

1 [Lease Agreement - San Francisco Unified School District - 1235 Mission Street - Initial Rate
2 of \$216,014.33 Monthly]

3 **Resolution retroactively approving a Lease Agreement with San Francisco Unified**
4 **School District of Real Property at 1235 Mission Street for the Human Services**
5 **Agency, at an initial rate of \$216,014.33 per month for a term of 11 years and 10**
6 **months from July 1, 2014, through April 30, 2026.**

7
8 WHEREAS, On August 1, 1992, The City and County of San Francisco ("City")
9 previously entered into a Sublease ("Sublease") with the San Francisco Unified School
10 District ("SFUSD") for approximately 117,826 square feet of office space at 1235 Mission
11 Street ("Premises") to accommodate the Human Services Agency, which was authorized by
12 the Board of Supervisors through Board Resolution No. 20-92 adopted January 16, 1992;
13 and

14 WHEREAS, By a Notice of Establishment of Rent for First Extension Period, dated
15 May 29, 2003, City and SFUSD agreed to a five year extension of the sublease, which was
16 approved by the Board of Supervisors through Board Resolution No. 404-03 adopted June
17 27, 2003; and

18 WHEREAS, By an Agreement Establishing Rent and Term for Second Extension
19 Period and Confirming Second Sublease Extension, dated July 23, 2012, City and SFUSD
20 agreed to a five year extension of the sublease, which was approved by the Board of
21 Supervisors through Board Resolution No. 342-12 adopted September 24, 2012; and

22 WHEREAS, By Grant Deed recorded on August 30, 2013, SFUSD acquired the
23 Premises from Cadence Bank, N.A., successor by merger to Encore Bank, N.A., formerly
24 known as Guardian Savings and Loan Association; and

1 WHEREAS, City and SFUSD jointly commissioned a property condition assessment
2 of the Premises to provide guidance as to necessary capital repairs and appropriate rental
3 structure going forward; and

4 WHEREAS, The Human Services Agency continues to provide vital General
5 Assistance Services from the Premises; and

6 WHEREAS, The Director of Property, in consultation with the City Attorney's Office,
7 has negotiated a Lease Agreement for the Premises for a term of 11 years and 10 months
8 to April 30, 2026, using a schedule of rent that commences at a rate of \$22.00 per rentable
9 square foot per year (\$216,014.33 per month until June 30, 2016), then increases to a rate
10 of \$23.25 per rentable square foot per year (\$228,287.92 per month until June 30, 2018),
11 then increases to a rate of \$24.50 per rentable square foot (\$240,561.42 per month until
12 June 30, 2020), then increases to a rate of \$25.75 per rentable square foot (\$252,835.00
13 per month until June 30, 2022), then increases to a rate of \$27.00 per rentable square foot
14 (\$265,108.50 per month until June 30, 2024), and finally increases to a rate of \$28.50 per
15 rentable square foot (\$279,836.75 per month until April 30, 2026), on file with the Clerk of
16 the Board in File No. 140784, and by reference made a part hereof; and

17 WHEREAS, The Director of Property has determined that the proposed rental rate for
18 the entire lease period, from July 1, 2014, through April 30, 2026, as set forth in the Lease
19 Agreement, is no greater than fair market rent for the Premises; and,

20 WHEREAS, The contributions of SFUSD and City toward necessary capital
21 improvements to the Premises of up to \$6,000,000 (up to \$3,500,000 by SFUSD, and up to
22 \$2,500,000 by City), represent reasonable tenant and capital improvements consistent with
23 standard real estate market practices, and the process for design and construction of said
24 improvements are clearly articulated in Article 6 of the Lease Agreement; and
25

1 WHEREAS, The additional one-time rental payment agreed to by City and SFUSD of
2 \$232,706.35 represents a reasonable amount of differential base rent from the Second
3 Extension of Sublease as extended from September 1, 2013, to July 1, 2014 (the
4 negotiations period of 10 months, or \$0.1975 per month per rentable square foot); and

5 WHEREAS, The Lease Agreement shall have two five-year extensions exercisable
6 by City with 18 months prior notice at a rent of 95% of fair market rent as determined in the
7 Lease Agreement; and

8 WHEREAS, The City shall have the right of early termination of the lease, with proper
9 prior notice anytime after the 126th month of the Lease; now therefore, be it

10 RESOLVED, That in accordance with the recommendation of the City Attorney and
11 the Director of Property, the Board of Supervisors hereby approves the Lease Agreement
12 and transaction contemplated thereby in substantially the form of such Agreement
13 presented to the Board and authorizes the Director of Property to execute and deliver the
14 Lease Agreement, and authorizes City staff to take all actions, on behalf of the City, to
15 perform its obligations and exercise its rights under the Lease Agreement; and, be it

16 FURTHER RESOLVED, That all actions heretofore taken by any employee or official
17 of the City with respect to this Lease Agreement are hereby approved, confirmed and
18 ratified; and, be it

19 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of
20 Property to enter into any amendments or modifications to the Lease Agreement (including
21 without limitation, the exhibits) that the Director of Property determines, in consultation with
22 the City Attorney, are in the best interest of the City, do not materially increase the
23 obligations or liabilities of the City, do not materially decrease the benefits to the City, or are
24 necessary or advisable to effectuate the purposes of the Lease Agreement or this
25

1 Resolution, and are in compliance with all applicable laws, including City's Charter; and, be
2 it

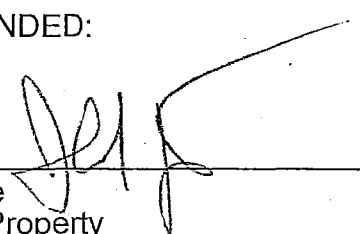
3 FURTHER RESOLVED, That said Lease Agreement shall be subject to certification
4 as to funds by the Controller, pursuant to Section 3.105 of the Charter.
5
6

7 \$232,706.35 Available

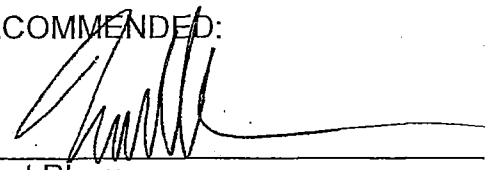
8 Fund/Subfund: 1GAGFAAA
9 Program: CAO
10 Index Code: 45ADOH
11 Subobject: 03011

12
13 
Controller

14 RECOMMENDED:

15 
16
17 John Updike
Director of Property

18
19 RECOMMENDED:

20 
21
22 Trent Rhorer
Director
Human Services Agency
23
24
25

LEASE AGREEMENT

between

SAN FRANCISCO UNIFIED SCHOOL DISTRICT,
as Landlord

and

CITY AND COUNTY OF SAN FRANCISCO,
as Tenant

For the lease of
1235 Mission Street
San Francisco, California

July 1, 2014

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LIST OF EXHIBITS

- EXHIBIT A – Legal Description of Property
- EXHIBIT B – Notice of Commencement Date
- EXHIBIT C – Determination of Fair Market Rent
- EXHIBIT D – Lobby Work Schedule and Budget

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "**Lease**"), dated for reference purposes only as of July 1, 2014, is by and between SAN FRANCISCO UNIFIED SCHOOL DISTRICT, a political subdivision of the State of California ("**Landlord**"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**" or "**Tenant**").

Landlord and City hereby agree as follows:

1. BASIC LEASE INFORMATION

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

Lease Reference Date:	July 1, 2014
Landlord:	SAN FRANCISCO UNIFIED SCHOOL DISTRICT
Tenant:	CITY AND COUNTY OF SAN FRANCISCO
Premises (<u>Section 2.1</u>):	The entire building located at 1235 Mission Street, San Francisco, California
Rentable Area of Premises (<u>Section 2.1</u>):	Approximately 117,826 rentable square feet (RSF), 99,000 RSF on floors 1 through 4 and 18,426 RSF in the lower level
Term (<u>Section 3</u>):	Estimated commencement date: July 1, 2014 Expiration date: April 30, 2026
Extension Options (<u>Section 3.3</u>):	Two additional terms of five (5) years each, exercisable by City by notice to Landlord given not less than eighteen (18) months in advance of the commencement of the applicable additional term, with rent at ninety-five percent (95%) of Fair Market Rent (as defined and determined pursuant to <u>Exhibit C</u>)

Base Rent (Section 4.1):

7/1/2014-6/30/2016: \$22.00 per rentable square foot per year (\$2,592,172 annually or \$216,014.33 per month) (24 months)

7/1/2016-6/30/2018: \$23.25 per rentable square foot per year (\$2,739,455 annually or \$228,287.92 per month) (24 months)

7/1/2018-6/30/2020: \$24.50 per rentable square foot per year (\$2,886,737 annually or \$240,561.42 per month) (24 months)

7/1/2020-6/30/2022: \$25.75 per rentable square foot per year (\$3,034,020 annually or \$252,835.00 per month) (24 months)

7/1/2022-6/30/2024: \$27.00 per rentable square foot per year (\$3,181,303 annually or \$265,108.50 per month) (24 months)

7/1/2024-4/30/2026: \$28.50 per rentable square foot per year (\$3,358,041 annually or \$279,836.75 per month) (22 months)

Use (Section 5.1):

Office and customer service areas affiliated with delivering social services provided by the City's Human Services Agency or other appropriate local agencies as required under law, and any other lawful use

Leasehold Improvements (Article 6):

