from the Permit Area. CHS shall immediately notify City when CHS learns of, or has reason to believe that, a release of Hazardous Material has occurred in, on or about the Permit Area. CHS shall further comply with all laws requiring notice of such releases or threatened releases to governmental agencies, and shall take all action necessary to mitigate the release or minimize the spread of contamination. In the event that CHS or its Agents or Invitees cause a release of Hazardous Material, CHS shall, without cost to City and in accordance with all laws and regulations, return the Permit Area to the condition immediately prior to the release. In connection therewith, CHS shall afford City a full opportunity to participate in any discussion with governmental agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree or other compromise proceeding involving Hazardous Material. For purposes hereof, "Hazardous Material" means material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to public health, welfare or the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance, pollutant or contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 et seq., or pursuant to Section 25316 of the California Health & Safety Code; a "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 Permit Area or are naturally occurring substances in the Permit Area, and any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas or natural gas liquids. The term "release" or "threatened 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 in, on, under or about the Permit Area.

##### **4.4 Nuisances**

CHS shall not conduct any activities on or about the Permit Area that constitute waste, nuisance or unreasonable annoyance (including, without limitation, emission of objectionable



odors, noises or lights) to City, to current occupant of the Permit Area, to the owners or occupants of neighboring property or to the public.

#### **4.5 Damage**

CHS shall not do anything about the Permit Area that will cause damage to any of City's property.

#### **5. PERMIT FEES**

In light of the ENA and CHS' duties and responsibilities set forth therein, and the cooperative relationship between City and CHS regarding the Project, as defined in the ENA, City waives any one-time administrative fee and monthly fees during the Project. However, without limiting its right to revoke this Permit or any of its other rights hereunder, City may at any time, upon not less than thirty (30) days' written notice to CHS, charge a use fee for the privilege given hereunder, and City may increase such fee from time to time.

#### **6. TERM OF PERMIT**

The privilege given to CHS pursuant to this Permit is temporary only and shall commence on March 31, 2017, and shall expire on 5:00 p.m. on March 31, 2018, unless sooner terminated pursuant to the terms hereof. Without limiting any of its rights hereunder, City may at its sole option freely revoke this Permit at any time prior to such expiration date, without cause and without any obligation to pay any consideration to CHS.

If CHS continues to use the Permit Area after the expiration of the initial term with the express consent of City, such use shall be construed to automatically extend the term of this Permit one year or until March 31, 2019. If CHS continues to use the Permit Area after the expiration of the second year term with the express consent of City, such use shall be construed to automatically extend the term of this Permit on a month-to-month basis on the terms and conditions herein specified so far as applicable (except for those pertaining to the term). Any continued use of the Permit Area after the expiration of the term without the City's consent, or after the conclusion of the Project, shall constitute a default by CHS and entitle City to exercise any or all of its remedies as provided in this Permit and by law.

#### **7. INSURANCE**

(a) CHS shall procure and keep in effect at all times during the term of this Permit, at CHS's expense, insurance as follows:

(i) General Liability Insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Independent Permittees, Explosion, Collapse and Underground (XCU), Broadform Property Damage, Sudden and Accidental Pollution, Products Liability and Completed Operations;

(ii) 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 coverages for owned, non-owned and hired automobiles, as applicable, and Sudden and Accidental Pollution; and

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

(b) All liability policies required hereunder shall provide for the following: (i) name as additional insureds the City and County of San Francisco, its officers, agents and employees; and (ii) specify that such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Permit and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period. Sudden and accidental pollution coverage in the liability policies required hereunder shall be limited to losses resulting from CHS's activities (and CHS's Agents and Invitees) under this Permit (excluding non-negligent aggravation of existing conditions with respect to Hazardous Materials).

(c) All insurance policies required to be maintained by CHS hereunder shall be endorsed to provide for thirty (30) days' prior written notice of cancellation for any reason, non-renewal or reduction in coverage to both CHS and City. Notice to City shall be mailed to the address(es) for City set forth in Section 35 below.

(d) Prior to the commencement date of this Permit, CHS shall deliver to City certificates of insurance and additional insured policy endorsements from insurers in a form satisfactory to City, evidencing the coverages required hereunder, together with complete copies of the policies at City's request. In the event CHS shall fail to procure such insurance, or to deliver such policies or certificates, City may procure, at its option, the same for the account of CHS, and the cost thereof shall be paid to City within five (5) days after delivery to CHS of bills therefor.

(e) Should any of the required insurance 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.

(f) Should any of the required insurance be provided under a claims made form, CHS shall maintain such coverage continuously throughout the term of this Permit and, without lapse, for a period of three (3) years beyond the Permit expiration, to the effect that, should any occurrences during the Permit term give rise to claims made after expiration of the Permit, such claims shall be covered by such claims-made policies.

(g) Upon City's request, CHS and City shall periodically review the limits and types of insurance carried pursuant to this Section. If the general commercial practice in the City and County of San Francisco is to carry liability insurance in an amount or coverage materially greater than the amount or coverage then being carried by CHS for risks comparable to those associated with the Permit Area, then City in its sole discretion may require CHS to increase the amounts or coverage carried by CHS hereunder to conform to such general commercial practice.

(h) CHS's compliance with the provisions of this Section shall in no way relieve or decrease CHS' indemnification obligations under this Permit or any of CHS's other obligations hereunder. Notwithstanding anything to the contrary in this Permit, this Permit shall terminate immediately, without notice to CHS, upon the lapse of any required insurance coverage. CHS shall be responsible, at its expense, for separately insuring CHS's personal property.

## **8. COMPLIANCE WITH LAWS**

CHS shall, at its expense, conduct and cause to be conducted all activities on the Permit Area allowed hereunder in a safe and prudent manner and in compliance with all laws,

regulations, codes, ordinances and orders of any governmental or other regulatory entity (including, without limitation, the Americans with Disabilities Act and any other disability access laws), whether presently in effect or subsequently adopted and whether or not in the contemplation of the parties. CHS shall, at its sole expense, procure and maintain in force at all times during its use of the Permit Area any and all business and other licenses or approvals necessary to conduct the activities allowed hereunder. CHS understands and agrees that City is entering into this Permit in its capacity as a property owner with a proprietary interest in the Permit Area and not as a regulatory agency with police powers. Nothing herein shall limit in any way CHS's obligation to obtain any required regulatory approvals from City departments, boards or commissions or other governmental regulatory authorities or limit in any way City's exercise of its police powers.

