

LEASE

between

33 GOUGH LLC,  
as Landlord

and

CITY AND COUNTY OF SAN FRANCISCO,  
as Tenant

For the lease of  
33 Gough Street  
San Francisco, California

December 1, 2019

**TABLE OF CONTENTS**

	<u>Page</u>
1. BASIC LEASE INFORMATION .....	1
2. PREMISES .....	4
2.1 Lease Premises .....	4
2.2 Disability Access .....	4
3. TERM .....	4
3.1 Term of Lease .....	4
3.2 Commencement Date and Expiration Date.....	4
3.3 Delay in Delivery of Possession .....	5
4. RENT .....	5
4.1 Base Rent .....	5
4.2 Additional Charges .....	5
4.3 Additional Services.....	5
4.4 Payment of Taxes and Insurance .....	6
4.5 Audits.....	7
4.6 Records .....	7
4.7 Payments by City .....	7
4.8 Landlord’s Compliance with City Business and Tax and Regulations Code .....	8
5. USE.....	8
5.1 Permitted Use.....	8
5.2 Interference with Access.....	8
6. LANDLORD AND TENANT IMPROVEMENTS .....	9
6.1 Construction of Landlord Improvements.....	9
6.2 Construction of Tenant Improvements .....	10
6.3 Installation of Telecommunications and Other Equipment .....	10
6.4 Construction of Improvements that Disturb or Remove Exterior Paint .....	10
7. ALTERATIONS.....	11
7.1 Alterations by City.....	11
7.2 Title to Improvements.....	11
7.3 City’s Personal Property .....	11
7.4 Alteration by Landlord.....	12
8. REPAIRS AND MAINTENANCE .....	12

8.1	Landlord’s Repairs.....	12
8.2	City’s Repairs.....	13
8.3	Liens.....	13
9.	UTILITIES AND SYSTEM DISRUPTION .....	13
9.1	Landlord’s Provision of Utilities .....	13
9.2	Janitorial, Pest Control and Security Services .....	13
9.3	Disruption in Utilities or Building Systems.....	14
10.	COMPLIANCE WITH LAWS; PREMISES CONDITION .....	14
10.1	Landlord’s Compliance with Laws; Premises Condition; Indemnity.....	14
10.2	City’s Compliance with Laws; Indemnity .....	15
10.3	City’s Compliance with Insurance Requirements.....	15
11.	SUBORDINATION.....	15
12.	DAMAGE AND DESTRUCTION.....	16
13.	EMINENT DOMAIN .....	17
13.1	Definitions.....	17
13.2	General .....	17
13.3	Total Taking; Automatic Termination .....	18
13.4	Partial Taking; Election to Terminate.....	18
13.5	Termination of Lease; Rent and Award.....	18
13.6	Partial Taking; Continuation of Lease .....	18
13.7	Temporary Taking .....	19
14.	ASSIGNMENT AND SUBLETTING .....	19
15.	DEFAULT; REMEDIES .....	19
15.1	Events of Default by City .....	19
15.2	Landlord’s Remedies .....	20
15.3	Landlord’s Default.....	20
16.	INDEMNITIES.....	21
16.1	City’s Indemnity .....	21
16.2	Landlord’s Indemnity.....	21
17.	INSURANCE.....	21
17.1	City’s Self-Insurance .....	21
17.2	Landlord’s Insurance .....	21
18.	ACCESS BY LANDLORD.....	22

19.	ESTOPPEL CERTIFICATES .....	22
20.	SURRENDER OF PREMISES .....	22
21.	HAZARDOUS MATERIALS .....	23
21.1	Definitions.....	23
21.2	Landlord’s Representations and Covenants.....	23
21.3	Landlord’s Environmental Indemnity.....	24
21.4	City’s Covenants.....	24
21.5	City’s Environmental Indemnity.....	24
22.	CITY PROVISIONS.....	24
22.1	MacBride Principles - Northern Ireland .....	24
22.2	Controller’s Certification of Funds.....	24
22.3	Prevailing Wages and Working Conditions.....	25
22.4	Non Discrimination in City Contracts and Benefits Ordinance.....	25
22.5	Tropical Hardwood and Virgin Redwood Ban .....	26
22.6	Bicycle Parking Facilities .....	27
22.7	Intentionally Deleted.....	27
22.8	Sunshine Ordinance .....	27
22.9	Conflicts of Interest.....	27
22.10	Notification of Prohibition on Contributions .....	27
22.11	Preservative-Treated Wood Containing Arsenic .....	28
23.	GENERALLY APPLICABLE PROVISIONS.....	28
23.1	Notices .....	28
23.2	No Implied Waiver .....	29
23.3	Amendments .....	29
23.4	Authority.....	29
23.5	Parties and Their Agents; Approvals .....	29
23.6	Interpretation of Lease .....	30
23.7	Successors and Assigns.....	30
23.8	Brokers.....	30
23.9	Severability .....	30
23.10	Governing Law .....	31
23.11	Entire Agreement; Incorporation of Exhibits .....	31
23.12	Attorneys’ Fees .....	31

23.13	Holding Over .....	31
23.14	Cumulative Remedies .....	32
23.15	Time of Essence .....	32
23.16	Survival of Indemnities .....	32
23.17	Signs .....	32
23.18	Quiet Enjoyment and Title .....	32
23.19	Bankruptcy .....	32
23.20	Transfer of Landlord’s Interest .....	33
23.21	Non-Liability of City Officials, Employees, and Agents .....	33
23.22	Counterparts .....	33
23.23	Effective Date .....	33
23.24	Certification by Landlord .....	33
23.25	Cooperative Drafting .....	34

LIST OF EXHIBITS AND SCHEDULES

EXHIBIT A – Floor Plans of Premises

EXHIBIT B – Notice of Commencement Date

EXHIBIT C – Landlord Improvements (if any)

EXHIBIT D - Tenant Improvements

## LEASE

THIS LEASE (this "Lease"), dated for reference purposes only as of December 1, 2019, is by and between 33 GOUGH LLC, a Georgia limited liability company ("**Landlord**"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**" or "**Tenant**").

Landlord and City hereby agree as follows:

### 1. BASIC LEASE INFORMATION

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

Lease Reference Date:	December 1, 2019
Landlord:	33 GOUGH LLC
Tenant:	CITY AND COUNTY OF SAN FRANCISCO
Building ( <u>Section 2.1</u> ):	33 Gough Street; San Francisco, CA 94103
Premises ( <u>Section 2.1</u> ):	The entire Building and both adjacent parking lots shown on <u>Exhibit A</u>
Rentable Area of Premises ( <u>Section 2.1</u> ):	Approximately 49,000 rentable square feet in the Building plus the adjacent parking lot
Term ( <u>Section 3</u> ):	Estimated commencement date: February 15, 2020  Expiration Date: Third (3rd) anniversary of the Commencement Date.  Commencement Date: The date Landlord has delivered the Premises to City, which date may not be before the Effective Date, as provided in <u>Section 23.23</u> .

Base Rent (Section 4.1):

First Payment: Single payment, at a rate of \$104,941.67 per month, prorated for the time period that spans the date that is between the Rent Commencement Date and June 30, 2020, payable on the Rent Commencement Date. For example, if the Commencement Date is March 1, 2020, rent payable on April 1, 2020 would be \$314,825.00 (3 months \* \$104,941.67 per month).

Second Payment: \$1,259,300 due on or before August 1, 2020 (for the period July 1, 2020 – June 30, 2021).