City to perform the work described in Section 6.1 and Landlord to perform the work described in Section 6.2, with Landlord to pay up to \$3,500,000 for the work described in Section 6.2 and City to pay up to \$2,500,000 for the work described in Section 6.1 and Section 6.2

Utilities (Section 9.1):

Tenant to maintain all utility connections to the Premises in good condition and repair, and City to obtain, at its sole cost, any utilities that City wishes to have at the Premises

Services (Section 9.2):

City to obtain, at its sole cost, any services that City wishes to have at the Premises

Notice Address of Landlord (Section 23.1):

135 Van Ness Avenue, 3rd Floor
San Francisco, CA 94102
Attn: Chief Financial Officer
Fax No.: (415) 241-6687

With a copy to:

135 Van Ness Avenue, Room 116
San Francisco, CA
Attn: Real Estate Permit Office

Key Contact for Landlord: Joseph C. Grazioli/CFO

Landlord Contact Telephone No.: (415) 241-6542

Notice Address for Tenant (Section 23.1): Real Estate Division
 25 Van Ness Avenue, Suite 400
 San Francisco, CA 94102
 Attn: John Updike
 Director of Property
 Re: 1235 Mission Street
 Fax No.: (415) 552-9216

with a copy to: Human Services Agency
 170 Otis Street
 San Francisco, CA 94103
 Attn: David Curto
 Fax No.: (415) 431-9270

and to: Office of the City Attorney
 City Hall, Room 234
 1 Dr. Carlton B. Goodlett Place
 San Francisco, CA 94102-4682
 Attn: Special Projects Team
 Re: 1235 Mission Street
 Fax No.: (415) 554-4755

Key Contact for Tenant: David Curto

Tenant Contact Telephone No.: (415) 557-5581

Alternate Contact for Tenant: John Updike

Alternate Contact Telephone No.: 415-554-9860

Brokers (Section 23.8): Jay Sholl, Senior Vice President, CBRE, Inc.

2. PREMISES

Landlord leases to City and City leases from Landlord, subject to the provisions of this Lease, the entire building (the "**Premises**") located on the real property commonly known as 1235 Mission Street, San Francisco, and further described on the attached Exhibit A (the "**Land**"). The Premises contain the rentable area specified in the Basic Lease Information. As used in this Lease, the term "rentable area" shall mean that measurement of interior floor area computed in accordance with the "Office Buildings: Standard Methods of Measurements" (ANSI/BOMA Z65.1-2010), adopted by the Building Owners and Managers Association (BOMA). The Premises, the Land, and all other improvements on or appurtenances to the Land are referred to collectively as the "**Property**." Notwithstanding anything to the contrary in this Lease, the rentable area calculation set forth in Basic Lease Information is for descriptive purposes only. City shall have no right to terminate this Lease or receive any adjustment or rebate of any Rent (as defined in Section 4) hereunder if such calculation is incorrect. City has inspected the Premises and is fully familiar with the scope and size thereof and agrees to pay the full Rent pursuant to the terms and conditions of this Lease in consideration for the use and occupancy of the Premises even if such rentable area calculation is incorrect.

3. TERM

3.1 Term of Lease

The Premises are leased for an initial term (the "**Initial Term**") commencing on the later date to occur of the date specified in the Basic Lease Information as the estimated commencement date (the "**Estimated Commencement Date**"), or the Effective Date (as defined in Section 23.30). The Initial Term of this Lease shall end on the expiration date specified in the Basic Lease Information, or such earlier date on which this Lease terminates pursuant to the provisions of this Lease, provided that City shall have the right to extend the Initial Term pursuant to Section 3.3 (Extension Options). The word "**Term**" as used herein shall refer to the Initial Term and any Extended Terms (as defined in Section 3.3) if City exercises the Extension Options as provided below.

Notwithstanding anything to the contrary herein, City shall have the right to terminate this Lease at any time by giving Landlord not less than eighteen (18) months prior written notice of the early termination date, provided, however, that such early termination date shall be no earlier than the end of the one hundred and twenty-sixth (126th) month of the Term. On or before such early termination date, City shall pay Landlord an amount equal to the Unamortized Share (defined as follows) less the unamortized portion of a capital expenditure (as defined in Section 8.2) allocable to the period following the early termination date. The "**Unamortized Share**" shall mean the unamortized portion of the Landlord Contribution (as defined and calculated in Section 6.3) allocable to the period immediately following such early termination date.

3.2 Commencement Date and Expiration Date

The dates on which the Term commences and terminates pursuant hereto are referred to respectively as the "**Commencement Date**" and the "**Expiration Date**." If the Commencement Date occurs on a date other than the Estimated Commencement Date, then promptly thereafter Landlord shall deliver to City a notice substantially in the form of Exhibit B attached hereto, confirming the actual Commencement Date, but Landlord's failure to do so shall not affect the commencement of the Term.

3.3 Extension Options

City shall have the right to extend the Initial Term of this Lease (the "**Extension Options**") for the additional terms specified in the Basic Lease Information (the "**Extended Terms**"). Such Extension Options shall be on all of the terms and conditions contained in this Lease. City may exercise the Extension Options, if at all, by giving written notice (the "**Exercise Notice**") to Landlord no later than eighteen (18) months prior to expiration of the Term to be extended; provided, however, if City is in material default under this Lease on the date of giving such Exercise Notice and fails to cure such default as provided in this Lease, Landlord may reject such exercise by delivering written notice thereof to City promptly after such failure to cure. Landlord acknowledges and agrees that City's notice of its intent to exercise an Extension Option shall be subject to enactment of a resolution by the Board of Supervisors and the Mayor, in their respective sole and absolute discretion, approving and authorizing the same, within sixty (60) days after the date such Exercise Notice is given. City's failure to deliver an Exercise Notice for the first Extended Term on or before the applicable delivery date therefor specified hereinabove shall be deemed to constitute City's waiver of its Extension Options. City's failure to deliver an Exercise Notice for the second Extended Term on or before the applicable delivery date therefor specified hereinabove shall be deemed to constitute City's waiver of its second Extension Option. City may only exercise its second Extension Option hereunder if it has timely and properly exercised its first Extension Option, and

there is no uncured Event of Default under the Lease at the time City delivers its Exercise Notice for the second Extended Term.

3.4 Termination of Prior Lease

Immediately prior to the Commencement Date, City leased the Premises from Landlord pursuant to that certain Sublease between City and Landlord dated August 1, 1992, as amended by a Notice of Establishment of Rent for First Extension Period between City and Landlord dated May 29, 2003, a letter from City to Landlord dated January 11, 2008, and an Agreement Establishing Rent for Second Extension Period and Confirming Second Sublease Extension between City and Landlord dated as of July 23, 2012 (as amended, the "**Prior Lease**"). City's leasehold interest in the Premises under the Prior Lease converted into a holdover tenancy as of September 1, 2013, and Tenant and Landlord acknowledge and agree that the Prior Lease and such holdover tenancy terminated as of the Commencement Date.

4. RENT

4.1 Base Rent

Beginning on the Commencement Date, City shall pay to Landlord during the Term the annual Base Rent specified in the Basic Lease Information (the "**Base Rent**"); provided, however, that the Base Rent for any Extended Term shall be the Fair Market Rent, as defined and determined pursuant to Exhibit C. In addition to the Base Rent for the first month of the Term set forth in the Basic Lease Information, on or before the Commencement Date, City shall pay to Landlord a one-time additional amount of \$232,706.35.

The Base Rent shall be payable in equal consecutive monthly payments on or before the first day of each month, in advance, at the address specified for Landlord in the Basic Lease Information, or such other place as Landlord may designate in writing upon not less than thirty (30) days' advance notice. City shall pay the Base Rent without any prior demand and without any deductions or setoff except as otherwise provided in this Lease. If the Commencement Date occurs on a day other than the first day of a calendar month or the Expiration Date occurs on a day other than the last day of a calendar month, then the monthly payment of the Base Rent for such fractional month shall be prorated based on a thirty (30)-day month.

4.2 Additional Rent

City shall be responsible for paying any Real Estate Taxes (defined as follows) assessed during the Term and for its expenses in performing its maintenance, repair, replacement, operation, and use obligations specified in this Lease. "Real Estate Taxes" means all taxes, assessments and charges levied upon or with respect to Premises or Landlord's interest in the Premises. "**Real Estate Taxes**" shall include, without limitation, shall include any form of real estate tax or assessment, general, special, ordinary or extraordinary, and any license fee, improvement bond or bonds, levy or tax imposed on the Premises by any authority having the direct or indirect power to tax, including any city, county, state or federal government, or any school, agricultural, sanitary, fire, street, drainage or other improvement district thereof, as against any legal or equitable interest of Landlord in the Premises or in the real property of which the Premises are a part, as against Landlord's right to rent or other income therefrom, and as against Landlord's business of leasing the Premises. The term "Real Property Tax" shall also include any tax, fee, levy, assessment or charge (a) in substitution of, partially or totally, any tax, fee, levy, assessment or charge hereinabove included within the definition of "Real Property Tax," or (b) the nature of which was hereinbefore included within the definition of "Real Property Tax," or (c) which is imposed for a service or right not charged prior to June 1, 1978, or, if previously charged, has been increased since June 1, 1978, or (d) which is imposed by reason of this transaction, any modifications or changes hereto, or any transfers hereof.

