

RECORDING REQUESTED BY:
CITY AND COUNTY OF SAN FRANCISCO FINANCE CORPORATION

Squire Patton Boggs (US) LLP
275 Battery Street, Suite 2600
San Francisco, California 94111
Attention: Nathan Treu, Esq.

APN(s): (Space above for Recorder's Use Only)

[ADDRESS], San Francisco

**FIRST AMENDMENT TO
FACILITIES LEASE**

By and Between the

CITY AND COUNTY OF SAN FRANCISCO, as lessor

and the

CITY AND COUNTY OF SAN FRANCISCO FINANCE CORPORATION, as lessee

Dated as of June 1, 2018

NO DOCUMENTARY TRANSFER TAX

This First Amendment to Facilities Lease is exempt pursuant to
Section 6103 of the California Government Code

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FIRST AMENDMENT TO FACILITIES LEASE

THIS FIRST AMENDMENT TO FACILITIES LEASE (the "First Amendment to Facilities Lease"), is made and entered into as of June 1, 2018, (the "Effective Date") by and between the CITY AND COUNTY OF SAN FRANCISCO, a charter city and county and municipal corporation, duly organized and existing under and by virtue of its Charter and the Constitution of the State of California, as lessor (the "City"), and the CITY AND COUNTY OF SAN FRANCISCO FINANCE CORPORATION, a nonprofit public benefit corporation, duly organized and existing under and by virtue of the laws of the State of California, as lessee (the "Corporation").

WITNESSETH:

WHEREAS, the City and the Corporation previously have entered into a Facilities Lease, dated as of March 1, 2009 (the "Original Facilities Lease"), by and between the City as lessor and the Corporation as lessee under which the Corporation leased certain facilities (the "Original Facilities") and certain real property (the "Original Site") from the City; and

WHEREAS, pursuant to this First Amendment to Facilities Lease, the Corporation will lease certain [additional][substituted] facilities (as described in Section 2A hereof, the "2018 Facilities," which, together with the Original Facilities, as modified by this First Amendment to Facilities Lease, are also referred to herein as the "Facilities") and certain [additional][substituted] real property from the City (as described in Section 2A hereof, the "2018 Site," which, together with the Original Site, as modified by this First Amendment to Facilities Lease, is also referred to herein as the "Site"); the Original Facilities Lease, as supplemented by this First Amendment to Facilities Lease, is referred to herein as the "Facilities Lease"; and

WHEREAS, the City and the Corporation previously entered into a Master Lease, dated as of March 1, 2009 (the "Master Lease"), by and between the Corporation as lessor and the City as lessee pursuant to Section 16.109(d) of the Charter, which provides for the City to enter into obligations, including lease financing obligations, secured by and/or repaid from any available funds pledged or appropriated by the Board of Supervisors of the City for the acquisition, construction, reconstruction, rehabilitation and/or improvement of real property and/or facilities operated by the San Francisco Public Library (the "Library") for Library purposes and for the purchase of equipment relating to such real property and/or facilities; and

WHEREAS, the City has entered into a First Amendment to Master Lease, dated as of June 1, 2018 (the "First Amendment to Master Lease") pursuant to Article XIII of the Master Lease and Section 16.109(d) of the Charter; the Master Lease, as supplemented by the First Amendment to Master Lease, is referred to herein as the "Lease"; and

WHEREAS, pursuant to the Lease, the City leases the Facilities and the Site, including any property added or substituted pursuant to this First Amendment to Facilities Lease, from the Corporation; and

WHEREAS, the Corporation and U.S. Bank National Association, a national banking association duly organized and existing under and by virtue of the laws of the United States, as successor trustee (the "Trustee"), previously entered into a Master Trust Agreement dated as of

March 1, 2009 (the “Master Trust Agreement”) in connection with the issuance by the Corporation of \$34,265,000 in principal amount of Lease Revenue Bonds, Series 2009A (Branch Library Improvement Program) (the “Series 2009A Bonds”), proceeds of which Series 2009A Bonds were used to design and construct certain improvements (the “2009 Project”); and

WHEREAS, the Corporation will issue its \$[xx,xxx],000 principal amount of Refunding Lease Revenue Bonds, Series 2018B (Branch Library Improvement Program) (the “Series 2018 Bonds”) pursuant to the Master Trust Agreement as supplemented by the First Supplemental Trust Agreement of even date herewith, between the Corporation and the Trustee (the “First Supplemental Trust Agreement” and, together with the Master Trust Agreement, the “Trust Agreement”); and