Third Payment: \$1,259,300 due on or before August 1, 2021 (for the period July 1, 2021 – June 30, 2022).

Final Payment (of initial Term): Single payment at a rate of \$104,941.67 per month, prorated for the time period that spans the date July 1, 2022 and the Expiration Date. For example, if the Expiration Date is February 28, 2023, rent payable on August 1, 2022 would be \$839,533.33 (8 months \* \$104,941.67 per month).

Holdover Rent (with consent): \$115,435.83 per month.

Holdover Rent (without consent): \$209,884 per month.

Rent Commencement Date: One (1) month after the Commencement Date.

Responsibility for Taxes and Insurance (Section 4.4):

City shall pay all Real Estate Taxes and Landlord's required insurance under Section 17.2; City will pay for all other operating expenses of the Building directly, subject to Landlord's repair and maintenance obligations under Section 8.1.

Use (Section 5.1):

Any legally permitted office use, and, subject to necessary regulatory approvals, temporary sheltering of homeless residents of the City,



navigation centers, and associated programs and services.

Utilities (Section 9.1):

As of the Commencement Date, City is responsible for the cost of any necessary utilities.

Services (Section 9.2):

City is responsible for any services necessary for City's use of the Premises.

Notice Address of Landlord (Section 23.1):

33 GOUGH LLC  
191 Peachtree Street, Suite 4100  
Atlanta, Georgia 30303  
Attn: Asset and Investment Management

and to:

33 GOUGH  
191 Peachtree Street, Suite 4100  
Atlanta, Georgia 30303  
Attention: Legal Department

Landlord's Key Contact:

Adetayo Sanusi

Landlord Contact Telephone No.:

(404) 224-1860

Tenant's Notice Address (Section 23.1):

Director of Property  
Real Estate Division  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102  
Attn: Re: **33 Gough**

and to:

Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4682  
Attn: Real Estate and Finance Group  
Re: **33 Gough**  
Fax No.: (415) 554-4757

Tenant's Key Contact:

Rachel Alonso

Tenant Contact Telephone No.:

(415) 557-4784

Tenant's Alternate Contact:

Josh Keene

Alternate Contact Telephone No.:

(415) 554-9859

## 2. PREMISES

### 2.1 Lease Premises

Landlord leases to City and City leases from Landlord, subject to the provisions of this Lease, those premises in the building identified in the Basic Lease Information (the “**Building**”) and the adjacent parking lots as shown on the diagrams attached as Exhibit A (the “**Premises**”). The Premises contain the rentable area of the Building specified in the Basic Lease Information. The Building, the land on which the Building and the adjacent parking lots are located, and all other improvements on or appurtenances to the land are referred to collectively as the “**Property**.”

### 2.2 Disability Access

California Civil Code section 1938 requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist (“**CASp**”) to determine whether the property meets all applicable construction-related accessibility requirements.

City is advised that the Premises have not been inspected by a CASp. The law does not require landlords to have the inspections performed, but Landlord may not prohibit City from obtaining a CASp inspection of the Premises for its occupancy or potential occupancy if requested by City. If City elects to obtain an inspection, City and Landlord will mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the CASp inspection fee, and the cost of any repairs necessary to correct violations of construction-related accessibility standards.

## 3. TERM

### 3.1 Term of Lease

The Premises are leased for a term commencing on the date that Landlord has delivered the Premises to City, which date may not be before the Effective Date, as provided in Section 23.23 (Effective Date) (the “**Term**”). The Term will end on the Expiration Date specified in the Basic Lease Information, or the date that this Lease is earlier terminated under the provisions of this Lease.

### 3.2 Commencement Date and Expiration Date

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

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

Landlord will use its best efforts to deliver possession of the Premises to City with the Building completely vacant on the Effective Date. Prior to or on the Effective Date, Landlord will terminate all leases or other agreements for the parking areas of the Premises and will cause such parking areas to be completely vacated no later than the Rent Commencement Date specified in the Basic Lease Information (the “**Rent Commencement Date**”). Between the Effective Date and the Rent Commencement Date, the parking operator may continue to operate the parking lots so long as such operation does not materially interfere with the City’s use of the Premises. If Landlord is unable to deliver possession of the Premises by the Effective Date, then, subject to the provisions of this Section below, the validity of this Lease will not be affected by Landlord’s inability to deliver possession except that the Term will not commence until Landlord has delivered the Premises as required under this Lease. If Landlord is unable to deliver possession of the Premises to City as required under this Lease within one-hundred eighty (180) days after the Effective Date, then, by written notice to Landlord, City may terminate this Lease, without any further liability to Landlord. If City terminates this Lease, then Landlord will promptly reimburse City for all of City’s costs of construction of the Tenant Improvement Work City has paid or becomes obligated to pay as of the termination date.

## **4. RENT**

### **4.1 Base Rent**

Beginning on the Rent Commencement Date, City will pay to Landlord the annual Base Rent specified in the Basic Lease Information (the “**Base Rent**”) pursuant to the payment schedule in the Basic Lease Information. On the Commencement Date, City and Landlord will calculate the First and Final rental payments to be made (assuming that this Lease will terminate on the Expiration Date). If this Lease terminates prior to the Expiration Date, Landlord shall refund any prepaid Base Rent to City within thirty (30) days after the termination of this Lease, which obligation shall survive the termination of this Lease. The Base Rent is payable at the address specified for Landlord in the Basic Lease Information, or other place as Landlord may designate in writing on not less than thirty (30) days’ advance notice. Landlord must supply an invoice to City detailing any charges, including any associated back-up or documentation, prior to City being required to pay Base Rent or other Additional Charges.

### **4.2 Additional Charges**

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

### **4.3 Additional Services**

City may request additional services for the Premises from Landlord, which Landlord may provide in its discretion, but which it will not unreasonably deny providing. If Landlord elects to provide the requested additional services, so long as City has approved the cost of the additional services in writing before Landlord incurs any costs, City will pay for the cost of the requested

additional services within thirty (30) days after receipt of an invoice; provided, however, that City may elect to provide any deposit or other prepayment that City determines is appropriate given the nature of the requested services. Any additional terms for the additional services will be memorialized by a written agreement, which, upon execution by Landlord and City, will be considered a part of this Lease.

#### **4.4 Payment of Taxes and Insurance**

(a) Definitions.

(i) **“Real Estate Taxes”** means all taxes, assessments, and charges levied on or with respect to the portion of the Building owned by Landlord, or Landlord’s interest in the Building. Real Estate Taxes include all general real property taxes and general and special assessments, charges, fees, or assessments for transit, housing, police, fire, or other governmental services, service payments in lieu of taxes that are now or later levied or assessed against Landlord by the federal, state, or local government, district or public corporation, and will also include any other tax, fee, or other excise, however described, that may be levied or assessed as a substitute for, or as an addition to, in whole or in part, any other Real Estate Taxes. Real Estate Taxes expressly do not include: **(1)** franchise, transfer, inheritance, gross receipts, or capital stock taxes, or income taxes of Landlord from all sources unless, due to a change in the method of taxation, any of those taxes are levied or assessed against Landlord as a substitute for, or as an addition to, in whole or in part, any other tax that would otherwise constitute a Real Estate Tax, **(2)** any penalties, fines, interest, or charges attributable to the late payment of any taxes, except to the extent attributable to City’s failure to pay its portion of Real Estate Taxes, **(3)** any personal property taxes payable by City or by any other tenant or occupant of the Building, **(4)** any increase in Real Estate Taxes due to any reassessment due to improvements to the Building or the Property or a transfer of any of Landlord’s interest in the Building or the Property, or **(5)** any Commercial Rent Tax for Childcare and Early Education (Prop. C) (gross receipts received from leases to government entities are exempt from this tax).