Notwithstanding the foregoing, Real Estate Taxes shall exclude (1) franchise, transfer, inheritance, personal income, estate, or capital stock taxes or income taxes measured by the net income of Landlord from all sources unless, due to a change in the method of taxation, any of such taxes is levied or assessed against Landlord as a substitute for, or as an addition to, in whole or in part, any other tax that would otherwise constitute a Real Estate Tax, (2) any penalties, fines, interest or charges attributable to the late payment of any taxes, except to the extent attributable to City's failure to pay Real Estate Taxes hereunder, or (3) any personal property taxes payable by City hereunder or by any other occupant of the Premises. City shall pay prior to delinquency all taxes assessed against and levied upon trade fixtures, furnishings, equipment and all other personal property of City contained in the Premises or elsewhere and all gross receipts tax payable with respect to Rent (as defined below) and other amounts payable by City under this Lease, including without limitation the City Share (as defined below).

The Base Rent, together with any amounts to be paid by City to Landlord pursuant to this Lease, shall be collectively referred to as the "**Rent**".

5. USE

5.1 Permitted Use

City may use the Premises for general office uses, for delivering social services, and such other uses as may be specified in the Basic Lease Information, and for no other use without the prior written consent of Landlord, which shall not be unreasonably withheld or delayed. City shall be solely responsible for (a) determining if and to the extent City's use is permitted by applicable laws and regulations and (b) obtaining and maintaining all permits and licenses required by applicable laws and regulations for such use. Notwithstanding anything to the contrary contained in this Lease, in no event shall the Premises be used for any purpose or in any manner which (i) violates any covenants, conditions and restrictions of record title encumbering the Premises as of the Commencement Date, (ii) is unlawful, (iii) creates damage, waste or a nuisance, or (iv) unreasonably disturbs the owners and/or occupants of, or causes damage to, neighboring properties. Landlord acknowledges and agrees that, so long as City is using the Premises in compliance with all applicable Laws, City's use of the Premises for office uses and/or delivering social services shall not be deemed a nuisance or an unreasonable disturbance to the owners and/or occupants of neighboring properties unless a court of competent jurisdiction makes such determination.

5.2 Interference with Access

Landlord shall not impair City's access to any portion of the Premises.

6. LEASEHOLD IMPROVEMENTS

6.1 Lobby Work

Pursuant to the Prior Lease, Tenant commenced the lobby improvement and ground floor bathroom work described in the drawings prepared by William Duff Architects and dated September 6, 2013 (the "**Lobby Work**"). Tenant shall diligently pursue the completion of the Lobby Work in compliance with the Lobby Work construction schedule and construction budget (the "**Lobby Work Budget**") attached as Exhibit D and in compliance with all applicable Laws (as defined in Section 10.1). City shall pay all Lobby Work costs shown on the Lobby Work Budget (the "**Approved Costs**"), and City shall pay for any other Lobby Work costs. City's total payment of the Approved Costs shall be the "**City Lobby Contribution**". Any appurtenances, fixtures, improvements, equipment, additions and other property installed in the Premises as part of the Lobby Work shall be referred to collectively as the "**Lobby Improvements**". City shall

assign to Landlord, on a nonexclusive basis, any construction warranties or guaranties received in connection with the Lobby Improvements.

6.2 Additional Work

(a) City and Landlord agree to use good faith efforts to create a mutually-agreeable list of additional leasehold improvement work (collectively, the "**Additional Work**") to be performed at the Premises during the thirty-six (36) month period immediately following the Commencement Date through the following four (4) phases of work (each, a "**Phase**") in the following order of priority: (1) upgrading the electrical system; (2) upgrading the heating, ventilation and air conditioning system and roof; (3) upgrading the plumbing; and (4) upgrading the elevators and performing any additional building improvement work mutually selected by City and Landlord. The Additional Work shall be performed in a manner that minimizes any disruption to City's use of the Premises. City and Landlord shall use good faith efforts to determine the scope of, and the tentative schedule and budget for, the Additional Work during the six-month period immediately following the Commencement Date. Any such tentative budget shall include a designation of which portion of the Additional Work described in such budget will be deemed City's property during the Term (the "**City TIs**"). Following any mutual agreement of the scope, tentative schedule, budget and ownership designation for any Phase, Landlord and City shall take the following actions:

i. Within the time period specified in the tentative schedule for any Phase, Landlord shall have its qualified and licensed architect or space planner approved by City (which approval shall not be unreasonably withheld, conditioned or delayed) (the "**Architect**") and its qualified and licensed engineer approved by City (which approval shall not be unreasonably withheld, conditioned or delayed) (the "**Engineer**") prepare and submit to City, for its approval, the proposed final plans, specifications and working drawings for such Phase, setting forth in detail all aspects of the design, function and construction for such Phase in form sufficient for bidding of all elements of construction, and in conformity with all of the requirements of this Lease (collectively, the "**Construction Documents**"). City shall notify Landlord of its approval of, or proposed changes to, any submitted Construction Documents within five (5) business days of receiving such submitted Construction Documents. City's approval of any submitted Construction Documents shall not be unreasonably withheld, conditioned or delayed. If City proposes reasonable changes to any submitted Construction Documents, Landlord shall submit revised Construction Documents to City for review. The work described in any Construction Documents approved by City pursuant to this subsection (i) shall be referred to as the "**Leasehold Work**". Notwithstanding anything to the contrary in this Article 6, City's approval shall not be required for any element of a Phase or a Construction Budget (as defined below) that in the reasonable judgment of Landlord is required in order for such Phase to comply with applicable laws or to remedy a condition that Landlord reasonably believes creates a risk of personal injury or might affect the health and safety of persons using the Premises; provided, however, that Landlord shall notify City of any such determination by Landlord in writing.

ii. Within fourteen (14) days following City's approval of any Construction Documents pursuant to the foregoing subsection (i) (or, if City's approval is not required as to any element in the Construction Documents, the date upon which Landlord completes the Construction Documents for such elements), Landlord shall provide City with an updated construction budget for the Leasehold Work described in such Construction Documents for City's approval. Such updated construction budget shall include Landlord's costs to prepare the Construction Documents, the costs of any permits needed for the Leasehold Work described in such Construction Documents, Landlord's project management fees for the Leasehold Work described in such Construction Documents, Landlord's commercially reasonable construction supervision fee, and the cost of insurance required for such Leasehold Work pursuant to this Lease and shall restrict all costs to be included in the Allowance (as defined in Section 6.3) to

line items in cost categories. Any submitted construction budget approved by City shall be the "**Construction Budget**". If the Leasehold Work described in a Construction Budget cannot be completed in strict conformity with such Construction Budget, Landlord shall immediately submit to City for its approval a revised construction budget and shall identify to City the changes and the reasons for such changes. If further changes are required, Landlord shall seek City's approval, following the same procedures. No costs shall be included in the Allowance for any items in excess of the Construction Budget and any revisions thereto approved by City. Subject to the last sentence of Section 6.2(a)(i), City shall have the right to approve or disapprove any submitted construction budget or proposed revisions to a Construction Budget in its reasonable judgment. No such approval or disapproval shall be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, if City withholds its approval of the Construction Budget for a Phase, Landlord may elect to proceed with the construction of the applicable Phase based on the last Construction Budget proposed by Landlord; provided that if Landlord so elects, the payment for the work covered by the Construction Budget not approved by City shall be commercially reasonable and made from the Landlord Share.

(b) Following City's approval of the Construction Documents and the applicable Construction Budget (to the extent City's approval is required under Section 6.2(a)), Landlord shall endeavor to obtain, and keep City apprised of the status of approval for, all required permits for the Leasehold Work described in such approved Construction Documents. Landlord understands and agrees that City is entering into this Lease in its proprietary capacity and not as a regulatory agency with certain police powers. Notwithstanding anything to the contrary herein, no approval by City of the plans for the Leasehold Work (including the Construction Documents) or completion of the Leasehold Work shall be deemed to constitute approval of any governmental or regulatory authority with jurisdiction over the Premises.

Following its receipt of all required permits for such Leasehold Work, Landlord shall cause such Leasehold Work to be diligently performed by its general contractor (the "**Contractor**") in a good and professional manner in accordance with sound building practice and in conformity with the Construction Documents, as revised by any change orders approved in advance and in writing by City, and the terms of this Article 6. The selection of the Contractor shall be made by Landlord using the public bidding process used by it for comparable projects. Landlord shall keep City informed of the progress of the bidding process. Upon written request from City, Landlord agrees to reject all bids received and restart the public bidding process. City shall not have any obligation with respect to the performance of any Leasehold Work. Landlord shall use its commercially reasonable efforts to complete the construction of the Leasehold Work in accordance with the construction schedule approved by Landlord and City for such Leasehold Work. Landlord or its Contractor shall furnish City with weekly reports on construction. When construction progress so permits, but not less than fifteen (15) days in advance of completion, Landlord shall notify City of the approximate date on which any Leasehold Work will be substantially completed in accordance with the approved Construction Documents and the provisions hereof. Landlord shall notify City when the Leasehold Work is in fact substantially completed.

(d) The performance of all Leasehold Work by Landlord shall be subject to the following terms and conditions:

- i. All Leasehold Work shall be performed in compliance with all applicable Laws.
- ii. Without limiting the foregoing, the construction of the Leasehold Improvements shall comply with all requirements of the Americans With Disabilities Act of 1990, Title 24 of the California Code of Regulations, and all other applicable federal, state, local and administrative laws, rules, regulations, orders and requirements intended to provide equal

accessibility for persons with disabilities (collectively, "**Disabled Access Laws**"), and with City's work plan for accessibility improvements.

iii. Landlord and its Contractor shall be responsible for all required insurance, the cost of which shall be included in the Construction Budget.

iv. Landlord and City shall cooperate at all times with the other in bringing about the timely completion of the Leasehold Improvements.

v. Landlord shall assign to the City on a nonexclusive basis any construction warranties or guaranties received in connection with the Leasehold Improvements.