WHEREAS, the Corporation and the City intend to use a portion of the proceeds from the sale of the Series 2018 Bonds to redeem and refund the Series 2009A Bonds (and thereby refinance the 2009 Project); and

WHEREAS, the Corporation will lease the Facilities and the Site to the City and use amounts received from the City as Base Rental (as defined in the Lease) under the Lease to pay debt service on the Series 2018 Bonds and any additional Parity Bonds (collectively, the “Bonds”); and

WHEREAS, pursuant to and in accordance with certain provisions of the Trust Agreement and the Lease, the Corporation may issue additional Parity Bonds payable from Base Rental on a parity with the Series 2018 Bonds, for the purpose of financing and refinancing the construction, reconstruction, rehabilitation and/or improvement of the additional components of the Project; and

WHEREAS, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this First Amendment to Facilities Lease do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this First Amendment to Facilities Lease;

NOW, THEREFORE, in consideration of the mutual promises and agreements herein contained, the parties hereto agree as follows:

Section 1A. Definitions.

All capitalized terms used in this First Amendment to Facilities Lease and not otherwise defined shall have the meanings given to such terms in the Lease and the Trust Agreement.

Section 2A. Lease of Facilities and the Site.

The City hereby leases to the Corporation certain facilities, as more particularly described in Exhibit A hereto and incorporated herein by this reference (the “2018 Facilities”), located on real property located within the City, as more particularly described in Exhibit B hereto and incorporated herein by this reference (the “2018 Site”), subject (i) to the terms hereof and (ii) to Permitted Encumbrances. The term “Facilities” is hereby amended to include the Original Facilities, as modified by this First Amendment to Facilities Lease, comprising the 2018 Facilities.

The term "Site" is hereby amended to include the Original Site, as modified by this First Amendment to Facilities Lease, comprising the 2018 Site. The City also grants to the Corporation such rights of ingress and egress to the 2018 Facilities and the 2018 Site as the Corporation may require in order to fulfill its obligations hereunder and under the Lease.

Section 3A. Removal.

The Corporation does hereby remise, release and terminate and quit claim to the City all of its leasehold interest in and to the real property described in Exhibit C hereto and the improvements thereon.

Section 4A. Ownership.

The City represents that it is the sole owner of and holds fee title to the 2018 Facilities, subject to Permitted Encumbrances.

Section 5A. Term.

a. This First Amendment to Facilities Lease shall commence on the date of recordation hereof in the official records of the City and County of San Francisco and end on the day after the termination of the First Amendment to Lease (other than a termination pursuant to Section 7.01(a) of the Lease).

b. Upon termination of this First Amendment to Facilities Lease, all of the Corporation's and the Trustee's interest in the 2018 Facilities and the 2018 Site shall vest with the City.

Section 6A. Rent.

The Corporation shall pay to the City an advance rent in the amount of \$1.00 as full consideration for this First Amendment to Facilities Lease over its terms, the receipt of which is hereby acknowledged by the City.

Section 7A. Purpose.

The Corporation shall use the 2018 Facilities and the 2018 Site only for the purposes described in the Lease, and for such other purposes as may be incidental thereto.

Section 8A. Expiration.

The Corporation agrees, upon the expiration of this First Amendment to Facilities Lease, to quit and surrender the 2018 Facilities and the 2018 Site; it being the understanding of the parties hereto that upon termination of this First Amendment to Facilities Lease title to the 2018 Facilities and the 2018 Site shall vest in the City free and clear of any interest of the Corporation or any assignee of the Corporation.

Section 9A. Effect of this First Amendment to Facilities Lease.

On and after the Effective Date, each reference in the Original Facilities Lease to the Facilities shall include the “2018 Facilities” as set forth in Exhibit A hereto and each reference in the Original Facilities Lease to the Site shall include the “2018 Site” as set forth in Exhibit B hereto. Except as expressly provided in this First Amendment to Facilities Lease, the Original Facilities Lease shall continue in full force and effect in accordance with the terms and provisions thereof, as amended hereby.

Section 10A. Partial Invalidity.

If any one or more of the terms, provisions, promises, covenants or conditions of this First Amendment to Facilities Lease shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants and conditions of this First Amendment to Facilities Lease shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.

Section 11A. Governing Law.

This First Amendment to Facilities Lease shall be governed by the laws of the State of California.

Section 12A. City Requirements.