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

(b) Calculation of Real Estate Taxes. The calculation of Real Estate Taxes will be made in accordance with sound real estate accounting principles. The amount of Real Estate Taxes in any Tax Year will be calculated without taking into account any decreases in real estate taxes obtained in connection with any Proposition 8 reduction in Real Estate Taxes, and, therefore, the Real Estate Taxes Tax Year may be greater than those actually incurred by Landlord, but nonetheless will be the Real Estate Taxes due under this Lease; provided that **(i)** any costs and expenses incurred by Landlord in securing any Proposition 8 reduction will not be included in Real Estate Taxes for purposes of this Lease, and **(ii)** tax refunds under Proposition 8 will not be deducted from Real Estate Taxes or refunded to Tenant, but will be Landlord’s sole property.

(c) Payment of Real Estate Taxes. For periods from and after the Commencement Date (including the Tax Year in which the Expiration Date occurs, even if occupancy has ended), with reasonable promptness not to exceed thirty (30) days after Landlord

has received the tax bills for any Tax Year, Landlord will furnish City with a statement (“**Landlord’s Tax Statement**”) setting forth the actual amount of Real Estate Taxes for the Tax Year and a copy of the tax bill. City will pay Landlord, as Additional Charges, the actual Real Estate Taxes within thirty (30) days after the receipt of Landlord’s Tax Statement and tax bill.

(d) Payment of Landlord’s Required Insurance. For periods from and after the Commencement Date (including the lease year in which the Expiration Date occurs, even if occupancy has ended), with reasonable promptness not to exceed thirty (30) days after Landlord has received bills for the premiums for the insurance coverage required by Landlord to be carried under Section 17.2 below, Landlord will furnish City with a statement (“**Landlord’s Insurance Statement**”) setting forth the actual amount of those insurance premiums for that period and a copy of the insurance bill. City will pay Landlord, as Additional Charges, the actual amount of those insurance premiums within thirty (30) days after the receipt of Landlord’s Insurance Statement and insurance bill.

(e) Survival. Tenant’s obligations to pay Additional Charges applicable during the Term of this Lease will survive the expiration or termination of this Lease.

#### **4.5 Audits**

After not less than five (5) business days’ notice to Landlord, City may audit the books and records of the Building related to Real Estate Taxes and any other charges paid by City under this Lease. If an audit discloses any discrepancies that result in a reduction of Real Estate Taxes paid by City under this Lease by three percent (3%) or more for any 12-month period or Tax Year, then Landlord will pay the costs of the audit.

#### **4.6 Records**

Landlord will maintain, in a safe, complete, and organized manner, all of its records related to this Lease, Real Estate Taxes, and any other charges paid by City under this Lease, for at least three (3) years after the Expiration Date or earlier termination of this Lease. Landlord will maintain the records on a current basis and in sufficient detail to facilitate adequate review and audit. All books and records will be available electronically for inspection, printing, and audit by City and its representatives, at City’s expense, subject to the provisions of Section 4.5 (Audits).

#### **4.7 Payments by City**

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

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

Landlord acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the withholding of payments to any vendor that is delinquent in the payment of any amounts that the vendor is required to pay the City under the San Francisco Business and Tax Regulations Code. If, under that authority, any payment City is required to make to Landlord under this Lease is withheld, then City will not be in breach or default under this Lease, and the Treasurer and Tax Collector will authorize release of any payments withheld under this paragraph to Landlord, without interest, late fees, penalties, or other charges, upon Landlord coming back into compliance with its San Francisco Business and Tax Regulations Code obligations.

### **5. USE**

#### **5.1 Permitted Use**

City may use the Premises for general office purposes and for the temporary sheltering of homeless residents of the City, navigation centers, and associated programs and services, and for no other purpose. City shall, at City's expense, comply promptly with all applicable statutes, ordinances, rules, regulations, orders and requirements in effect during the term regulating the use by City of the Premises for non-general office uses. City shall not use or permit the use of the Premises in any manner that will tend to create waste or a nuisance, nor shall City, its Agents or Invitees damage the Premises or use any sidewalks or other areas outside of the Premises for storage or any purpose other than access to the Premises. For the avoidance of doubt, City acknowledges and agrees that the temporary sheltering of homeless residents of the City is not a general office use and, therefore, any costs incurred, repairs, maintenance, alterations, or improvements necessitated by, or other compliance with Laws applicable to, such non-office use shall be at the sole cost and expense of City, and City shall indemnify Landlord from and against all claims arising therefrom. For the avoidance of doubt, Landlord acknowledges and agrees that the temporary sheltering of homeless residents, navigation centers, and associated programs and services does not constitute a nuisance.

#### **5.2 Interference with Access**

Landlord will provide to City uninterrupted access to the Building and the Premises twenty-four (24) hours per day, seven (7) days per week, including during any power outages affecting the Premises or any portion of the Building; but Landlord may, after consultation with City's Administrator, interrupt City's access to the Premises if there is an immediate threat that will render the Premises unsafe for human occupancy. If City's use of the Premises or access to the Premises is interrupted because the Premises or any portion of it is unsafe for human occupancy due to Landlord's failure to comply with its obligations under this Lease, then Landlord will immediately undertake all necessary steps to correct the condition. If the condition continues for three (3) business days, then the Rent will be abated based on the extent to which the condition interferes with City's ability to normally and safely carry on its business at the Premises. If the condition continues for thirty (30) days or more after City's use is interrupted or impaired then, without limiting any of its other rights under this Lease, City may terminate this Lease, unless Landlord supplies City with evidence reasonably satisfactory to City that City's normal and safe use will be restored within sixty (60) days after the date City's use was interrupted or impaired, and City's full use is actually restored within that 60-day period. Nothing in this Section will limit

City's rights with respect to any disruption due to casualty under Section 12 (Damage and Destruction).

## **6. LANDLORD AND TENANT IMPROVEMENTS**

### **6.1 Construction of Landlord Improvements**

Prior to the Effective Date and at other times during the Term, Landlord and Tenant may mutually determine if it is appropriate and/or beneficial for Landlord to perform certain work and installations at the Premises. Any work and installations performed under this Lease by Landlord are referred to as the "**Landlord Improvement Work**" and the "**Landlord Improvements**". If any such work is agreed upon by both parties, it will be added to "**Exhibit C**" ("**Landlord Improvements**"). For avoidance of doubt, the inclusion of any Landlord Improvements will not delay the Commencement Date or the Rent Commencement Date. Any such Landlord Work will be performed in cooperation with and under the direction of the City's Department of Public Works and in accordance with the provisions of this Section 6.1.

#### (a) Permits

Landlord will secure and pay for any building and other permits and approvals, government fees, licenses and inspections necessary for the proper performance and completion of the Landlord Improvement Work and will provide copies to City promptly following receipt thereof. Landlord will be responsible for arranging for all inspections required by City's Bureau of Building Inspection.