6.3 Payment of Additional Work

Landlord shall contribute up to \$3,500,000 (the "**Landlord Share**"), and City shall contribute up to the City Share (defined as follows), to pay for the Additional Work (which shall include the Leasehold Work). The "**City Share**" shall be an amount equal to \$2,500,000 less the City Lobby Contribution. Landlord shall not be obligated to contribute more to the construction of the Additional Work than the Landlord Share. City shall not be obligated to contribute more to the construction of the Additional Work than the City Share.

Landlord shall provide City with copies of (i) all invoices and requests for payment received by Landlord from the Contractor, the Architect, the Engineer or other consultants in connection with the Leasehold Work, (ii) satisfactory evidence of payment of such invoices, including unconditional lien waivers, or if such invoices have not been paid, conditional lien waivers, all such lien waivers being in the form prescribed by California Civil Code Sections 8132, 8134, 8136 and 8138 and executed by each subcontractor and material supplier; provided, however, that with respect to fees and expenses of the Architect or any project managers or other similar consultants, Landlord shall only be required to deliver to Tenant an invoice for such cost; and (iii) such additional customary supporting data substantiating the Contractor's right to payment as City may reasonably require, such as copies of requisitions from subcontractors and material suppliers. Landlord's submittal of the foregoing items shall include a summary of the total amount paid or payable with respect to the invoices included therein, which shall reflect any retention provided for under the applicable contracts (the "**Total Payment Amount**"). Within fifteen (15) business days after Landlord delivers City the information described in this paragraph, Tenant shall pay Landlord an amount equal to Tenant's Percentage (as defined below) of the Total Payment Amount. As used herein, "**Tenant's Percentage**" means the percentage determined by dividing (a) the City Share, by (b) \$6,000,000.

The total Landlord Share paid for the Additional Work "hard" construction costs pursuant to this Section 6 (the "**Landlord Contribution**"), together with seven percent (7%) interest thereon, shall be amortized on a straight line basis over the twelve (12) year period immediately following the Commencement Date. Any portion of the Landlord Share used to pay for any costs or fees in preparing the Construction Documents, the Construction Budget, or related materials, to manage or review the performance of the Additional Work, or for any other administrative, architect, engineer, construction management costs, fees, or permits related to the Additional Work, shall not be used in determining the Landlord Contribution.

6.4 Construction of Improvements that Disturb or Remove Exterior Paint

Landlord, on behalf of itself and its successors, assigns and agents, shall comply with all requirements of the San Francisco Building Code Chapter 34 and all other applicable local, state, and Federal laws, including but not limited to the California and United States Occupational and Health Safety Acts and their implementing regulations, when the work of improvement or alteration disturbs or removes exterior or interior lead-based or "presumed" lead-based paint (as

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

7. ALTERATIONS

7.1 Alterations by City

City shall not make or permit any alterations, installations, additions or improvements (collectively, "**Alterations**") to the Premises without first obtaining Landlord's written consent, which Landlord shall not unreasonably withhold or delay. However, the installation of furnishings, partitions, cubicles, fixtures, equipment, bicycle storage facilities, or decorative improvements, none of which affect the Building Systems or structural integrity of the Premises, and the repainting and recarpeting of the Premises, shall not constitute Alterations requiring Landlord's consent, but City shall give Landlord at least ten (10) days' notice of each Alteration, whether or not Landlord's consent is required to perform such Alteration. Any Alterations permitted hereunder shall be made at City's cost in compliance with applicable Laws. Landlord shall, without cost to itself, cooperate with City in securing building and other permits and authorizations needed in connection with any permitted Alterations. Landlord shall not be entitled to any construction or other administrative fee in connection with any Alteration. City shall not be required to remove any Alterations upon the expiration or sooner termination of this Lease unless Landlord notifies City in writing at the time Landlord approves such Alterations that they must be removed at the Expiration Date.

All Alterations shall be constructed in a good and professional manner by contractors reasonably acceptable to Landlord and only good grades of materials shall be used. All plans and specifications for any Alterations shall be submitted to Landlord for its approval. If Landlord reasonably determines it will need an outside consultant to review the plans and specification submitted by City for a proposed Alterations, Landlord shall deliver written notice (a "**Consultant Review Notice**") of such determination and the anticipated costs of such consultant review to City. Landlord shall not engage any consultant to review plans and specifications for any proposed Alterations without first obtaining City's written confirmation that Landlord may proceed with such review. If City does not provide such written confirmation within ten (10) business days of City's receipt of a Consultant Review Notice, City shall have been deemed to withdrawn its request to have Landlord review the submitted plans and specifications that require such consultant review.

Landlord may inspect and observe construction of the Alterations. City shall reimburse Landlord for its reasonable costs in reviewing plans and specifications and in monitoring construction, provided such costs shall not exceed the actual, out-of-pocket costs paid by Landlord to third parties (which shall not exceed five percent (5%) of the total "hard" costs of the proposed Alteration plus a Landlord construction management fee of five percent (5%) of the total "hard" costs of the proposed Alteration. Landlord's right to review plans and specifications and to monitor construction shall be solely for its own benefit, and Landlord shall have no duty to see that such plans and specifications or construction comply with all Laws. City shall provide Landlord with the identities and mailing addresses of all third party contractors performing work at, or supplying materials to, the Premises, prior to beginning such construction, and Landlord may post on and about the Premises notices of non-responsibility pursuant to applicable law.

7.2 Title to Improvements

Except for City's Personal Property (as defined in the next Section), the Lobby Improvements, and any City TIs, any appurtenances, fixtures, improvements, equipment, additions and other property permanently installed in the Premises as of the Commencement Date or during the Term shall be and remain Landlord's property. On the termination or expiration of the Term, ownership of the Lobby Improvements and the City TIs shall automatically transfer to Landlord. City may not remove such property (other than City's Personal Property) unless Landlord consents thereto.

7.3 City's Personal Property

All furniture, furnishings, equipment, trade fixtures, bicycle storage facilities, and articles of movable personal property installed in the Premises by or for the account of City and that can be removed without structural damage to the Premises (collectively, "**City's Personal Property**") shall be and remain City's property. At any time during the Term or at the expiration thereof, City may remove any of City's Personal Property, provided City shall repair any damage to the Premises resulting therefrom. Upon the expiration or earlier termination of this Lease, City shall remove City's Personal Property from the Premises in accordance with Section 20 (Surrender of Premises), below. Landlord acknowledges that some of City's Personal Property may be financed by an equipment lease financing otherwise subjected to a security interest, or owned by an equipment company and leased to City. Landlord, upon City's reasonable request, shall execute and deliver any document required by any supplier, lessor, or lender in connection with the installation in the Premises of any items of City's Personal Property, pursuant to which Landlord waives any rights it may have or acquire with respect to City's Personal Property, so long as the supplier, equipment lessor or lender agrees that it (i) will remove the Property from the Premises within thirty (30) days after the Expiration Date (but if it does not remove City's Personal Property within such time it shall have waived any rights it may have had to City's Personal Property), and (ii) will repair any damage caused by the removal of City's Personal Property. Landlord shall recognize the rights of any supplier, lessor or lender who has an interest in any items of City's Personal Property to enter the Premises and remove such property at any time during the Term or within thirty (30) days after the Expiration Date.

8. REPAIRS AND MAINTENANCE

8.1 Landlord's Repairs

Landlord shall have no repair or maintenance responsibilities for the Premises whatsoever other than as set forth in Article 6, Section 9.1, and Section 12 (collectively, "**Landlord's Maintenance Obligations**").

8.2 City's Repairs

Subject to Landlord's Maintenance Obligations, City shall repair and maintain (including replacements) at its cost all of the Premises and shall keep the Premises in good working order and in a safe and sanitary condition, except for ordinary wear and tear and damage by casualty. City shall make any such required repairs and replacements (i) at City's cost, (ii) by contractors or mechanics selected by City and reasonably approved by Landlord, (iii) so that same shall be at least substantially equal in quality, value and utility to the original work or installation prior to damage thereof, (iv) in a manner and using equipment and materials that will not materially interfere with or impair the operations, use or occupation of the Premises or the Building Systems, and (v) in compliance with all applicable Laws, including, without limitation, any applicable contracting requirements under City's Charter and Administrative Code.

If City fails to perform City's obligations under this Section 8.2, Landlord may at its option (but shall, not be required to) enter upon the Premises after thirty (30) days' prior written notice to City, perform such obligations on City's behalf and put the same in good order, condition and repair, and the cost thereof together shall become due and payable as additional rental to Landlord together within thirty (30) days of City receiving Landlord's invoice therefor, together with any documentation of such costs reasonably requested by City.

If any repair made by City pursuant to this Section is a capital expenditure, as defined by generally accepted accounting principles ("GAAP"), the cost of such repair shall be amortized over its useful life (as determined under GAAP). Following City's delivery of notice to Landlord of such capital expenditure and the amortized amount allocable to the period following the then-existing Expiration Date (the "**Unamortized Amount**"), City shall have the right to offset its Base Rent payments by such Unamortized Amount until it is exhausted; provided, however, that if City exercises its option to extend the Term pursuant to Section 3.3, prior to the commencement of the applicable Extended Term, City shall pay Landlord an amount equal to the amortized amount of such capital expenditure allocable to such Extended Term. If City exercises its early termination option pursuant to Section 3.1 or terminates this Lease pursuant to Section 10.2, City shall receive a credit equal to the amortized amount of any capital expenditure allocable to the period between the Expiration Date prior to such exercise and the Expiration Date following such exercise.