The Original Facilities Lease is hereby amended by deleting Sections 19 through 42 thereof and Section 45 thereof, replacing said sections in their entirety by the insertion of the sections set forth below in this Section 12A (i.e., Sections 19 through 39), by renumbering “Section 43” of such Original Facilities Lease as “Section 40,” by renumbering “Section 44” of such Original Facilities Lease as “Section 41,” and by renumbering “Section 46” of such Original Facilities Lease as “Section 42”:

19. Nondiscrimination; Penalties.

(a) Non-Discrimination in Contracts.

The Corporation shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. The Corporation shall incorporate by reference in any subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require any subcontractors to comply with such provisions. The Corporation is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

(b) Nondiscrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2.

The Corporation does not as of the date of this Facilities Lease, and will not during the term of this Facilities Lease, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States,

discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

(c) Condition to Contract.

As a condition to the Facilities Lease, the Corporation shall execute the “Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits” form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

20. MacBride Principles—Northern Ireland.

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

21. Tropical Hardwood and Virgin Redwood Ban.

Under San Francisco Environment Code Section 804(b), the City urges the Corporation not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

22. Alcohol and Drug-Free Workplace.

The City reserves the right to deny access to, or require the Corporation to remove from, City facilities personnel of such Corporation who the City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs the City’s ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. The City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

23. Compliance with Americans with Disabilities Act.

The Corporation shall provide the services specified in the Facilities Lease in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II’s program access requirements, and all other applicable federal, state and local disability rights legislation.

24. Sunshine Ordinance.

The Corporation acknowledges that this Facilities Lease and all records related to its formation, such Corporation's performance of services provided under the Facilities Lease, and the City's payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

25. Limitations on Contributions.

By executing this Facilities Lease, the Corporation acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The prohibition on contributions applies to each prospective party to the contract; each member of the Corporation's board of directors; the Corporation's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in such Corporation; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by such Corporation. The Corporation must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to City.

26. Requiring Minimum Compensation for Covered Employees.

The Corporation shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. The Corporation is subject to the enforcement and penalty provisions in Chapter 12P. By entering into this Facilities Lease, the Corporation certifies that it is in compliance with Chapter 12P.

27. Requiring Health Benefits for Covered Employees.

The Corporation shall comply with San Francisco Administrative Code Chapter 12Q. The Corporation shall choose and perform one of the Health Care Accountability options set forth in San Francisco Administrative Code Chapter 12Q.3. The Corporation is subject to the enforcement and penalty provisions in Chapter 12Q.

28. Prohibition on Political Activity with City Funds.

In performing the services provided under the Facilities Lease, the Corporation shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Facilities Lease from being expended to participate in, support, or attempt to

influence any political campaign for a candidate or for a ballot measure. The Corporation is subject to the enforcement and penalty provisions in Chapter 12G.

29. Nondisclosure of Private, Proprietary or Confidential Information.

If this Facilities Lease requires the City to disclose “Private Information” to the Corporation within the meaning of San Francisco Administrative Code Chapter 12M, the Corporation shall use such information consistent with the restrictions stated in Chapter 12M and in this Facilities Lease and only as necessary in performing the services provided under the Facilities Lease. The Corporation is subject to the enforcement and penalty provisions in Chapter 12M.

In the performance of services provided under the Facilities Lease, the Corporation may have access to the City’s proprietary or confidential information, the disclosure of which to third parties may damage the City. If the City discloses proprietary or confidential information to the Corporation, such information must be held by such Corporation in confidence and used only in performing the Facilities Lease. The Corporation shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or confidential information.

30. Consideration of Criminal History in Hiring and Employment Decisions.

The Corporation agrees to comply fully with and be bound by all of the provisions of Chapter 12T, “City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions,” of the San Francisco Administrative Code (“Chapter 12T”), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Facilities Lease. The text of Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. A partial listing of some of the Corporations’ obligations under Chapter 12T is set forth in this Section. The Corporation is required to comply with all of the applicable provisions of Chapter 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Facilities Lease shall have the meanings assigned to such terms in Chapter 12T.

The requirements of Chapter 12T shall only apply to the Corporation’s operations to the extent those operations are in furtherance of the performance of this Facilities Lease, shall apply only to applicants and employees who would be or are performing work in furtherance of this Facilities Lease, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco which excludes City property. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

31. Reserved.

32. Submitting False Claims; Monetary Penalties.

The full text of San Francisco Administrative Code §§ 21.35, including the enforcement and penalty provisions, is incorporated into this Facilities Lease. Under San Francisco

Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

33. Conflict of Interest.

By entering into the Facilities Lease, the Corporation certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City’s Charter; Article III, Chapter 2 of City’s Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 et seq.), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 et seq.), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Facilities Lease.