#### (b) Construction

Immediately upon Landlord's procurement of all necessary permits and approvals, Landlord will commence construction and will cause the Landlord Improvements to be completed in a good and professional manner in accordance with sound building practice. Landlord will comply with and give notices required by all laws, rules, regulations, ordinances, building restrictions and lawful orders of public authorities bearing on construction of the Landlord Improvements. Without limiting the foregoing, construction of the Landlord Improvements will comply with all applicable disabled access laws, including, without limitation, the most stringent requirements of the Americans With Disabilities Act of 1990, Title 24 of the California Code of Regulations (or its successor) and City's requirements for program accessibility. Landlord will pay prevailing wages in connection with construction of the Landlord Improvement Work as further provided in Section 22.3 (Prevailing Wages and Working Conditions), below, and will not use tropical hardwood wood products, or virgin redwood wood products as further provided in Section 22.5 (Tropical Hardwood and Virgin Redwood Ban), below.

#### (c) Construction Schedule; Substantial Completion

Landlord will keep City apprised on a regular basis of the permit issuance and the progress of construction. From time to time during the construction of the Landlord Improvements, City will have the right upon reasonable advance oral or written notice to Landlord to inspect the Premises, provided such inspections do not unreasonably interfere with the construction. Landlord or its representative may accompany City during any such inspection. When construction progress so permits, but not less than fifteen (15) days in advance of completion, Landlord will notify City of the approximate date on which the Landlord Improvement Work will be substantially completed and will immediately notify City when the Landlord Improvement Work is in fact substantially completed. On such date or other mutually agreeable

date as soon as practicable thereafter, City and its authorized representatives will have the right to accompany Landlord on an inspection of the Premises.

The Landlord Improvement Work will be deemed to be "substantially completed" for purposes of this Lease when the Landlord Improvements will have been sufficiently completed in accordance with the permits so that City can occupy the Premises, or the applicable portion thereof containing the Landlord Improvements, and conduct its business for its intended uses and City, through its Director of Property, will have approved the Landlord Improvements. City may, at its option, approve the Landlord Improvements even though there may remain minor details that would not interfere with City's use. Landlord will diligently pursue to completion all such details. Notwithstanding the foregoing, City will have the right to present to Landlord within thirty (30) days after acceptance of the Landlord Improvements, or as soon thereafter as practicable, a written punchlist consisting of any items that have not been finished in accordance with Exhibit C. Landlord will promptly complete all defective or incomplete items identified in such punchlist, and will in any event complete all items within thirty (30) days after the delivery of such list. City's failure to include any item on such list will not alter the Landlord's responsibility hereunder to complete all Landlord Improvement Work in accordance with Exhibit C, nor constitute any waiver of any latent defects.

## **6.2 Construction of Tenant Improvements**

As of the Effective Date, Tenant will be permitted to perform the work and make the installations in the Premises as generally described in "Exhibit D" (the "**Tenant Improvements**"). All work and installations performed under the Tenant Improvements exhibit are referred to as the "**Tenant Improvement Work**" and the "**Tenant Improvements**."

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

Landlord and City acknowledge that City is responsible for the installation of telecommunications, data, and computer cabling facilities and equipment. Landlord will furnish access to City and its consultants and contractors to the main communications service serving the floor(s) on which the Premises are located and all other parts of the Building where access is needed for proper installation of the facilities and equipment including wiring. As of the Effective Date, City will have the right to enter the Premises and the other portions of the Building in order to install the facilities and equipment. City and Landlord will use their good faith efforts to coordinate any and all activities to allow the Landlord Improvements, if any, and the Tenant Improvements and the installation of the facilities and equipment to be completed in a timely and cost-effective manner.

## **6.4 Construction of Improvements that Disturb or Remove Exterior Paint**

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



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

## **7. ALTERATIONS**

### **7.1 Alterations by City**

City may not make or permit any alterations, installations, additions, or improvements (collectively, “**Alterations**”) to the Premises without first obtaining Landlord’s written consent, which Landlord will not unreasonably withhold, condition, or delay. The Tenant Improvement Work, installation of non-structural partitions, furnishings, equipment, or decorative improvements that do not affect the Building Systems or structural integrity of the Building, and the repainting and recarpeting of the Premises do not constitute Alterations and do not require Landlord’s consent. Any Alterations permitted under this Lease will be made at City’s cost in compliance with applicable Laws (as defined in Section 10.1 (Landlord’s Compliance with Laws)). Without cost to itself, Landlord will cooperate with City in securing building and other permits and authorizations needed for any permitted Alterations. Landlord will not be entitled to any construction or other administrative fee in connection with any Alteration. City may, but will not be required to, remove any Alterations on the expiration or sooner termination of this Lease unless Landlord notifies City in writing at the time Landlord approves the Alterations that they must be removed. City is not required to remove any improvements not requiring Landlord’s consent.

### **7.2 Title to Improvements**

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

### **7.3 City’s Personal Property**

All furniture, furnishings, equipment, trade fixtures, and articles of movable personal property installed in the Premises by or for City and that can be removed without structural damage to the Premises (collectively, “**City’s Personal Property**”) are and will remain City’s property.

At any time during the Term, City may remove any of City's Personal Property, and City will repair any damage to the Premises resulting from that removal. On the expiration or earlier termination of this Lease, City will remove City's Personal Property from the Premises in accordance with Section 20 (Surrender of Premises). Landlord acknowledges that some of City's Personal Property may be financed and subjected to a security interest, or owned by an equipment company and leased to City. Upon City's reasonable request, Landlord will execute and deliver a reasonable document required by any supplier, lessor, or lender in connection with the installation in the Premises of any items of City's Personal Property, under which Landlord waives any rights it may have or acquire with respect to City's Personal Property, so long as the supplier, equipment supplier, lessor, or lender agrees that it **(i)** will remove the City's Personal Property from the Premises within fifteen (15) days after the Expiration Date or earlier termination of this Lease (and if it does not remove City's Personal Property within that time the equipment supplier, lessor, or lender will have waived any rights it may have had to City's Personal Property), **(ii)** will repair any damage caused by the removal of City's Personal Property; and **(iii)** indemnify Landlord from all Claims incurred as a result of such equipment suppliers, lessor's, or lender's entry in or upon the Premises and/or the removal of the City's Personal Property therefrom.

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

Landlord will use its best efforts to minimize interference with or disruption to City's use and occupancy of the Premises during any alterations, installations, additions, or improvements to the Building. Landlord will promptly remedy any interference or disruption on receiving City's notice thereof.

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

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

As of the date the City occupies the Premises upon completion of its Tenant Improvements, Landlord will maintain the exterior and structural portions of the Building in their then current or better condition, including, the roof, foundation, bearing and exterior walls, windows, window frames, doors, door frames, demising walls, and subflooring. Without limiting the foregoing, except to the extent any maintenance, repair, or replacement, is necessitated by the gross negligence or willful misconduct of Tenant, Landlord will:

(i) maintain, replace, repair and keep the following portions of the Premises in water-proof, leak-free, good condition, and repair in accordance with all applicable Laws and this Lease: (1) the foundation, including all points of access to the foundation; (2) the roof, including all points of access to the roof and all roof structures such as parapets; (3) structural trusses and support system, structural walls, the structural elements of all exterior walls and surfaces leading to the street or public areas; (4) the maintenance and repair of the main sewer and water and gas pipes connecting to the utility delivery system and electric wiring and conduit connecting to the utility delivery system; (5) the sidewalks; and (6) damage to other parts of the Premises caused by Landlord's failure to meet its obligations under this Section; and

(ii) promptly and diligently make any structural seismic, engineering, and other upgrades or improvements to the Premises as required by any existing or future Laws that are generally applicable to office buildings comparable to the Premises in the City of San Francisco (as opposed to any upgrades or improvements to the Premises required by any existing

or future Laws that are required as a result of the City's particular manner of use of the Premises, specifically, sheltering individuals).