8.3 Liens

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

City has no express or implied authority to create or place any lien or encumbrance of any kind upon, or in any manner to bind the interest of Landlord or City in, the Premises or to charge the Rent payable hereunder, for any claim in favor of any person that City hires to furnish materials or perform labor for any construction or repairs at the Premises (each, a "**Mechanics Lien**"). City covenants and agrees that it will save and hold Landlord harmless from all loss, cost or expense based on or arising out of such asserted claims or liens against the leasehold estate or against the interest of Landlord in the Premises or under this Lease with respect to such Mechanics Liens. City shall give Landlord immediate written notice of the placing of any lien or encumbrance against the Premises with respect to any Mechanics Lien and cause such lien or encumbrance to be discharged within twenty (20) days of the filing or recording thereof; provided, however, City may contest such liens or encumbrances as long as such contest

prevents foreclosure of the lien or encumbrance and City causes such lien or encumbrance to be bonded or insured over in a manner satisfactory to Landlord within such twenty (20) day period.

9. UTILITIES AND SERVICES

9.1 Provision of Access to Utilities

City shall keep, at its sole cost, the existing electricity, water, and gas utility physical connections to the Premises in at least the same condition and repair the connections are in as of the date of this Lease. If there is a failure to provide utility service to the Premises that is caused by Landlord, and such failure impairs City's ability to carry on its business in the Premises for a period of one (1) or more business days if such failure is in the reasonable control of Landlord or a period of five (5) or more consecutive business days if such failure is not within the reasonable control of Landlord, then the Rent shall be abated based on the extent such failure caused by Landlord impairs City's ability to carry on its business in the Premises. Such abatement shall continue until the failure of utility service caused by Landlord have been restored so they no longer materially impair City's ability to carry on its business in the Premises. Landlord shall use its best efforts to make any repairs or replacements necessary to correct the failure of the utility service caused by Landlord as soon as possible. However, if Landlord fails to do so and such failure caused by Landlord continues for any reason for one hundred twenty (120) days and such failure caused by Landlord interferes with City's ability to carry on its business in the Premises, then City may, without limiting any of its other rights or remedies hereunder or at law or in equity, terminate this Lease upon written notice to Landlord, unless Landlord supplies City with evidence reasonably satisfactory to City that the utility connections will be restored within one hundred eighty (180) days of the date City's use was interrupted by a failure caused by Landlord, and the utility services are actually restored within such one hundred eighty (180) day period. City shall not be entitled to any abatement of Rent or right to terminate if Landlord's inability to provide proper utility connections to City is due solely to the acts, omissions or negligence of City and its Agents.

9.2 Utilities and Services to the Premises

Subject to Landlord's obligation to provide the utility connections described in Section 9.1, City shall be responsible for obtaining any water, gas, heat, light, power, telephone and other utilities and services it wishes to have at the Premises. City shall pay for all such utilities and services City arranges to obtain for the Premises, together with any taxes thereon. Landlord shall not be liable for any failure or interruption of any utility service furnished to the Premises, and no such failure or interruption shall entitle City to any abatement in Rent or to terminate this Lease, unless such interruption is due to the negligence or willful misconduct of Landlord or due to Landlord's failure to timely perform its obligations under Section 9.1.

10. COMPLIANCE WITH LAWS; PREMISES CONDITION

10.1 Premises Condition and Compliance with Laws; Indemnity

Landlord represents and warrants to City, and covenants with City, as follows to Landlord's actual knowledge, Landlord has not received any written notice on or before the date of this Lease, except for those notices disclosed to, or known by, City, that (a) the physical structure, fixtures and permanent improvements of the Premises (including, without limitation, the Leasehold Improvements) or any portions of the Property along the path of travel to the Premises (including, but not limited to, the Premises entrances, restrooms, elevators, lobbies, telephone banks and drinking fountains and parking areas) are not in compliance with the requirements of any Disabilities Access Laws; (b) the Premises are not in compliance with any applicable federal, state, local and administrative laws, rules, regulations, orders and requirements relating to seismic safety (collectively, "**Seismic Safety Laws**"); (c) the Premises

and Building Systems serving the Premises are not in full compliance with all applicable federal, state, local and administrative laws, rules, regulations, orders and requirements relating to fire and life safety (including, without limitation, the San Francisco High-Rise Sprinkler Ordinance) (collectively, "**Life Safety Laws**"); **(d)** the Premises and Building Systems serving the Premises are not in compliance with all other applicable federal, state, local and administrative laws, rules, regulations, orders and requirements; and **(e)** there are any material physical or mechanical defects in the Premises or the Building Systems that would materially adversely affect City's intended use of the Premises. For purposes of this Lease, "**Landlord's actual knowledge**" shall be deemed to mean and limited to the current actual knowledge of David Goldin at the time of execution of this Lease and not any implied, imputed, or constructive knowledge of said individual or of Landlord or any parties related to or comprising Landlord and without any independent investigation or inquiry having been made or any implied duty to investigate or make any inquiries; it being understood and agreed that such individual shall have no personal liability in any manner whatsoever hereunder or otherwise related to the transactions contemplated hereby.

In the event that Landlord receives notice that the Premises are not in compliance with any existing or future federal, state, local and administrative laws, rules, regulations, orders and requirements (collectively, "**Laws**") existing as of the Commencement Date, including, without limitation, Disabilities Laws, Seismic Safety Laws, and Life Safety Laws, Landlord shall promptly deliver a copy of such notice to City.

10.2 City's Compliance with Laws; Indemnity

City shall use the Premises during the Term in compliance with applicable Laws; provided, however, that if any existing or future Laws require any structural alterations, additions or other modifications to the Premises that is a capital expenditure under GAAP in order for City's use to comply therewith, the cost of thereof shall be allocated between Landlord and City as provided in the last paragraph of Section 8.2. City shall be responsible for complying with any requirement of the Disabilities Laws relating to the placement of City's furniture or other City Personal Property and the operation of any 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 along the path of travel to the Premises that are Landlord's obligation as provided in Section 10.1 above. Without limiting Section 16.1 (City's Indemnity), City shall 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 shall not conduct any use in or about the Premises that would: **(a)** invalidate or be in conflict with any fire or other casualty insurance policies covering the Premises or any property located therein, **(b)** result in a refusal by fire insurance companies of good standing to insure the Premises or any such property in amounts reasonably satisfactory to Landlord or the holder of any mortgage or deed of trust encumbering any of the Property, **(c)** cause an increase in the fire insurance premium for the Premises unless City agrees to pay such increase, or **(d)** subject Landlord to any liability or responsibility for injury to any person or property by reason solely of any business operation being conducted by City in the Premises; provided, however, Landlord shall provide City with reasonable prior written notice of any applicable insurance requirements and no such insurance requirements shall materially and adversely interfere with City's normal business in the Premises.

11. SUBORDINATION

(a) Without the necessity of any additional document being executed by City for the purpose of effecting a subordination, and subject to subsection (b) below, this Lease shall

be subject and subordinate at all times to the following (each an "Encumbrance"): (a) any reciprocal easement agreements, ground leases or other underlying leases that may hereafter be executed affecting Landlord's interest in the Property, or any portion thereof, and (b) the lien of any mortgages or deeds of trust and renewals, modifications, consolidations, replacements and extensions of any of the foregoing that may hereafter be executed by Landlord in any amount for which any part of the Property, any ground lease or underlying lease, or Landlord's interest or estate therein is subject. Notwithstanding the foregoing, if the ground lessor, mortgagee, trustee, or holder of any such mortgage or deed of trust elects to have City's interest in this Lease be superior to any such instrument, then upon notice thereof to City, this Lease shall be deemed superior, whether this Lease was executed before or after the date of said instrument or the recording thereof. At City's request, the holder of the Encumbrance shall enter into a subordination and nondisturbance agreement with City in a form reasonably acceptable to City evidencing such subordination or superiority of this Lease.

(b) In the event any mortgage or deed of trust to which this Lease is subordinate is foreclosed or a deed in lieu of foreclosure is given to the mortgagee or beneficiary, or in the event any ground lease or underlying lease to which this Lease is subordinate is terminated, this Lease shall not be barred, terminated, cut off, or foreclosed nor shall the rights and possession of City hereunder be disturbed if City shall not then be in default in the payment of rental or other sums due hereunder or otherwise be in default under the terms of this Lease. City shall attorn to and become the tenant of the successor-in-interest to Landlord, provided that City has received proper written notice of such succession and the name and address of the successor landlord. City's covenant under subsection (a) above to subordinate this Lease to any Encumbrance or other hypothecation hereafter executed is conditioned upon each such senior instrument containing the commitments specified in this subsection (b). The provisions of this Section shall be self-operative and no further instrument shall be required other than as provided in this Section. City agrees, however, to execute upon request by Landlord and in a form reasonably acceptable to City, any additional documents evidencing the priority or subordination of this Lease with respect to any such Encumbrance as provided herein.