#### **9. COVENANT TO MAINTAIN PERMIT AREA**

In connection with its use hereunder, CHS shall at all times, at its sole cost, maintain the Permit Area in a good, clean, safe, secure, sanitary and sightly condition, so far as the Permit Area may be affected by CHS's activities hereunder.

#### **10. REMOVAL OR ALTERATION OF IMPROVEMENTS**

Not applicable.

#### **11. SURRENDER**

Upon the expiration of this Permit or within ten (10) days after any sooner revocation or other termination of this Permit, Permittee shall surrender the Permit Area. At such time, Permittee shall remove all of its personal property from the Permit Area, if any, and any signs permitted hereunder, and shall repair, at its cost, any damage to the Permit Area caused by such removal. CHS's obligations under this Section shall survive any termination of this Permit.

#### **12. WAIVER OF CLAIMS**

(a) Neither City nor any of its Agents, or their employees, shall be liable for any damage to the property of CHS, its Agents, or their employees, or for any bodily injury or death to such persons, resulting or arising from the condition of the Permit Area or its use by CHS.

(b) CHS acknowledges that this Permit is freely revocable by City and in view of such fact, CHS expressly assumes the risk of making any expenditures in connection with this Permit, even if such expenditures are substantial. Without limiting any indemnification obligations of CHS or other waivers contained in this Permit and as a material part of the consideration for this Permit, CHS fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, City, its Agents, and all persons acting by, through or under each of them, under any present or future laws, statutes, or regulations, including, but not limited to, any claim for inverse condemnation or the payment of just compensation under the law of eminent domain, or otherwise at equity, in the event that City exercises its right to revoke or terminate this Permit.

(c) CHS acknowledges that it will not be a displaced person at the time this Permit is terminated or revoked or expires by its own terms, and CHS fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, City, its Agents, and all persons acting by, through or under each of them, under any present or future laws, statutes, or regulations, including, without limitation, any and all claims for relocation benefits or assistance from City under federal and state relocation assistance laws.

(d) In connection with the foregoing releases, CHS acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**

CHS acknowledges that the releases contained herein includes all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. CHS realizes and acknowledges that it has agreed upon this Permit in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained herein shall survive any termination of this Permit.

### **13. REPAIR OF DAMAGE**

If any portion of the Permit Area or any property of City located on or about the Permit Area is damaged by any of the activities conducted by CHS hereunder, CHS shall immediately, at its sole cost, repair any and all such damage and restore the Permit Area or property to its previous condition.

### **14. SIGNS**

CHS shall not place, erect or maintain any sign, advertisement, banner or similar object on or about the Permit Area, except for any temporary sign that is necessary for CHS's use so long as CHS first obtains City's written consent, which City may give or withhold in its sole discretion.

### **15. UTILITIES**

City has no responsibility or liability of any kind with respect to any utilities that may be on, in or under the Permit Area. CHS has the sole responsibility to locate such utilities and protect them from damage. CHS shall arrange and pay for any necessary temporary relocation of City and public utility company facilities, subject to the prior written approval by City, and the consent of the current Permittee, any such utility companies of any such relocation. CHS shall be solely responsible for arranging and paying directly for any utilities or services necessary for its activities hereunder.

### **16. CITY'S RIGHT TO CURE DEFAULTS BY CHS**

If CHS fails to perform any of its obligations under this Permit, to restore the Permit Area or repair damage, or if CHS defaults in the performance of any of its other obligations under this Permit, then City may, at its sole option, remedy such failure for CHS's account and at CHS's expense by providing CHS with three (3) days' prior written or oral notice of City's intention to cure such default (except that no such prior notice shall be required in the event of an emergency as determined by City). Such action by City shall not be construed as a waiver of any rights or remedies of City under this Permit, and nothing herein shall imply any duty of City to do any act that CHS is obligated to perform. CHS shall pay to City upon demand, all costs, damages, expenses or liabilities incurred by City, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such default. CHS's obligations under this Section shall survive the termination of this Permit.

**17. NO COSTS TO CITY**

CHS shall bear all costs or expenses of any kind or nature in connection with its use of the Permit Area, and shall keep the Permit Area free and clear of any liens or claims of lien arising out of or in any way connected with its use of the Permit Area.

**18. INDEMNITY**

CHS shall indemnify, defend and hold harmless City, its commissions, departments, boards, officers, agents, employees, contractors or subcontractors (collectively, "Agents"), and each of them, from and against any and all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages and liabilities of any kind (collectively, "Losses"), arising in any manner out of (a) any injury to or death of any person or damage to or destruction of any property occurring in, on or about the Permit Area, or any part thereof, whether the person or property of CHS, its Agents, its invitees, guests or business visitors (collectively, "Invitees"), or third persons, relating in any manner to any use or activity under this Permit, (b) any failure by CHS to faithfully observe or perform any of the terms, covenants or conditions of this Permit, (c) the use of the Permit Area or any activities conducted thereon by CHS, its Agents or Invitees, or (d) any release or discharge, or threatened release or discharge, of any Hazardous Material caused or allowed by CHS, its Agents or Invitees, on, in, under or about the Permit Area, any improvements permitted thereon, or into the environment; except solely to the extent of Losses resulting directly from the willful misconduct of City or City's authorized representatives. The foregoing indemnity shall include, without limitation, reasonable attorneys' and consultants' fees, investigation and remediation costs and all other reasonable costs and expenses incurred by the indemnified parties, including, without limitation, damages for decrease in the value of the Permit Area and claims for damages or decreases in the value of adjoining property. CHS specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this 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 CHS by City and continues at all times thereafter. CHS's obligations under this Section shall survive the expiration or other termination of this Permit.