## **8.2 City's Repairs**

Subject to Landlord's warranty under Section 10.1 (Premises Condition), any construction warranties or guaranties received in connection with Landlord's completion of the Landlord Improvements, if any, and Landlord's repair and maintenance obligations under this Lease, City will repair and maintain at its cost the interior portions of the Premises and will keep the Premises in good working order and in a safe and sanitary condition, except for ordinary wear and tear and damage by casualty or condemnation. City will make any all necessary and routine maintenance and non-extraordinary repair of the interior of the Building, the heating, ventilating, air conditioning, plumbing, electrical, fire protection, life safety, security, and other mechanical, electrical, and communications systems of the Building (collectively, the "**Building Systems**"). This will also include annual inspections of sprinklers and fire alarms and facilities in the Premises, and on all Alterations installed by or on Tenant's behalf in the Premises (collectively, "**Routine Maintenance**"). City will make the repairs and maintenance required under this Section (i) at City's cost, (ii) by licensed (if required) and insured contractors or mechanics selected by City, and (iii) in compliance with all applicable Laws, including any applicable contracting requirements under City's Charter and Administrative Code. At all times during the Term, promptly after City's reasonable notice, Landlord will provide City and its Agents with access to those portions of the Building that are necessary to maintain or repair the telecommunications and data and computer cabling facilities and equipment installed by City.

## **8.3 Liens**

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

## **9. UTILITIES AND SYSTEM DISRUPTION**

### **9.1 Landlord's Provision of Utilities**

Landlord will cause the following utilities to be available at the Building: electricity, water, sewer, natural gas, and telephone. City will be responsible for contracting with each utility provider for service and will pay each utility service provider directly.

### **9.2 Janitorial, Pest Control and Security Services**

City will provide at its cost janitorial and pest control service, as deemed necessary by Tenant in order to maintain the Premises in a clean and safe condition. City will have the right to install its own security system (which may be a card-key system), subject to Landlord's approval of the plans and specifications, which approval will not be unreasonably withheld, conditioned, or delayed. City will ensure that Landlord has keys and codes needed to access the Building in the event of an emergency or as otherwise allowed under this Lease. If City fails to provide the keys

and codes, then in an emergency, Landlord may access the Building by any means reasonably necessary and City will be responsible for any and all repair costs related to Landlord's emergency entry.

### **9.3 Disruption in Utilities or Building Systems**

If any failure, stoppage, or interruption of any Building Systems or utilities to be furnished and maintained by Landlord occurs, and such failure, stoppage, or interruption is caused by a condition reasonably within Landlord's control, and not due to the City's failure to contract with, pay for, or otherwise provide a utility service, then Landlord will immediately notify City of the failure, stoppage, or interruption; diligently attempt to restore service as promptly as possible; and keep City apprised of its efforts. If Landlord is unable to furnish uninterrupted use of any of the utility services (to the extent to be provided by Landlord) or Building Systems (collectively, "**Essential Services**") and that inability of Landlord impairs City's ability to carry on its business in the Premises for **(a)** three (3) or more consecutive business days, and it is in Landlord's reasonable control to restore the Essential Services or **(b)** ten (10) or more consecutive business days if the failure is not within Landlord's reasonable control, then the Rent will be abated based on the extent that the lack of the Essential Services impairs City's ability to normally carry on its business in the Premises. The abatement will continue until the Essential Services have been restored so that the lack of any remaining Essential Services no longer materially impairs City's ability to carry on its business in the Premises. Landlord will use its best efforts to restore disrupted Essential Services as soon as possible. If the failure to provide any Essential Services occurs for any reason for thirty (30) consecutive days or more in any sixty (60) day period and that failure interferes with City's ability to normally carry on its business in the Premises, then, without limiting any of its other rights or remedies under this Lease or at law or in equity, City may terminate this Lease on written notice to Landlord, unless Landlord supplies City with evidence reasonably satisfactory to City that the Essential Services will be reliably restored within sixty (60) days after the date City's use was first interrupted, and the Essential Services are actually restored and reliable within the 60-day period. City will not be entitled to any abatement of Rent or right to terminate if Landlord's inability to supply Essential Services to City results solely to the negligent acts or omissions of City and its Agents.

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

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

Subject to City's obligation under Section 8.2 (City's Repairs), Landlord will at all times during the Term maintain, at its cost, the Property, Building, and the Building Systems serving the Premises in compliance with applicable present or future federal, state, local, and administrative laws, rules, regulations, orders, and requirements (collectively, "**Laws**"). Landlord represents and warrants to City, and covenants with City, as follows **(a)** the physical structure, fixtures, and permanent improvements of the Premises (including the Landlord Improvements, if any) and all portions of the Property and the Building along the path of travel to the Premises (including the Building entrances, restrooms, elevators, lobbies, telephone banks, and drinking fountains and parking/driving areas) are now, and as of the Commencement Date will be, to the extent applicable, in compliance with the requirements of the Americans With Disabilities Act of 1990 and California Code of Regulations Title 24 and all other applicable Laws intended to provide equal accessibility for persons with disabilities (collectively, "**Disabilities Laws**"); **(b)** the Building is not an unreinforced masonry building, and is now, and as of the Commencement Date will be, in

compliance with all applicable Laws relating to seismic safety (collectively, “**Seismic Safety Laws**”); (c) the Building, and Building Systems serving the Premises are now, and as of the Commencement Date will be, in full compliance with all applicable Laws relating to fire and life safety (including the San Francisco High-Rise Sprinkler Ordinance) (collectively, “**Life Safety Laws**”); (d) the Building, and Building Systems serving the Premises are now, and as of the Commencement Date will be, in compliance with all other applicable Laws; and (e) as of the Commencement Date there will not be, any material physical or mechanical defects in the Premises, Building, or the Building Systems that would materially adversely affect City’s intended use of the Premises. Without limiting Section 16.2 (Landlord’s Indemnity), Landlord will Indemnify City against any and all Claims (defined in Section 16.1 (City’s Indemnity) below) arising out of (i) any failure of the Property, Building, Building Systems (or any portion of any of them) to comply with applicable Laws; or (ii) any intentional or knowingly false misrepresentation by Landlord under this Section.

### **10.2 City’s Compliance with Laws; Indemnity**

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

### **10.3 City’s Compliance with Insurance Requirements**

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

## **11. SUBORDINATION**

(a) This Lease is subject and subordinate at all times to the following (each an “**Encumbrance**”): (i) any reciprocal easement agreements, ground leases, or other underlying leases that may later be executed affecting Landlord’s interest in the Property (or any portion of

it), and (ii) the lien of any mortgages or deeds of trust and renewals, modifications, consolidations, replacements, and extensions of any of the foregoing that may later be executed by Landlord in any amount for which any part of the Property, any ground lease, or underlying lease, or Landlord's interest or estate in them is subject. But, if the ground lessor, mortgagee, trustee, or holder of any mortgage or deed of trust (each an "**Encumbrancer**") elects to have City's interest in this Lease be superior to its Encumbrance, then, on City's receipt of a notice from the Encumbrancer, this Lease will be deemed superior, whether this Lease was executed before or after the date of Encumbrance or the date of its recording. At City's request, Landlord will cause any Encumbrancer to enter into a subordination, nondisturbance, and attornment agreement with City in a form reasonably acceptable to City evidencing the subordination or superiority of this Lease. City's covenant under this subsection (a) to subordinate this Lease to any Encumbrance later executed is conditioned on each senior instrument containing the commitments in subsection (b) below.