12. DAMAGE AND DESTRUCTION

If the Premises or any Building Systems are damaged by fire or other casualty, Landlord shall repair the same without delay (and if Landlord is then carrying insurance on the Leasehold Improvements or if City at its sole option makes funds available to Landlord, Landlord shall also repair the Leasehold Improvements), provided that such repairs can be made under applicable laws within sixty (60) days after Landlord obtains all necessary permits for such repairs but not later than two hundred ten (210) days after the date of such damage (the "Repair Period"). In such event, this Lease shall remain in full force and effect, except that City shall be entitled to an abatement of Rent while such repairs are being made. Such abatement in Rent shall be based upon the extent to which such damage and the making of such repairs interfere with City's business in the Premises. Landlord's repairs shall not include, and the Rent shall not be abated as a result of, any damage by fire or other cause to City's Personal Property or any damage caused by the negligence or willful misconduct of City or its Agents.

Within twenty (20) days after the date of such damage, Landlord shall notify City whether or not, in Landlord's reasonable judgment made in good faith, such repairs can be made within the Repair Period. If such repairs cannot be made within the Repair Period, then either party hereto may, by written notice to the other given within thirty (30) days after the date of such damage, terminate this Lease as of the date specified in such notice, which date shall be not less than thirty (30) nor more than sixty (60) days after notice is given by Landlord. In case of termination, the Rent shall be reduced by a proportionate amount based upon the extent to which such damage interferes with the conduct of City's business in the Premises, and City shall pay such reduced Rent up to the date of termination. Landlord shall refund to City any Rent previously paid for any period of time subsequent to such date of termination.

Notwithstanding the foregoing, Landlord may elect not to rebuild and/or restore the Premises or the Building Systems and instead terminate this Lease by notifying Tenant in writing of such termination within sixty (60) days after the date of Landlord's discovery of such damage, but Landlord may so elect only if the damage is not fully covered (except for deductible amounts in the case of a casualty other than earthquake or flood) by Landlord's insurance policies.

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

The parties intend that the provisions of this Section govern fully their rights and obligations in the event of damage or destruction, and Landlord and City each hereby waives and releases any right to terminate this Lease in whole or in part under Section 1932, subdivision 2, Section 1933, subdivision 4, and Sections 1941 and 1942 of the Civil Code of California or under any similar law, statute or ordinance now or hereafter in effect, to the extent such rights are inconsistent with the provisions hereof.

13. EMINENT DOMAIN

13.1 Definitions

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

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

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

13.2 General

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

13.3 Total Taking; Automatic Termination

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

13.4 Partial Taking; Election to Terminate

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

(b) In the case of a partial taking of over fifty percent (50%) of the Premises, and if subsection (a) above does not apply, City and Landlord shall each have the right to terminate this Lease by written notice to the other within thirty (30) days after the Date of Taking, provided that, as a condition to City's right to terminate, the portion of the Premises taken shall, in City's reasonable judgment, render the Premises unsuitable for continued use by City for its intended purposes or otherwise materially adversely affect City's normal operations in the Premises.

(c) Either party electing to terminate under the provisions of this Section 13.4 shall do so by giving written notice to the other party before or within thirty (30) days after the Date of Taking, and thereafter this Lease shall terminate upon the later of the thirtieth (30th) day after such written notice is given or the Date of Taking.

13.5 Termination of Lease; Rent and Award

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

13.6 Partial Taking; Continuation of Lease

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

13.7 Temporary Taking

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

14. ASSIGNMENT AND SUBLETTING

Except as provided in this Section below, City shall not directly or indirectly sell, assign, encumber, pledge or otherwise transfer or hypothecate all or any part of its interest in or rights with respect to the Premises or its leasehold estate hereunder 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 shall not be unreasonably withheld or delayed. City shall provide to Landlord all information concerning the assignee or sublessee as Landlord may reasonably request. Landlord may revoke its consent immediately and without notice if, as of the effective date of the assignment or sublease, there is any uncured Event of Default under the Lease. City shall have the right from time to time, upon notice to but without the consent of Landlord, to 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.

City shall reimburse Landlord for all of Landlord's reasonable expenses in connection with reviewing any assignment or sublease requested by City for this Lease, provided such expenses shall not exceed \$3,000.00. This Lease shall be binding upon City and its successors and permitted assigns. Upon Landlord's receipt of City's written notice of a desire to assign or sublet the Premises, or any part thereof to a non-City party, Landlord may, by giving written notice to City within thirty (30) days after receipt of City's notice, terminate this Lease with respect to the space described in City's notice, as of the date specified in City's notice for the commencement of the proposed assignment or sublease. Notwithstanding the foregoing, City may withdraw its notice to sublease or assign by notifying Landlord within ten (10) business days after Landlord has given City notice of such termination, in which case the Lease shall not terminate but shall continue. Notwithstanding any assignment or subletting, City and shall at all times remain fully responsible and liable for the payment of the rent and for compliance with all of City's other obligations under this Lease (regardless of whether Landlord's approval has been obtained for any such assignments or sublettings). In the event that the rent due and payable by a sublessee or assignee (or a combination of the rental payable under such sublease or assignment plus any bonus or other consideration therefor or incident thereto) exceeds the Rent payable for such period under this Lease, then after recovering its commercially reasonable costs to enter into such sublease or assignment (including commercially reasonable brokers fees and the fee paid to obtain Landlord's consent thereto) and to make any Landlord approved tenant improvements required to be made by City at the Premises under such sublease or assignment, City shall be bound and obligated to pay Landlord as additional rent hereunder one hundred percent (100%) of such excess rental and other excess consideration within ten (10) business days following receipt thereof by City; provided in the event of a sublease which is less than 100% of the Premises such excess rental and other consideration shall be applied on a square foot basis.

If City assigns this Lease or subleases the Premises (whether in whole or in part) to any non-City party, or mortgages, pledges, or hypothecates City's leasehold interest in the Premises, grants any concession or license within the Premises to another party or permits another party to occupy the Premises in whole or in part in exchange for rental payments to City (each, a "**Transfer**"), then upon an Event of Default, Landlord may collect rent to be paid to City from the transferees under such Transfers and, except to the extent set forth in the preceding paragraph, apply the amount collected from such transferees to the next installment of Rent payable hereunder. Any rentals collected by City from such transferees with respect to the Premises during an Event of Default shall be held in trust for Landlord and immediately forwarded to Landlord, and Landlord shall apply such forwarded amounts to the next installment of Rent payable hereunder. No such transaction or collection of rent or application thereof by Landlord, however, shall be deemed a waiver of these provisions or a release of City from the further performance by City of its covenants, duties, or obligations hereunder.

15. DEFAULT; REMEDIES

15.1 Events of Default by City

Any of the following shall constitute an event of default by City hereunder (each, an "Event of Default"):

(a) City fails to make any timely payment of Rent and to cure such nonpayment within five (5) business days after receipt of written notice thereof 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 and each period in which the Base Rent increases, City shall have twenty (20) days to cure any such nonpayment after written notice thereof from Landlord;

(b) City abandons the Premises (within the meaning of California Civil Code Section 1951.3); or

(c) City (A) makes a general assignment for the benefit of creditors; (B) commences any case, proceeding or other action seeking to have an order for relief entered on its behalf as a debtor or to adjudicate it as bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or of any substantial part of its property (collectively a "proceeding for relief"); (C) becomes the subject of any proceeding for relief which is not dismissed within 60 days of its filing or entry; or (D) dissolves or fails to maintain its legal existence; or

(d) City fails to perform any other covenant or obligation of City hereunder (not involving the payment of money) and to cure such non-performance within thirty (30) days of the date of receipt of notice thereof from Landlord, provided that if more than thirty (30) days are reasonably required for such cure, no event of default shall occur if City commences such cure within such period and diligently prosecutes such cure to completion.

15.2 Landlord's Remedies

Upon the occurrence of any uncured Event of Default, Landlord shall have all rights and remedies available pursuant to law or granted hereunder, including the following:

(a) The rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate City's right to possession of the Premises. Upon such termination, Landlord may recover from City the following, as provided in Section 1951.2 of the Civil Code of California: (i) the worth at the time of award of the unpaid Rent that had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that City proves could have been reasonably avoided; (iii) the worth at the time of award by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such rental loss that City proves could have been reasonably avoided, subject to Section 1951.2(c) of the Civil Code of California; and (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by City's failure to perform its obligations under this Lease or that in the ordinary course of things would be likely to result therefrom. As used herein, the following terms are defined: (A) The "worth at the time of award" of the amounts referred to in clauses (i) and (ii) is computed by allowing interest at the lesser of 18 percent per annum or the maximum lawful rate. The "worth at the time of award" of the amount referred to in clause (iii) is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent; (B) The "time of award" as used in clauses (i),

(ii), and (iii) above is the date on which judgment of an uncured event of default by City under this Lease is entered by a court of competent jurisdiction.

(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) Upon the termination of this Lease or termination of City's right of possession, it shall be lawful for Landlord to re-enter the Premises by summary dispossession proceedings or any other action or proceeding authorized by law and to remove City and its Agents, Invitees and property therefrom. If Landlord so re-enters the Premises, Landlord shall have the right to remove from the Premises and store all of the City's furniture, fixtures and equipment.