**19. "AS IS" CONDITION OF PERMIT AREA; DISABILITY ACCESS; DISCLAIMER OF REPRESENTATIONS**

CHS accepts the Permit Area in its "AS IS" condition, without representation or warranty of any kind by City, its officers, agents or employees, including, without limitation, the suitability, safety, or duration of availability of the Permit Area or any facilities on the Permit Area for CHS's use. Without limiting the foregoing, this Permit is made subject to all applicable laws, rules and ordinances governing the use of the Permit Area, and to any and all covenants, conditions, restrictions, easements, encumbrances, claims of title and other title matters affecting the Permit Area, whether foreseen or unforeseen, and whether such matters are of record or would be disclosed by an accurate inspection or survey. It is CHS's sole obligation to conduct an independent investigation of the Permit Area and all matters relating to its use of the Permit Area hereunder, including, without limitation, the suitability of the Permit Area for such uses and the use of the Permit Area by the current Permittee. CHS, at its own expense, shall obtain such permission or other approvals from any third parties with existing rights as may be necessary for CHS to make use of the Permit Area in the manner contemplated hereby.

Under California Civil Code Section 1938, to the extent applicable to this Permit, CHS is hereby advised that the Permit Area has not undergone inspection by a Certified Access Specialist ("CASp") to determine whether it meets all applicable construction-related accessibility requirements.

**20. NO ASSIGNMENT**

This Permit is personal to CHS and shall not be assigned, conveyed or otherwise transferred by CHS under any circumstances. Any attempt to assign, convey or otherwise transfer this Permit shall be null and void and cause the immediate termination and revocation of this Permit.

**21. CESSATION OF USE**

CHS will not terminate its activities on the Permit Area pursuant hereto without prior written notice to City as set forth in the ENA.

**22. NO JOINT VENTURES OR PARTNERSHIP; NO AUTHORIZATION**

This Permit does not create a partnership or joint venture between City and CHS as to any activity conducted by CHS on, in or relating to the Permit Area. CHS is not a State actor with respect to any activity conducted by CHS on, in, or under the Permit Area. The giving of this Permit by City does not constitute authorization or approval by City of any activity conducted by CHS on, in or relating to the Permit Area.

**23. MACBRIDE PRINCIPLES - NORTHERN IRELAND**

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

**24. NON-DISCRIMINATION**

**24.1 Covenant Not to Discriminate**

In the performance of this Permit, CHS agrees not to discriminate against any employee of, any City employee working with CHS, or applicant for employment with CHS, 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.

**24.2 Subcontracts**

CHS shall include in all subcontracts relating to the Project and the Permit Area a non-discrimination clause applicable to such subcontractor in substantially the form of Subsection 25.1 above. In addition, CHS 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. CHS's failure to comply with the obligations in this Subsection shall constitute a material breach of this Permit.

**24.3 Non-Discrimination in Benefits**

CHS does not as of the date of this Permit and will not during the term of this Permit, 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.

#### **24.4 Condition to Permit**

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

#### **24.5 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 use of City property are incorporated in this Section by reference and made a part of this Permit as though fully set forth herein. CHS shall comply fully with and be bound by all of the provisions that apply to this Permit under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, CHS 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 Permit may be assessed against CHS and/or deducted from any payments due CHS.

#### **25. TROPICAL HARDWOODS AND VIRGIN REDWOOD BAN**

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 product, except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code. CHS agrees that, except as permitted by the application of Sections 802(b) and 803(b), CHS shall not use or incorporate any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product in the performance of this Permit.

#### **26. NOTIFICATION OF LIMITATIONS ON CONTRIBUTIONS**

Through its execution of this Permit, CHS 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 the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. CHS 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. CHS further acknowledges that the prohibition on contributions applies to each CHS; each member of CHS's board of directors, and CHS's chief executive officer, chief financial officer and chief operating

officer; any person with an ownership interest of more than twenty percent (20%) in CHS; any subcontractor listed in the contract; and any committee that is sponsored or controlled by CHS. Additionally, CHS acknowledges that CHS must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. CHS further agrees to provide to City the names of each person, entity or committee described above.

## **27. POSSESSORY INTEREST TAXES**

CHS recognizes and understands that this Permit may create a possessory interest subject to property taxation and that CHS may be subject to the payment of property taxes levied on such interest under applicable law. CHS agrees to pay taxes of any kind, including possessory interest taxes, if any, that may be lawfully assessed on CHS's interest under this Permit or use of the Permit Area pursuant hereto and to pay any other taxes, excises, licenses, permit charges or assessments based on CHS's usage of the Permit Area that may be imposed upon CHS by applicable law. CHS shall pay all of such charges when they become due and payable and before delinquency.

## **28. RESTRICTION ON THE USE OF PESTICIDES**

Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or "IPM Ordinance") describes an integrated pest management ("IPM") policy to be implemented by all City departments. CHS shall not use or apply or allow the use or application of any pesticides on the Permit Area or contract with any party to provide pest abatement or control services to the Permit Area without first receiving City's written approval of an IPM plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that CHS may need to apply to the Permit Area during the term of this Permit, (ii) describes the steps CHS will take to meet the City's IPM Policy described in Section 300 of the IPM Ordinance and (iii) identifies, by name, title, address and telephone number, an individual to act as the CHS's primary IPM contact person with the City. CHS shall comply, and shall require all of CHS's contractors to comply, with the IPM plan approved by the City and shall comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if CHS were a City department. Among other matters, such provisions of the IPM Ordinance: (a) provide for the use of pesticides only as a last resort, (b) prohibit the use or application of pesticides on property owned by the City, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City's Department of the Environment), (c) impose certain notice requirements, and (d) require CHS to keep certain records and to report to City all pesticide use at the Permit Area by CHS's staff or contractors.

If CHS or CHS's contractor will apply pesticides to outdoor areas at the Permit Area, CHS must first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation ("CDPR") and any such pesticide application shall be made only by or under the supervision of a person holding a valid, CDPR-issued Qualified Applicator certificate or Qualified Applicator license. City's current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website, <http://sfenvironment.org/ipm>.