(b) If any mortgage or deed of trust to which this Lease is subordinate is foreclosed or a deed in lieu of foreclosure is given to the mortgagee or beneficiary, or if any ground lease or underlying lease to which this Lease is subordinate is terminated, then this Lease will not be barred, terminated, cut off, or foreclosed and the rights and possession of City under this Lease will not be disturbed unless an Event of Default has occurred and is continuing. City will attorn to and become the tenant of the successor-in-interest to Landlord, provided that City has received proper written notice of the succession and the name and address of the successor landlord.

## **12. DAMAGE AND DESTRUCTION**

(a) If the Premises, the Building, or any Building Systems are damaged by fire or other casualty, Landlord will repair the same without delay (and if Landlord is then carrying insurance on the Tenant Improvements or if, at its sole option, City makes funds available to Landlord, Landlord will also repair the Tenant Improvements) so long as the repairs can be made under applicable Laws within sixty (60) days after Landlord obtains all necessary permits but not later than two hundred ten (210) days after the date of the damage (the "**Repair Period**"). If Landlord is obligated to repair as provided above, then this Lease will remain in full force and effect, except that City will be entitled to an abatement of Rent until the Premises are restored to their condition before the casualty. The abatement in Rent will be based on the extent to which the damage, the making of the repairs, and reoccupying the repaired Premises interferes with City's use of the Premises. Landlord's repairs will not include, and the Rent will not be abated as a result of, any damage by fire or other cause to City's Personal Property or any damage caused by the negligence or willful misconduct of City or its Agents.

(b) Within twenty (20) days after the date of the damage, Landlord will notify City whether, in Landlord's reasonable judgment made in good faith, the repairs can be made within the Repair Period. If the repairs cannot be made within the Repair Period, then either party may terminate this Lease by giving written notice to the other given within thirty (30) days after the date of Landlord's notice. The termination date will be the date specified in the termination notice, which date may be not less than thirty (30) or more than sixty (60) days after Landlord's notice. If either party elects to terminate this Lease, then the Rent will be reduced by a proportionate amount based on the extent to which the damage interferes with the normal conduct of City's business in the Premises, and City will pay the reduced Rent up to the date of termination. Landlord will refund to City any Rent previously paid for any period after the date of termination.

(c) Notwithstanding the foregoing, if the Premises are damaged or destroyed by flood or earthquake, and the damage or destruction is not fully covered by insurance proceeds payable under the insurance policies Landlord is required to carry under this Lease (excluding any deductible, for which Landlord is solely responsible), then Landlord may terminate this Lease by written notice to City within thirty (30) days after the date Landlord receives written notice that the damage is not covered by insurance. Landlord's termination notice must include adequate written evidence of the denial of insurance coverage. If Landlord does not elect to terminate this Lease, then subsections (a) and (b) will apply.

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

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

## **13. EMINENT DOMAIN**

### **13.1 Definitions**

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

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

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

### **13.2 General**

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

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

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

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

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

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

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

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

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

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

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



any Tenant Improvements paid for by City in the portion of the Premises taken and any Award made specifically for City's relocation expenses or the interruption of or damage to City's business or damage to City's Personal Property.

### **13.7 Temporary Taking**

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

## **14. ASSIGNMENT AND SUBLETTING**

Except as provided in this Section, City may not directly or indirectly sell, assign, encumber, pledge, or otherwise transfer or hypothecate all or any part of its interest in or rights with respect to the Premises or its leasehold estate created by this Lease or permit all or any portion of the Premises to be occupied by anyone other than itself or sublet all or any portion of the Premises, without Landlord's prior written consent in each instance, which will not be unreasonably withheld, conditioned, or delayed. From time to time, on notice to Landlord, but without Landlord's consent, City may transfer this Lease or use and occupancy of all or any of the Premises to any department, commission, or agency of the City and County of San Francisco for uses permitted under this Lease. Upon such transfer, City will not be able to use the Premises for any purposes other than those listed in Section 5.1 without the express written consent of Landlord.

## **15. DEFAULT; REMEDIES**

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

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

(a) After Landlord is qualified as an approved vendor as provided in Section 4.7 (Payments by City) above, City fails to make any timely payment of Rent and to cure the nonpayment within five (5) business days after receipt of written notice or nonpayment from Landlord, provided that for the first two (2) monthly payments of Rent at the beginning of the Term and for the first monthly payment of Rent after the beginning of each new fiscal year for City, City will have twenty (20) days after written notice from Landlord to cure any nonpayment.

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

(c) City's failure to perform any other of its covenants or obligations under this Lease (not involving the payment of money) and failure to cure the non-performance within thirty (30) days of the date of receipt of Landlord's notice of the failure, provided that if more than thirty (30) days are reasonably required for the cure, no Event of Default will occur if City commences the cure within the 30-day period and diligently prosecutes the cure to completion.

## **15.2 Landlord's Remedies**

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

(a) The rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including the right to terminate City's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that City proves could be reasonably avoided, as computed under subsection (b) of Section 1951.2.

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

(c) After terminating this Lease, any items of Tenant's Personal Property remaining in the Premises after termination may be deemed abandoned and disposed of in accordance with Section 1980 et seq. of the California Civil Code.

## **15.3 Landlord's Default**

If Landlord fails to perform any of its obligations under this Lease, then (without limiting any of City's other cure rights under this Lease), at its sole option, City may cure the default at Landlord's expense if the default continues after thirty (30) days after the date City gives notice to Landlord of City's intention to perform the cure. However, if a default occurs because of a cause beyond Landlord's control (excluding any financial inability to perform), and Landlord cannot with due diligence cure the default within the thirty (30)-day period, then the thirty (30)-day period will be extended if, promptly on receipt of City's notice, Landlord advises City of Landlord's intention to take all steps required to cure the default, and Landlord promptly commences the cure and diligently prosecutes the cure to completion. But if any default by Landlord continues for sixty (60) consecutive days and materially impairs City's ability to carry on its normal business in the Premises, then City may terminate this Lease on written notice to Landlord within thirty (30) days after the expiration of the sixty (60)-day period. Subject to the other provisions of this Lease relating to abatement of Rent, if Landlord fails to cure any default within the 30-day cure period provided above (as it may be extended as provided above), then, whether or not City elects to cure Landlord's default, the Rent will be abated based on the extent to which the default interferes with City's ability to carry on its normal business at the Premises. City's rights under this Section and under any other provisions of this Lease will not limit in any way any of its other rights and remedies under this Lease or at law or in equity.

## **16. INDEMNITIES**

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

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

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

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

## **17. INSURANCE**

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

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

### **17.2 Landlord's Insurance**

(a) At all times during the Term, Landlord will keep the Building insured against damage and destruction by fire, vandalism, malicious mischief, sprinkler damage (including earthquake sprinkler leakage) and other perils customarily covered under a cause of loss-special form property insurance policy in an amount equal to one hundred percent (100%) of the full insurance replacement value (replacement cost new, including debris removal and demolition). Upon City’s request, Landlord will provide to City a certificate of insurance issued

by the insurance carrier, evidencing the required insurance. The certificate must expressly provide that the policy is not cancelable or subject to reduction of coverage or otherwise subject to modification except after thirty (30) days' prior written notice to City. Landlord waives any rights against City for loss or damage to the Premises or any other part of the Property to the extent covered by Landlord's property insurance.