(d) Exercise by Landlord of any one or more remedies hereunder granted or otherwise available shall not be deemed to be an acceptance of surrender of the Premises and/or a termination of this Lease by Landlord, whether by agreement or by operation of law, unless such surrender and/or termination is effected by the written agreement of Landlord and City or any summary dispossession proceedings or any other action or proceeding authorized by law. Any usage or custom to the contrary notwithstanding, Landlord shall have the right at all times to enforce the provisions of this Lease in strict accordance with the terms hereof and applicable Laws; and the failure of Landlord at any time to enforce its rights under this Lease strictly in accordance with same shall not be construed as having created a custom in any way or manner contrary to the specific terms, provisions, and covenants of this Lease or as having modified the same. City and Landlord further agree that forbearance or waiver by Landlord to enforce its rights pursuant to this Lease or at law or in equity, shall not be a waiver of Landlord's right to enforce one or more of its rights in connection with any subsequent default. A receipt by Landlord of rent or other payment with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by Landlord of any provision of this Lease shall be deemed to have been made unless expressed in writing and signed by Landlord. To the greatest extent permitted by law, City waives all right of redemption in case City shall be dispossessed by a judgment or by warrant of any court or judge. Any reletting of the Premises shall be on such terms and conditions as Landlord in its sole discretion may determine (including without limitation a term different than the remaining Term, rental concessions, alterations and repair of the Premises, lease of less than the entire Premises to any tenant and leasing any or all other portions of the Premises), provided such terms and conditions are commercially reasonable. Provided that Landlord has not terminated City's right to possession of the Premises, Landlord shall not be liable, nor shall City's obligations hereunder be diminished because of, Landlord's election not to relet the Premises or collect rent due in respect of such reletting.

15.3 Landlord's Default

If Landlord fails to perform any of its obligations under this Lease, then (without limiting any of City's other cure rights under this Lease) City may, at its sole option, cure such default at Landlord's expense if such default continues after thirty (30) days from the date City gives notice to Landlord of City's intention to perform such cure. However, in the case of a default which for causes beyond Landlord's control (excluding any financial inability to perform) cannot with due diligence be cured within such thirty (30)-day period, such thirty (30)-day period shall be extended if Landlord, promptly upon receipt of City's notice, advises City of Landlord's intention to take all steps required to cure such default, and Landlord promptly commences such cure and diligently prosecutes the same to completion. City's rights hereunder, and under Section 9.1, shall not limit in any way any of its other rights and remedies hereunder or at law or in equity.

16. INDEMNITIES

16.1 City's Indemnity

To the fullest extent permitted by law, City shall indemnify, defend and hold harmless ("**Indemnify**") Landlord and its Agents from and against any and all claims, suits, damages, costs and expenses, including, without limitation, reasonable attorneys' fees (collectively, "**Claims**"), court costs and costs of alternative dispute resolution (if any) incurred as a result of (a) City's use of the Premises, (b) any default by City in the performance of any of its material obligations under this Lease, or (c) any negligent acts, omissions or willful misconduct of City or its Agents in, on or about the Premises or the Property; provided, however, City shall not be obligated to Indemnify Landlord or its Agents to the extent any Claim arises out of the negligence or willful misconduct of Landlord or its Agents. In any action or proceeding brought against Landlord or its Agents by reason of any Claim Indemnified by City hereunder, City may, at its sole option, elect to defend such Claim by attorneys in City's Office of the City Attorney, by other attorneys selected by City, or both. City shall have the right to control the defense and to determine the settlement or compromise of any action or proceeding, provided that Landlord shall have the right, but not the obligation, to participate in the defense of any such Claim at its sole cost. City's obligations under this Section shall survive the termination of the Lease.

16.2 Landlord's Indemnity

To the fullest extent permitted by law, Landlord shall Indemnify City and its Agents against any and all Claims, suits, damages 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, omissions or willful misconduct of Landlord or its Agents in, on or about the Premises or the Property; provided, however, Landlord shall not be obligated to Indemnify City or its Agents to the extent any Claim arises out of the negligence or willful misconduct of City or its Agents. In any action or proceeding brought against City or its Agents by reason of any Claim Indemnified by Landlord hereunder, Landlord may, at its sole option, elect to defend such Claim by attorneys selected by Landlord. Landlord shall have the right to control the defense and to determine the settlement or compromise of any action or proceeding, provided that City shall have the right, but not the obligation, to participate in the defense of any such Claim at its sole cost. Landlord's obligations under this Section shall survive the termination of this Lease.

17. INSURANCE

17.1 City's Self-Insurance

Landlord acknowledges that City maintains a program of self-insurance and agrees that City shall not be required to carry any additional coverage 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

Landlord may insure the Building under an all risk policy of property insurance in the amount of the replacement cost of the Building either as part of the blanket policy maintained by Landlord for multiple properties or under a separate policy applicable only to the Property. Such policy need not include earthquake coverage. Landlord may elect to carry earthquake insurance; provided that Tenant shall not be obligated to reimburse Landlord for premiums for earthquake insurance unless (a) earthquake insurance coverage is required by a lender who is a beneficiary under a deed of trust encumbering the Property, or (b) such earthquake insurance coverage is typically carried for similar properties in San Francisco County or San Mateo County. City shall

reimburse Landlord within thirty (30) days after demand for the cost of all such insurance (subject to the limitation on earthquake insurance provided above). If the policy of property insurance covers multiple properties, the cost of that insurance shall be reasonably allocated by Landlord to the Property using one of the following methods as selected by Landlord: pro rata allocation based on square footage of all improvements covered by the policy, pro rata allocation based on replacement cost of all improvements covered by the policy or allocation of premiums to the Property made by the insurer. Landlord shall have no obligation to insure City's Personal Property. Notwithstanding the foregoing, Landlord may elect to insure the Property under a program of self-insurance and City agrees that Landlord shall not be required to carry any additional coverage with respect to this Lease. Upon request from City from time to time, Landlord shall provide City with Landlord's reasonable estimate of any changes in the cost of insurance anticipated during the following 90 days due to Landlord's planned modification of the scope of the insurance coverage during such 90 day period. Without limiting the obligation of any of Landlord's insurers, Landlord assumes the risk of damage to any of the Premises and the Property, except for damage caused by City or its Agents.

17.3 Waiver of Subrogation

Notwithstanding anything to the contrary contained herein, Landlord and Tenant each hereby waives any right of subrogation and/or recovery against each other for loss of or damage to its property to the extent such property is covered by any third-party or self-insurance carried by such party. City and its agents, employees and contractors shall not be liable for, and Landlord hereby waives all claims against such parties for losses resulting from an interruption of Landlord's business, or any person claiming through Landlord for business interruption losses, resulting from any accident or occurrence in or upon the Premises or the Building from any cause whatsoever, including without limitation, damage caused in whole or in part, directly or indirectly, by the negligence of City or its agents, employees or contractors. Landlord and its agents, employees and contractors shall not be liable for, and City hereby waives all claims against such parties for losses resulting from an interruption of City's business, or any person claiming through City for business interruption losses, resulting from any accident or occurrence in or upon the Premises or the Building from any cause whatsoever, including without limitation, damage caused in whole or in part, directly or indirectly, by the negligence of Landlord or its agents, employees or contractors.

17.4 Contractor Insurance

It is the responsibility of each party hereto to ensure that each third party contractor and subcontractor (including the Architect, Engineer, and Contractor) it uses for any improvements or alterations to be performed by such party under this Lease (including, but not limited to, the Lobby Work, the Additional Work, and any Alterations) procures and maintains commercially reasonable insurance policies prior to such contractor or subcontractor beginning any such work for or on behalf of such party. All such policies shall name the parties hereto as additional insureds and/or loss payees and include a waiver of any rights of subrogation in favor of the parties.

18. ACCESS BY LANDLORD

Landlord reserves for itself and any designated Agent the right to enter the Premises at all reasonable times and, except in cases of emergency (in which event Landlord shall give any reasonable notice), after giving City at least twenty four (24) hours' advance written or oral notice, for the purpose of (a) inspecting the Premises, (b) supplying any service to be provided by Landlord hereunder, (c) showing the Premises to any prospective purchasers, mortgagees or, during the last twelve (12) months of the Term of this Lease, tenants, (d) posting notices of non-responsibility, and (e) altering, improving or repairing the Premises pursuant to its obligations under this Lease, and Landlord may for that purpose erect, use and maintain

necessary structures in and through the Premises where reasonably required by the character of the work to be performed, provided that the entrance to the Premises shall not be blocked thereby, and further provided that City's use shall not be interfered with. Landlord may grant easements and create restrictions on or about the Premises, provided that any such easement or restriction is subordinate to this Lease and City's rights hereunder. At Landlord's request, City shall execute such instruments as may be necessary for Landlord to grant such subordinate easements or restrictions; provided such instruments are commercially reasonable and are approved as to form by City's Office of the City Attorney.

19. ESTOPPEL CERTIFICATES

Either party, from time to time during the Term upon not less than twenty (20) days' prior written notice from the other party, may reasonably request the other party to execute, acknowledge and deliver to such persons or entities designated by such other party a certificate stating: (a) the Commencement Date and Expiration Date of this Lease, (b) that this Lease is unmodified and in full force and effect (or, if there have been modifications, this the Lease is in full force and effect as modified and stating the modifications), (c) that there are no defaults under this Lease (or if so, specifying the same), and (d) the date to which Rent has been paid.

20. SURRENDER OF PREMISES

Upon the expiration or sooner termination of this Lease, City shall surrender the Premises to Landlord in good order and condition, reasonable use and wear and damage by fire or other casualty excepted. Within ten (10) days after the Expiration Date, City shall 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 pursuant to the provisions of Section 7.1 (Alterations by City), above. City shall repair or pay the cost of repairing any damage to the Premises or the Property resulting from such removal. Notwithstanding anything to the contrary in this Lease, City shall not be required to demolish or remove from the Premises any of the Leasehold Improvements. City's obligations under this Section shall survive the expiration or earlier termination of this Lease. All obligations of City hereunder not fully performed as of the termination of the Term shall survive the termination of the Term, including without limitation, indemnity obligations, and all City's maintenance obligations under this Lease.