## **29. PROHIBITION OF TOBACCO SALES AND ADVERTISING**

CHS acknowledges and agrees that no sale or advertising of cigarettes or tobacco products is allowed on the Permit Area. This advertising prohibition includes the placement of the name of a company producing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product.



**30. RESERVED**

**31. CONFLICTS OF INTEREST**

Through its execution of this Permit, CHS acknowledges that it is familiar with the provisions of Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 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 provision, and agrees that if CHS becomes aware of any such fact during the term of this Permit, CHS shall immediately notify the City.

**32. FOOD SERVICE WASTE REDUCTION**

CHS agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in the San Francisco Environment Code, Chapter 16, including the remedies provided therein, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Permit as though fully set forth herein. This provision is a material term of this Permit. By entering into this Permit, CHS agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine. Without limiting City's other rights and remedies, CHS agrees that the sum of One Hundred Dollars (\$100.00) liquidated damages for the first breach, Two Hundred Dollars (\$200.00) liquidated damages for the second breach in the same year, and Five Hundred Dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Permit was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of CHS's failure to comply with this provision.

**33. FIRST SOURCE HIRING AGREEMENT**

CHS agrees that, to the extent applicable, it will enter into a First Source Agreement with City, pursuant to San Francisco Administrative Code, Chapter 83 (the "First Source Agreement"). Any default by CHS under the First Source Agreement shall be a default under this Permit.

**34. BOTTLED DRINKING WATER**

Unless exempt, CHS agrees to comply fully with and be bound by all of the provisions of the San Francisco Bottled Water Ordinance, as set forth in San Francisco Environment Code Chapter 24, including the administrative fines, remedies, and implementing regulations provided therein, as the same may be amended from time to time. The provisions of Chapter 24 are incorporated herein by reference and made a part of this Permit as though fully set forth.

**35. CRIMINAL HISTORY INQUIRIES FOR EMPLOYMENT**

(a) Unless exempt, CHS agrees to comply with and be bound by all of the provisions of San Francisco Administrative Code Chapter 12T (Criminal History in Hiring and Employment Decisions; "Chapter 12 T"), which are hereby incorporated as may be amended from time to time, with respect to applicants and employees of CHS who would be or are performing work at the Permit Area.

(b) CHS shall incorporate by reference the provisions of Chapter 12T in all of its contracts requiring use of some or all of the Permit Area, and shall require all of its agents, contractors and subcontractors ("CHS Agents") to comply with such provisions. CHS's failure to comply with the obligations in this subsection shall constitute a material breach of this Permit.

(c) CHS and CHS Agents shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

(d) CHS and CHS Agents shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection (c) above. CHS and CHS Agents shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

(e) CHS and CHS Agents shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with CHS or subCHS at the Permit Area, that the CHS and sublicensees will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(f) CHS and CHS Agents shall post the notice prepared by the Office of Labor Standards Enforcement ("OLSE"), available on OLSE's website, in a conspicuous place at the Permit Area and at other workplaces within San Francisco where interviews for job opportunities at the Permit Area occur. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the Permit Area or other workplace at which it is posted.

(g) CHS and CHS Agents understand and agree that upon any failure to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T or this Permit, including but not limited to a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Permit.

(h) If CHS has any questions about the applicability of Chapter 12T, it may contact the City's Real Estate Division for additional information. City's Real Estate Division may consult with the Director of the City's Office of Contract Administration who may also grant a waiver, as set forth in Section 12T.8.

## 35. NOTICES

Except as otherwise expressly provided herein, any notices given under this Permit shall be effective only if in writing and given by delivering the notice in person, by sending it first class mail or certified mail, with a return receipt requested, or overnight courier, return receipt requested, with postage prepaid, addressed as follows:

City: Real Estate Division  
City and County of San Francisco  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102  
Attn: Director of Property  
Re: Old Mint

NPU: NPU, Inc  
88 5<sup>th</sup> Street  
San Francisco, CA 94103  
Attn: Jordan Langer  
Re: Old Mint

Permittee: California Historical Society  
678 Mission Street  
San Francisco, CA 94105  
Attn: Anthea M. Hartig  
Re: Old Mint

Notices herein shall be deemed given two (2) days after the date when it shall have been mailed if sent by first class, certified or overnight courier, or upon the date personal delivery is made.

**36. SEVERABILITY**

If any provision of this Permit or the application thereof to any person, entity or circumstance shall be invalid or unenforceable, the remainder of this Permit, 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 Permit shall be valid and be enforceable to the fullest extent permitted by law, except to the extent that enforcement of this Permit without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this Permit.

**37. COUNTERPARTS**

This Permit 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.

**38. COOPERATIVE DRAFTING**

This Permit has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Permit reviewed and revised by legal counsel. No party shall be considered the drafter of this Permit, 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 Permit.

**42. SUGAR-SWEETENED BEVERAGE PROHIBITION**

CHS agrees that it will not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Permit.

**43. GENERAL PROVISIONS**

(a) This Permit may be amended or modified only by a writing signed by City and CHS. (b) No waiver by any party of any of the provisions of this Permit shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver. (c) All approvals and determinations of City requested, required or permitted hereunder may be made in the sole and absolute discretion of

the Director of Property or other authorized City official. **(d)** This instrument (including the exhibit(s) hereto) contains the entire agreement between the parties and all prior written or oral negotiations, discussions, understandings and agreements are merged herein. **(e)** The section and other headings of this Permit are for convenience of reference only and shall be disregarded in the interpretation of this Permit. **(f)** Time is of the essence. **(g)** This Permit shall be governed by California law and the City's Charter. **(h)** If either party commences an action against the other or a dispute arises under this Permit, the prevailing party shall be entitled to recover from the other reasonable attorneys' fees and costs. For purposes hereof, reasonable attorneys' fees of City shall be based on the fees regularly charged by private attorneys in San Francisco with comparable experience. **(i)** If CHS consists of more than one person then the obligations of each person shall be joint and several. **(j)** CHS may not record this Permit or any memorandum hereof. **(k)** Subject to the prohibition against assignments or other transfers by CHS hereunder, this Permit shall be binding upon and inure to the benefit of the parties and their respective heirs, representatives, successors and assigns. **(l)** In the event City sells or otherwise conveys the property burdened by this Permit this Permit shall automatically be revoked.