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

## **18. ACCESS BY LANDLORD**

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

## **19. ESTOPPEL CERTIFICATES**

From time to time during the Term, by not less than thirty (30) days' prior written notice to the other party, either party may request the other party to execute, acknowledge, and deliver to the persons or entities designated by the other party a certificate stating: (a) the Commencement Date and Expiration Date of this Lease, (b) that this Lease is unmodified and in full force and effect (or, if there have been modifications, this the Lease is in full force and effect as modified and stating the modifications), (c) that there are no defaults under this Lease (or if so, specifying the same), and (d) the date to which Rent has been paid. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Building. City's failure to deliver such statement within such time shall be deemed City's confirmation that: (i) this Lease is in full force and effect, without modification except as may be represented by Landlord; and (ii) there are no uncured defaults in Landlord's performance.

## **20. SURRENDER OF PREMISES**

On the expiration or sooner termination of this Lease, City will surrender the Premises to Landlord in good order and condition, excepting reasonable use and wear and damage by fire or

other casualty or condemnation. Within ten (10) days after the Expiration Date, City will remove from the Premises all of City's Personal Property, City's telecommunications, data, and computer facilities, and any Alterations City desires or is required to remove from the Premises under the provisions of Section 7.1 (Alterations by City). In the event City surrenders or abandons the Premises prior to the Expiration Date, City will repair or pay the cost of repairing any damage to the Premises or the Building resulting from that removal. City will not be required to demolish or remove from the Premises any of the Tenant Improvements. City's obligations under this Section will survive the expiration or earlier termination of this Lease.

## **21. HAZARDOUS MATERIALS**

### **21.1 Definitions**

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

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

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

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

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

Landlord represents and warrants to City that, to the best of Landlord's knowledge, the following statements are true and correct and will be true and correct as of the Commencement Date: **(a)** the Property is not in violation of any Environmental Laws; **(b)** the Property is not now, and has not been, used for the manufacture, use, storage, discharge, deposit, transportation, or disposal of any Hazardous Material, except for the use of Hazardous Material in limited quantities as are customarily used in offices, which limited use is and has been in compliance with Environmental Laws; **(c)** the Property does not consist of any landfill or contain any underground storage tanks; **(d)** the Building does not contain any asbestos-containing materials or have building materials that contain any other Hazardous Material, and the Premises do not contain any lead-based paints; **(e)** there is and has been no Release of any Hazardous Material in the Building or in, on, under, or about the Property; and **(f)** the Property is not subject to any claim by any governmental regulatory agency or third party related to the Release of any Hazardous Material, and there is no inquiry by any governmental agency (including the California Department of Toxic

Substances Control or the Regional Water Quality Control Board) with respect to the presence of Hazardous Material in the Building or in, on, under, or about the Property, or the migration of Hazardous Material from or to other real property. Subject to City's obligations under this Section below, Landlord will maintain the Property throughout the Term in compliance with all Environmental Laws that could affect the health, safety, and welfare of City's employees or City's use, occupancy, or enjoyment of the Premises for their intended purposes.

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

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

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

Neither City nor its Agents will cause or permit any Hazardous Material to be brought on, kept, used, stored, generated, or disposed of in, on or about the Premises or the Property, or transported to or from the Premises or the Property, in violation of any Environmental Laws.

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

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

## **22. CITY PROVISIONS**

### **22.1 MacBride Principles - Northern Ireland**

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

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

The terms of this Lease are governed by and subject to the budgetary and fiscal provisions of City's Charter. Notwithstanding anything to the contrary contained in this Lease, there will be no obligation for the payment or expenditure of money by City under this Lease unless the Controller of the City and County of San Francisco first certifies, under Section 3.105 of City's Charter, that there is a valid appropriation from which the expenditure may be made and that

unencumbered funds are available from the appropriation to pay the expenditure. Without limiting the foregoing, if in any fiscal year of City after the fiscal year in which the Term of this Lease commences, sufficient funds for the payment of Rent are not appropriated, then City may terminate this Lease, without penalty, liability, or expense of any kind to City, as of the last date on which sufficient funds are appropriated. City will use its reasonable efforts to give Landlord reasonable advance notice of the termination.

### **22.3 Prevailing Wages and Working Conditions**

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

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

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

#### (a) Covenant Not to Discriminate

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

(b) Subcontracts

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

(c) Non-Discrimination in Benefits

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

(d) CMD Form

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

(e) Incorporation of Administrative Code Provisions by Reference

The provisions of San Francisco Administrative Code Chapters 12B and 12C relating to non-discrimination by parties contracting for the lease of property to City are incorporated into this Section by reference and made a part of this Lease as though fully set forth. Landlord will comply fully with and be bound by all of the provisions that apply to this Lease under Administrative Code Chapters 12B and 12C, including the remedies provided in those Chapters. Without limiting the foregoing, Landlord understands that under San Francisco Administrative Code section 12B.2(h) a penalty of Fifty Dollars (\$50) for each person for each calendar day during which that person was discriminated against in violation of the provisions of this Lease may be assessed against Landlord and/or deducted from any payments due Landlord.

## **22.5 Tropical Hardwood and Virgin Redwood Ban**

(a) Except as expressly permitted by San Francisco Environment Code sections 802(b) and 803(b), neither Landlord nor any of its contractors may provide any items to City in the construction of the Landlord Improvements, if any, or otherwise in the performance of



this Lease that are tropical hardwood, tropical hardwood wood products, virgin redwood, or virgin redwood wood products.

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

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

## **22.6 Bicycle Parking Facilities**

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

## **22.7 Intentionally Deleted**

## **22.8 Sunshine Ordinance**

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

## **22.9 Conflicts of Interest**

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

## **22.10 Notification of Prohibition on Contributions**

By executing this Lease, Landlord acknowledges its obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who leases, or seeks to lease, to or from any department of the City any land or building from making any campaign

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

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

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

## **23. GENERALLY APPLICABLE PROVISIONS**

### **23.1 Notices**

Except as otherwise specifically provided in this Lease, any notice given under this Lease must be in writing and given by delivering the notice in person or by commercial courier, or by sending it by first-class mail, certified mail, return receipt requested, or Express Mail, return receipt requested, with postage prepaid, to: **(a)** City at City’s address set forth in the Basic Lease Information; or **(b)** Landlord at Landlord’s address set forth in the Basic Lease Information; or **(c)** any other address designated by as either Landlord or City as its new address for notices by notice given to the other in accordance with this Section. A properly addressed notice transmitted by one of the foregoing methods will be deemed received upon confirmed delivery, attempted delivery, or rejected delivery. For convenience of the parties, copies of notices may also be given by email to the email address number set forth in the Basic Lease Information or any other email address as may be provided from time to time, but, neither party may give official or binding notice by email.

### **23.2 No Implied Waiver**

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

### **23.3 Amendments**

The terms and provisions of this Lease may only be changed, waived, discharged, or terminated by a written instrument signed by both parties. No waiver of any breach will affect or alter this Lease, and each and every term, covenant, and condition of this Lease will continue in full force and effect with respect to any other then-existing or subsequent breach. Whenever this Lease requires or permits City's consent or approval, the City's then current Director of Property, or his or her designee, will be authorized to provide the consent or approval, except as otherwise provided by applicable Law, including the Charter of the City and County of San Francisco. City's agreement to any amendments or modifications to this Lease (including the exhibits) may be made on the sole approval of the Director of Property, or his or her designee; provided, however, material amendments or modifications to this Lease **(a)** changing the legal description of the Premises, **(b)** increasing the Term, **(c)** increasing the Rent, **(d)** changing the general use of the Premises from the use authorized under Section 5.1 (Permitted Use), and **(e)** any other amendment or modification that materially increases City's liabilities or financial obligations under this Lease will also require the approval of City's Board of Supervisors.