34. Assignment.

The services provided under the Facilities Lease to be performed by the Corporation are personal in character and neither this Facilities Lease nor any duties or obligations may be assigned or delegated by the Corporation unless first approved by the City by written instrument executed and approved in the same manner as this Facilities Lease. Any purported assignment made in violation of this provision shall be null and void.

35. Food Service Waste Reduction Requirements.

The Corporation shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the provided remedies for noncompliance.

36. Cooperative Drafting.

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

37. Laws Incorporated by Reference.

The full text of the laws listed in this Appendix, including enforcement and penalty provisions, are incorporated into this Facilities Lease by reference. The full text of the San

Francisco Municipal Code provisions incorporated by reference in this Appendix are available at www.sfgov.org under "Open Gov."

38. Sugar-Sweetened Beverage Prohibition.

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

39. First Source Hiring Program.

The Corporation must comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Facilities Lease, and the Corporation is subject to the enforcement and penalty provisions in Chapter 83.

Section 13A. Execution in Counterparts.

This First Amendment to Facilities Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

[REMAINDER OF PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Corporation and the City have caused this First Amendment to Facilities Lease to be executed by their respective officers thereunto duly authorized, all as of the day and year first above written.

CITY AND COUNTY OF SAN
FRANCISCO FINANCE CORPORATION

By: _____
President

Attest:

By: _____
Secretary

CITY AND COUNTY OF SAN FRANCISCO

By: _____
Mayor

Attest:

By: _____
Clerk of the Board of Supervisors

APPROVED AS TO FORM:
Dennis J. Herrera
City Attorney

By: _____
Deputy City Attorney

(Signature Page to First Amendment to Facilities Lease)

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

STATE OF _____)
)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Signature (Seal)

EXHIBIT A

DESCRIPTION OF THE FACILITIES

The Facilities consist of portions of the Main Library building (consisting of approximately [] square feet) on the lower (i.e., below ground) level and the ground floor of the Main Library located at Civic Center Plaza, 100 Larkin Street, City and County of San Francisco, California.

EXHIBIT B

DESCRIPTION OF THE SITE

The land referred to herein is situated in the State of California, County of San Francisco, City of San Francisco, and described as follows: [CONFIRM NO CHANGES SINCE 2009, PER NEW TITLE REPORT]

BEGINNING AT A POINT FORMED BY THE INTERSECTION OF THE EASTERLY LINE OF LARKIN STREET AND THE NORTHERLY LINE OF GROVE STREET (EXTENDED EASTERLY) AND RUNNING THENCE NORTHERLY ALONG THE EASTERLY LINE OF LARKIN STREET 275 FEET;

THENCE AT A RIGHT ANGLE EASTERLY 412 FEET 6 INCHES TO THE WESTERLY LINE OF HYDE STREET (EXTENDED SOUTHERLY);

THENCE AT A RIGHT ANGLE SOUTHERLY ALONG SAID LINE OF HYDE STREET (SO EXTENDED) 275 FEET TO THE NORTHERLY LINE OF GROVE STREET (SO EXTENDED); AND

THENCE AT A RIGHT ANGLE WESTERLY ALONG SAID LINE OF GROVE STREET (SO EXTENDED) 412 FEET 6 INCHES TO THE SAID EASTERLY LINE OF LARKIN STREET AND THE POINT OF BEGINNING.

BEING A PORTION OF THE BLOCK OF LAND KNOWN AND DESIGNATED ON THE OFFICIAL MAP OF THE CITY AND COUNTY OF SAN FRANCISCO AS "THE CITY HALL LOT".

APN: LOT 1, BLOCK 354

EXHIBIT C

DESCRIPTION OF THE RELEASED PROPERTY

The facilities consisting of portions of the Main Library building (consisting of approximately 264,530 square feet) on floors 2 through 6 of the Main Library located at Civic Center Plaza, 100 Larkin Street, City and County of San Francisco, California.

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the Facilities Lease, dated as of March 1, 2009, as supplemented by the First Amendment to Facilities Lease, dated as of June 1, 2018, from the City and County of San Francisco to the City and County of San Francisco Finance Corporation (the "Corporation"), is hereby accepted by the undersigned officer on behalf of the Corporation pursuant to authority conferred by Resolution No. 2018-[] adopted by the Board of Directors of the Corporation on [], 2018, and the Corporation consents to recordation thereof by its duly authorized officer.

Dated as of June 1, 2018

CITY AND COUNTY OF SAN FRANCISCO
FINANCE CORPORATION

By: _____