*[SIGNATURES ON FOLLOWING PAGE]*

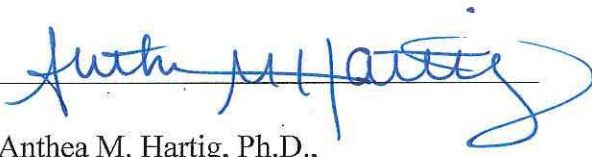
CHS represents and warrants to City that it has read and understands the contents of this Permit and agrees to comply with and be bound by all of its provisions.

PERMITTEE:

CALIFORNIA HISTORICAL SOCIETY,  
a California nonprofit public benefit corporation

By: 


Michael J. Sangiacomo,  
President, Board of Trustees

By: 

Anthea M. Hartig, Ph.D.,  
Executive Director and CEO

CITY:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By:   
John Updike  
Director of Property  
(pursuant to San Francisco Administrative  
Code Section 23.31)

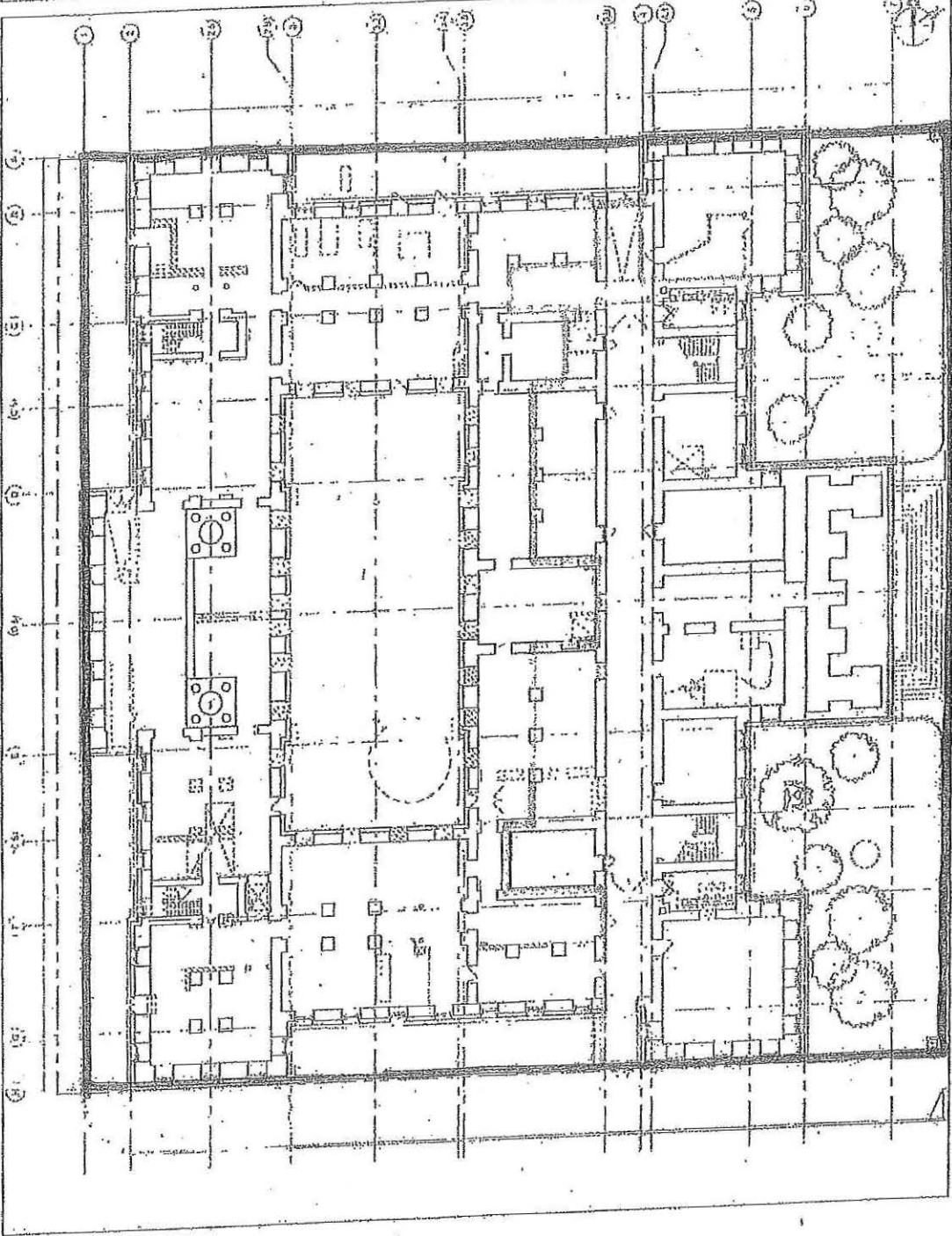
APPROVED AS TO FORM:

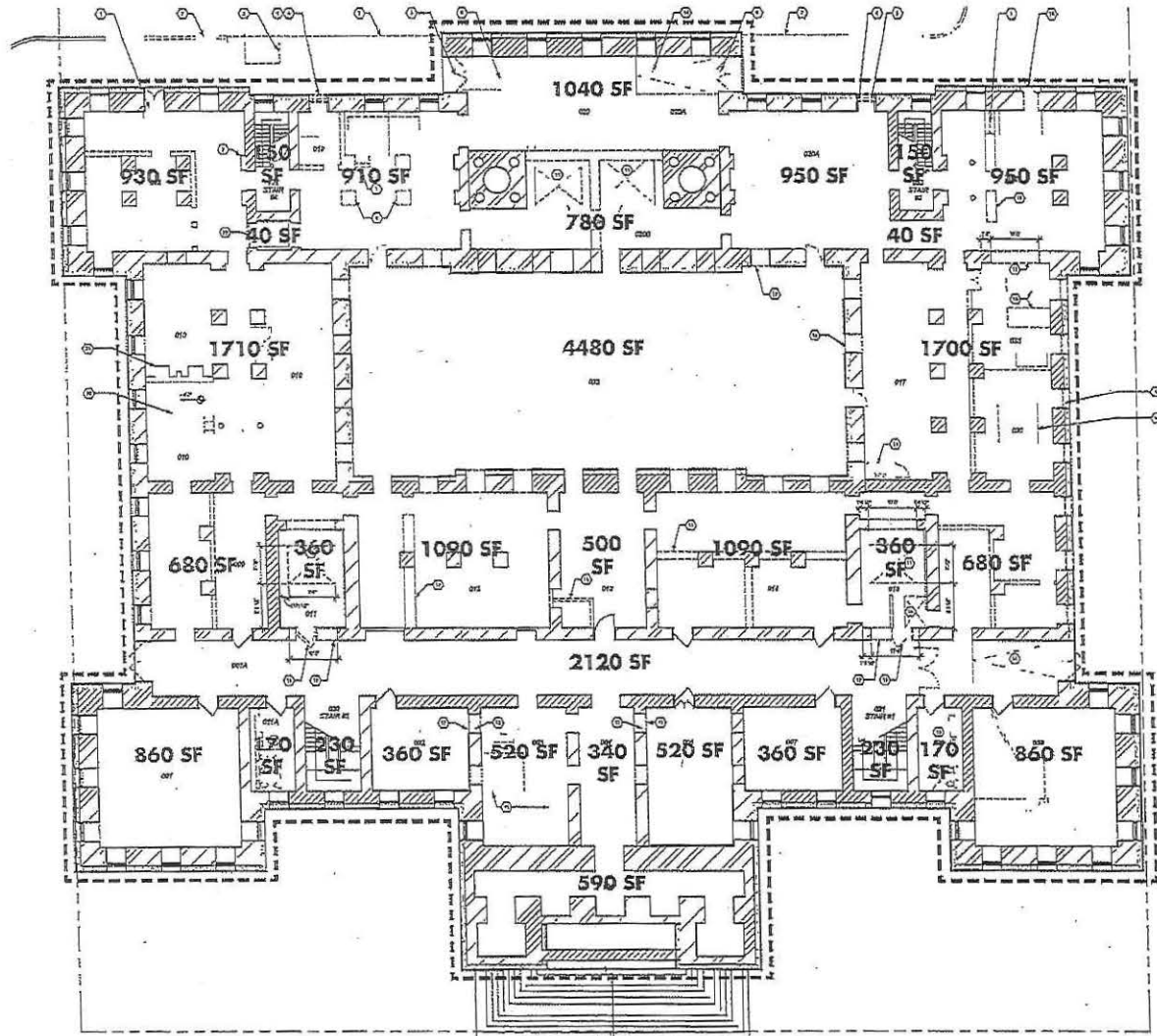
DENNIS J. HERRERA, City Attorney

By:   
Michelle Sexton  
Deputy City Attorney

**EXHIBIT A**

**Description of Permit Area**



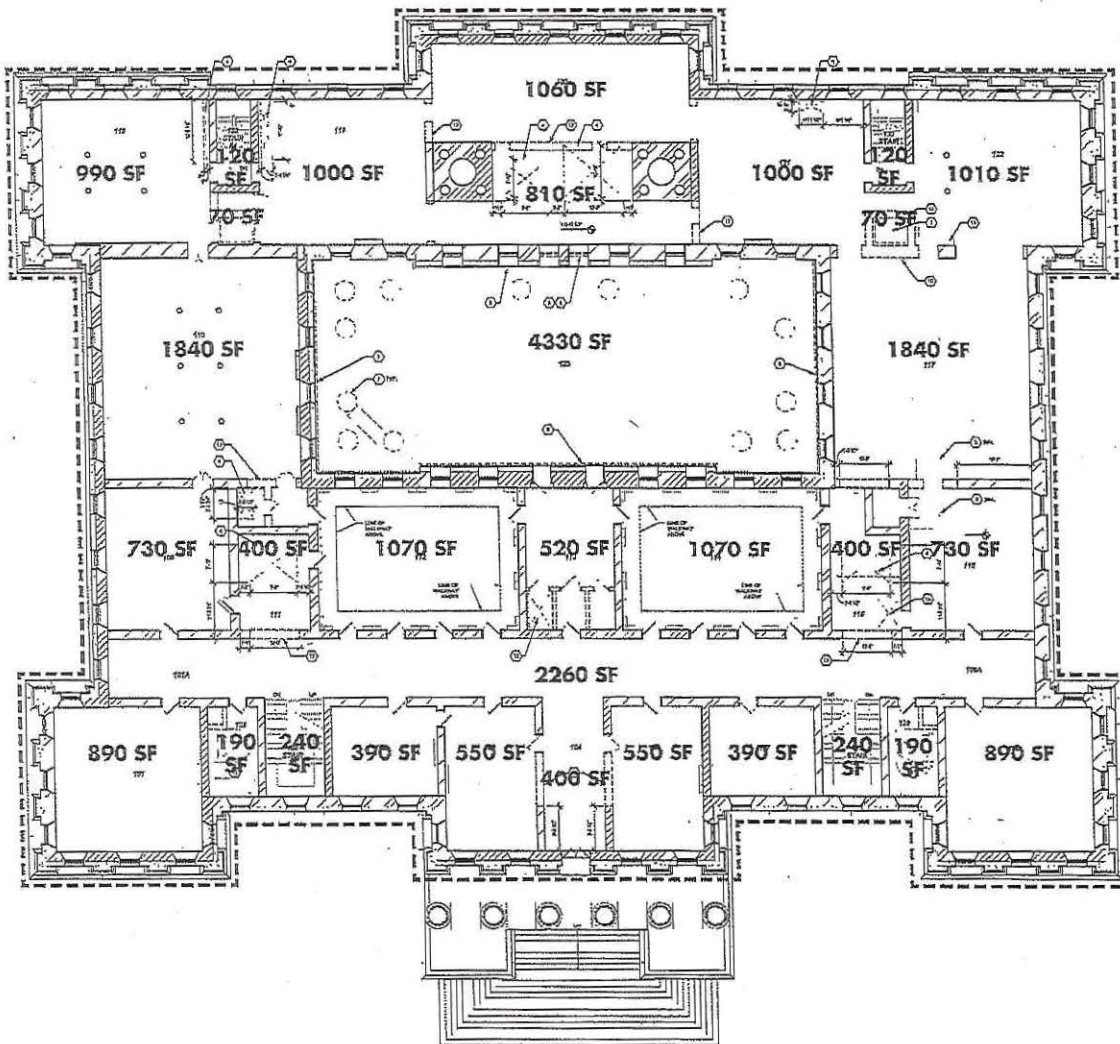


Gross	33,830 SF
ASF	25,920 SF

**GROUND FLOOR PLAN**  
with areas





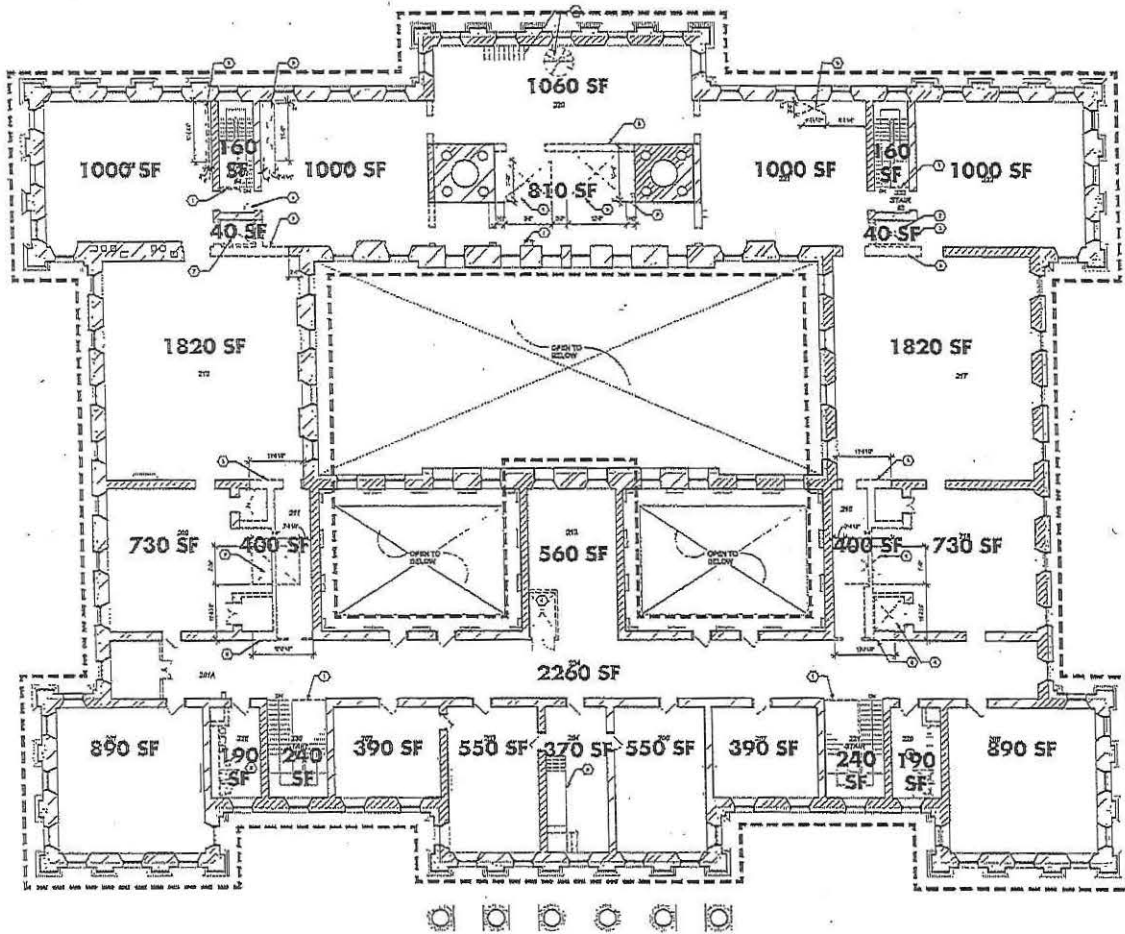


Gross 33,050 SF

ASF 26,360 SF

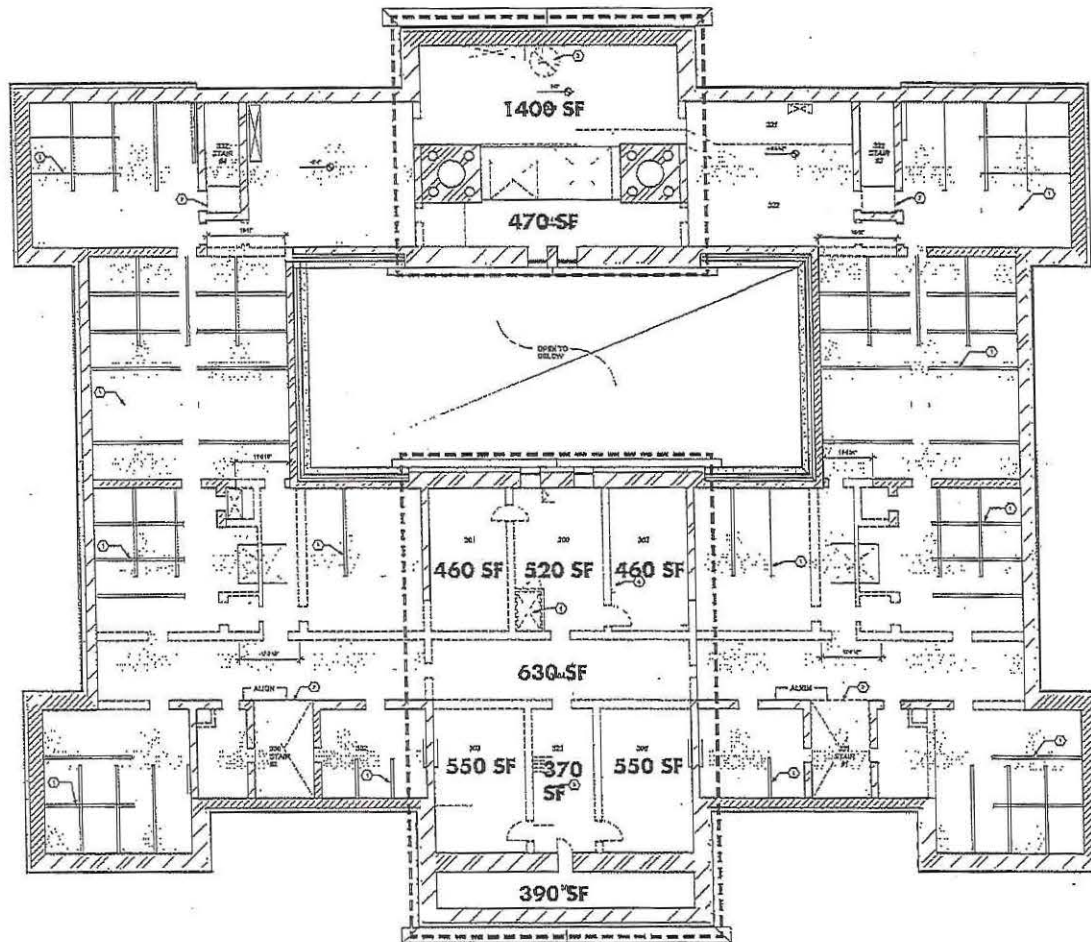
FIRST FLOOR PLAN  
with areas

architect



SECOND FLOOR PLAN  
with areas

ehcd.



Gross 7,940 SF  
 ASF 5,800 SF

ATTIC FLOOR PLAN  
 with areas



**EXHIBIT C**

**DELIVERABLES AND PERFORMANCE DATES**

<b><u>ACTIVITY</u></b>	<b><u>PROPOSED COMPLETION DATE*</u></b>
	*(after execution of this ENA)
<p>1. <b><u>PERSONNEL AND SCHEDULE</u></b></p> <p>CHS shall formalize its full project team, including a Project Manager and all staff and trustee assignments.</p> <p>CHS shall submit a tentative schedule for the development of the Project activities including, without limitation, those activities on this list.</p>	<p>Month 1</p> <p>Month 3</p>
<p>2. <b><u>DUE DILIGENCE INVESTIGATION</u></b></p> <p>CHS shall advise the City on the due diligence investigation of the Site, including for example, surveys, inspections, seismic and structural assessment, utility availability, cost estimations for rehabilitation, operations, and such other investigations as may be required by good engineering practices and by various regulatory agencies having jurisdiction with respect to the Project.</p>	<p>Month 24 (Ongoing)</p>