### **23.4 Authority**

This Lease is subject to the provisions of that certain Ground Lease dated February 17, 2017, between Landlord, as tenant, and San Francisco Community College District, as landlord (the "Ground Lease"). Landlord represents and warrants to City that it the execution and delivery of this Lease by Landlord does not violate any provision of any agreement, including the Ground Lease, or any applicable Laws. If Landlord is a corporation, limited liability company, or a partnership, each person executing this Lease on behalf of Landlord, by their signature, covenants and warrants that Landlord is a duly authorized and existing entity, that Landlord is qualified to do business in California, that Landlord has the full right and authority to enter into this Lease, and that each person signing on behalf of Landlord is authorized to do so. On City's request, Landlord will provide City with evidence reasonably satisfactory to City confirming these representations and warranties.

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

If applicable, the word "**Landlord**" will include the plural as well as the singular. The term "**Agents**" when used with respect to either party includes the agents, employees, officers, and

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

### **23.6 Interpretation of Lease**

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

### **23.7 Successors and Assigns**

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

### **23.8 Brokers**

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

### **23.9 Severability**

If any provision of this Lease or its application to any person, entity, or circumstance is found to be invalid or unenforceable, the remainder of this Lease, or the application of the provision to persons, entities, or circumstances other than those as to which it is invalid or

unenforceable, will not be affected by that finding, and each other provision of this Lease will be valid and be enforceable to the full extent permitted by Law, except to the extent that enforcement of this Lease without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this Lease.

### **23.10 Governing Law**

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

### **23.11 Entire Agreement; Incorporation of Exhibits**

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

### **23.12 Attorneys' Fees**

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

### **23.13 Holding Over**

If City holds over in possession of the Premises after the expiration of the Term with Landlord's consent, that holding over will not be deemed to extend the Term or renew this Lease, and City's tenancy will continue as a month-to-month tenancy until the tenancy is terminated by either party by giving least thirty (30) days' prior written notice of termination. The month-to-month tenancy will be on all the terms and conditions of this Lease and at the monthly Holdover Rent (with consent) set forth in the Basic Lease Information or as Landlord and City may mutually agree in writing. If City holds over without Landlord's consent, the rent payable by City during the period of holding over will be the monthly Holdover Rent (without consent) set forth in the

Basic Lease Information, and the tenancy will otherwise be on the terms and conditions contained in this Lease. City shall also defend and indemnify Landlord from all loss, liabilities, damages and costs, including consequential damages and attorneys' fees, incurred by City and resulting from City's failure to surrender possession of the Premises to Landlord when and as required under this Lease. The provisions of this paragraph shall survive the expiration or earlier termination of this Lease.

#### **23.14 Cumulative Remedies**

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

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

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

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

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

#### **23.17 Signs**

City may erect or post exterior signs on or about the Premises with Landlord's prior approval. Landlord reserves the right to review and approve the placement, design, and plan for before erecting or posting any sign, which review and approval will not be unreasonably withheld or delayed. Interior signs not visible from the exterior of the Premises are permitted as provided under Article 7 (Alterations).

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

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

#### **23.19 Bankruptcy**

Landlord represents and warrants to City that Landlord has neither filed nor been the subject of any filing of a petition under the federal bankruptcy law or any federal or state

insolvency laws or laws for composition of indebtedness or for the reorganization of debtors, and, to the best of Landlord's knowledge, no such filing is threatened. City's leasehold estate under this Lease includes all rights to receive and enjoy all services, facilities, and amenities of the Premises and the Building as provided in this Lease. If any of the services, facilities, or amenities are terminated, or materially limited or restricted because of any such case or proceeding, or for any other reason, City may **(a)** contract directly with any third-party provider of those services, facilities, or amenities, and **(b)** offset against the Rent all reasonable costs and expenses incurred by City in obtaining those services, facilities, or amenities.

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

Landlord may transfer its interest in the Property, the Building, or this Lease to any other financially responsible person or entity. If Landlord transfers its interest in the Property, the Building, or this Lease to another other financially responsible person or entity, then Landlord will be relieved of Landlord's obligations under this Lease accruing from and after the date of the transfer when **(a)** Landlord has provided notice to City of the name and address of Landlord's successor, **(b)** Landlord has provided City with supporting documentation reasonably acceptable to City demonstrating the transferee's financial ability to assume this obligations transferred to it by Landlord, **(c)** Landlord has transferred the any security deposit held by Landlord to the transferee, and **(d)** Landlord has delivered to City an express written assumption by the transferee of all of Landlord's obligations under this Lease.

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

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

### **23.22 Counterparts**

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

### **23.23 Effective Date**

This Lease will become effective on the date that: **(a)** City's Mayor and Board of Supervisors, at their sole and absolute discretion, adopt a resolution or enact an ordinance approving this Lease in accordance with all applicable laws and **(b)** this Lease is duly executed by Landlord and City (the "**Effective Date**").

### **23.24 Certification by Landlord**

By executing this Lease, Landlord certifies that neither Landlord nor any of its officers or members have been suspended, disciplined, or disbarred by, or prohibited from contracting with, any federal, state, or local governmental agency. If Landlord or any of its officers or members have been suspended, disbarred, disciplined, or prohibited from contracting with any governmental agency, it will immediately notify City of that fact and the reasons for the suspension, disbarment, discipline, or prohibition together with any relevant facts or information requested by City. If

there is any suspension, disbarment, discipline, or prohibition that may result in the termination or suspension of this Lease, City may terminate this Lease on written notice to Landlord. Landlord acknowledges that this certification is a material term of this Lease.

### **23.25 Cooperative Drafting**

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

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

*[SIGNATURES ON FOLLOWING PAGE]*



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

LANDLORD:

33 GOUGH LLC,  
a Georgia limited liability company

By: Integral 33 Gough, LLC  
Its: Manager

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

Its \_\_\_\_\_

CITY:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

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

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
Eileen Malley  
Deputy City Attorney

**EXHIBIT A**

**DIAGRAM OF PREMISES INCLUDING PARKING LOTS**

CONSISTING OF \_\_\_\_\_ PAGES

**EXHIBIT B**

**NOTICE OF COMMENCEMENT DATE**

[Date]

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

RE: Acknowledgement of Commencement Date, Lease Between \_\_\_\_\_  
(Landlord), and the CITY AND COUNTY OF SAN FRANCISCO (Tenant), for premises  
known as \_\_\_\_\_ located at \_\_\_\_\_

Dear Mr. Penick:

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

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

Very truly yours,

33 GOUGH LLC  
a Georgia limited liability company

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

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

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

Accepted and Agreed:

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

Andrico Q. Penick  
Director of Property

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

**EXHIBIT C**

**LANDLORD IMPROVMENTS**

*[IF ANY, TO BE ADDED IF MUTUALLY AGREED UPON BY THE PARTIES]*

**EXHIBIT D**

**TENANT IMPROVEMENTS**

*[PUBLIC WORKS TO IDENTIFY AREAS OF REPAIR TO BE PERFORMED BY CITY AS  
INFORMATION BECOMES AVAILABLE PRIOR TO THE EFFECTIVE DATE OR OTHERWISE,  
DURING THE TERM]*