<p>3. <b><u>STRUCTURAL ASSESSMENT</u></b></p> <p>CHS shall advise the City on the development of a baseline structural assessment of the Old Mint, and the modeling of various seismic scenarios and building performance based on those findings.</p>	<p>Month 6</p>
<p>4. <b><u>CAPITAL CAMPAIGN AND FEASIBILITY STUDY</u></b></p> <p>In consultation with and benefiting from the cooperation of the City, CHS shall cause to be performed an evaluation of the length, structure, and amount of a possible capital campaign to support the Old Mint Restoration Project, including CHS's capacity to play a leading role in such a campaign, and exploring the role of the City/CHS partnership.</p>	<p>Month 9</p>
<p>5. <b><u>FINANCING INVESTIGATION AND FISCAL PLANNING</u></b></p> <p>CHS shall develop a "Partner Evaluation Matrix" to evaluate potential financial partners; make recommendations on the</p>	

<p>creation of a fundraising advisory committee to review and assist with financial modeling and projections; investigate possible Historic Preservation Tax Credits; and, review regional, state, and federal incentives and programs; and, incorporate results of the Capital Campaign and Feasibility Study.</p>	<p>Month 18</p>
<p>6. <u>CULTURAL VIABILITY STUDY</u>  CHS shall cause to be performed a series of assessments of the viability and mix of cultural uses at the Old Mint, including an evaluation of marketing needs and audience expectations, business planning and modeling assumptions, collections assessment, and CHS's ability to anchor this set of activities within a reimagined historical society.</p>	<p>Month 18</p>
<p>7. <u>PUBLIC RELATIONS AND COMMUNITY OUTREACH PROGRAM</u>  CHS will craft a community engagement strategy for the Project, and hire a Community Outreach Consultant that will help facilitate public participation (including, but not limited to, public workshops organized, in part, around the annual "History Days" events at the Old Mint in both 2017 and 2018) in the Project.</p>	<p>Month 18</p>
<p>8. <u>PROGRAMMING PLAN</u>  CHS will help design and facilitate a Request for Interest process to identify potential programmatic partners for the Mint's reuse program.</p>	<p>Month 12</p>
<p>9. <u>DESIGN PLAN</u>  CHS will advise the City on the development of a set of proposed building renovations that meet the requirements of previously-executed binding agreements governing the rehabilitation of the building, and will assist the City in receiving approval of said plans from the State Historic Preservation Officer, the National Parks Service, and the President's Advisory Council on Historic Preservation.</p>	<p>Month 20</p>
<p>10. <u>REHABILITATION PROJECT PROPOSAL</u>  CHS to assist in the completion of a full reuse proposal, including a financing plan, rehabilitation timeline, and management/operating plan (as memorialized</p>	<p>Month 24</p>

in a draft Future Agreement), for submission to all relevant City agencies and policy makers.	
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