21. HAZARDOUS MATERIALS

21.1 Definitions

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

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

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

naturally occurring substances on or about the Property; and petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids.

(c) "Release" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside the Premises, 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 actual knowledge as of the Commencement Date, Landlord has not received any written notice, except for those notices disclosed to, or known by, City, that (a) the Property is in violation of any Environmental Laws, (b) the Property is now, or has been, used for the manufacture, use, storage, discharge, deposit, transportation or disposal of any Hazardous Material, except for the use of such substances in such limited quantities as are customarily used in offices, which limited use has been and is in compliance with Environmental Laws, (c) the Property consists of any landfill or contain any underground storage tanks; (d) the Premises consists of any asbestos-containing materials or building materials that contain any other Hazardous Material or contains any lead-based paints; (e) there has been any Release of any Hazardous Material in the Premises or in, on, under or about the Property; and (f) the Property is subject to any claim by any governmental regulatory agency or third party related to the Release of any Hazardous Material, or there is any inquiry by any governmental agency (including, without limitation, the California Department of Toxic Substances Control or the Regional Water Quality Control Board) with respect to the presence of Hazardous Material in the Premises or in, on, under or about the Property, or the migration of Hazardous Material from or to other real property. If Landlord is required, by a government agency with jurisdiction thereto, to remediate any Release of Hazardous Material that occurred in the Land prior to November 9, 1992 (the date that City took possession of the Premises pursuant to the Prior Lease), Landlord shall perform such remediation at its sole cost. Landlord shall perform any such remediation in a manner that reasonably minimizes interference with City's use of the Premises pursuant to this Lease. If Landlord's performance of such remediation prevents City from using all or any portion of the Premises for its permitted uses, Base Rent shall be proportionately abated. For clarity, nothing in this Section 21.2 shall obligate Landlord to remediate any Hazardous Materials in the Building or any improvements on the Land.

21.3 City's Covenants

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

21.4 City's Environmental Indemnity

If City breaches its obligations contained in the preceding Section 21.4, or if City or its Agents cause the Release of Hazardous Material from, in, on or about the Premises or the Property, then City shall Indemnify Landlord against any and all Claims (including, without limitation, diminution in value of the Premises, loss of rental income from the Premises, removal, repair, corrective action, or cleanup expenses, removal or management of any asbestos brought into the Premises or disturbed in breach of the requirements of this Section, to the extent such removal or management is required by Environmental Laws), arising during or after the Term of this Lease as a result of such Release, except to the extent Landlord or its Agents is responsible for the Release. The foregoing Indemnity shall not include any Claims resulting

from the non-negligent aggravation by City, its Agents or Invitees of physical conditions of the Premises, or other parts of the Property, existing prior to City's occupancy. The obligations of City under this Section shall survive any termination of this Lease.

22. [Intentionally deleted]

23. GENERAL PROVISIONS

23.1 Notices

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

23.2 No Implied Waiver

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

23.3 Amendments

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

from the use authorized under Section 5.1 of this Lease, and (e) any other amendment or modification which materially increases City's liabilities or financial obligations under this Lease shall additionally require the approval of City's Board of Supervisors.

23.4 Authority

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

23.5 Parties and Their Agents; Approvals

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

23.6 Interpretation of Lease

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

23.7 Successors and Assigns

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

23.8 Brokers

Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the lease contemplated herein, except for the broker, if any, identified in the Basic Lease Information, whose commission, if any is due, shall be the sole responsibility of Landlord pursuant to a separate written agreement between Landlord and such broker, and City shall have no liability

therefor. In the event that any other broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes his claim shall be responsible for such commission or fee and shall Indemnify the other party from any and all Claims incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Lease.

23.9 Severability

If any provision of this Lease or the application thereof to any person, entity or circumstance shall be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Lease shall be valid and be enforceable to the full extent permitted by law, 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 shall be construed and enforced in accordance with the laws of the State of California and the City's Charter.

23.11 Entire Agreement

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

23.12 Attorneys' Fees

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

23.13 Holding Over

Should City hold over in possession of the Premises after the expiration of the Term with Landlord's consent, such holding over shall not be deemed to extend the Term or renew this Lease, but such tenancy thereafter shall continue as a month-to-month tenancy. Such tenancy shall be on all the terms and conditions set forth in this Lease and at the monthly Base Rent in effect during the last month of the Term of this Lease or such other rental as Landlord and City may mutually agree in writing as a condition to Landlord's consent to such holding over, and City shall continue as a month-to-month tenant until the tenancy shall be terminated by Landlord giving City or City giving Landlord at least thirty (30) days' prior written notice of termination. Should City hold over without Landlord's consent, the rent payable by City during the period of such holding over shall be one hundred fifty percent (150%) of the monthly Base Rent in effect during the last month of the Term of this Lease, and such tenancy shall otherwise be on the terms and conditions contained herein. All other payments shall continue under the terms of this Lease. In addition, City shall be liable for all damages incurred by Landlord as a result of such holding over without Landlord's consent. No holding over by City, whether with or without consent of Landlord, shall operate to extend this Lease except as otherwise expressly provided, and this Section shall not be construed as consent for City to retain possession of the Premises beyond such month to month holdover occupancy.

23.14 Cumulative Remedies

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

23.15 Time of Essence

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

23.16 Survival of Indemnities

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

23.17 Signs

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

23.18 Quiet Enjoyment and Title

Landlord covenants and represents that it has full right, power and authority to grant the leasehold estate hereunder, and covenants that City, upon paying the Rent hereunder and performing the covenants hereof, shall, subject to the terms of this Lease, peaceably and quietly have, hold and enjoy the Premises and all appurtenances during the full Term of this Lease as

against all persons or entities claiming by and through Landlord or on account of any action, inaction or agreement of Landlord or its Agents. Without limiting the provisions of Section 16.2 (Landlord's Indemnity), Landlord agrees to Indemnify City and its Agents against Claims arising out of any breach of Landlord's foregoing covenant and representation 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. Landlord and City agree that City's leasehold estate created hereby includes, without limitation, all rights to receive and enjoy all services, facilities and amenities of the Premises and the Property as provided herein, and that if any of such services, facilities or amenities are terminated, or materially limited or restricted on account of any such case or proceeding, or for any other reason, City shall have the right to (a) contract directly with any third-party provider of such services, facilities or amenities to obtain the same, and (b) offset against the Base Rent or other charges payable hereunder any and all reasonable costs and expenses incurred by City in obtaining such services, facilities or amenities.

23.20 Transfer of Landlord's Interest

Landlord shall have the right to transfer its interest in the Property, the Premises or this Lease to any other financially responsible person or entity. In the event of any such transfer, Landlord shall be relieved, upon notice to City of the name and address of Landlord's successor, of any obligations accruing hereunder from and after the date of such transfer and upon delivering to City an express assumption by the transferee of all of Landlord's obligations hereunder. All obligations of Landlord under this Lease will be binding upon Landlord only during the period of its ownership of the Premises and not thereafter, except for any monetary obligations to City incurred by Landlord pursuant to this Lease incurred during such ownership, to the extent such monetary obligation is not fully discharged during such ownership. The term "Landlord" in this Lease shall mean only the owner, for the time being of the Premises, and in the event of the transfer by such owner of its interest in the Premises, such owner shall thereupon be released and discharged from all obligations of Landlord thereafter accruing (except for any monetary obligations to City incurred by Landlord pursuant to this Lease incurred during such ownership, to the extent such monetary obligation is not fully discharged during such ownership), but such obligations shall be binding during the Term upon each new owner of the Premises for the duration of such owner's ownership.

23.21 Non-Liability of City Officials, Employees and Agents

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

23.22 MacBride Principles - Northern Ireland

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

understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

23.23 Controller's Certification of Funds

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

23.24 Prevailing Wages for Construction Work

Landlord agrees that any person performing labor in the construction of the Leasehold Improvements or other improvements to the Premises, which Landlord provides under this Lease, shall be paid not less than the highest prevailing rate of wages as required by Section 6.22(E) of the San Francisco Administrative Code, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco County. Landlord shall include, in any contract for construction of such Leasehold Improvements or other improvements to the Premises, a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Landlord shall require any contractor to provide, and shall deliver to City upon request, certified payroll reports with respect to all persons performing labor in the construction of any Leasehold Improvements or other improvements to the Premises.

23.25 Non Discrimination in City Contracts and Benefits Ordinance

(a) Covenant Not to Discriminate

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

(b) Subcontracts

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

(c) Non-Discrimination in Benefits

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

(d) HRC Form

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

(e) Incorporation of Administrative Code Provisions by Reference

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

23.26 Tropical Hardwood and Virgin Redwood Ban

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

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

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

23.27 Bicycle Parking Facilities

Article 1.5 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 may install the Class 1 Bicycle Parking Spaces and Class 2 Bicycle Parking Spaces (both as defined in Planning Code) required of City under the Planning Code, which installations shall be part of City's Personal Property. Landlord shall, at no cost to Landlord, reasonably cooperate with City regarding the installation and location of such parking spaces in City's compliance with such requirements of the Planning Code.

23.28 Resource-Efficient City Buildings

Landlord acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 713 relating to green building requirements for the design, construction, and operation of buildings owned or leased by City. Landlord hereby agrees that it shall comply with all applicable provisions of such code sections to the extent applicable to Landlord's performance of the Additional Work (which shall exclude the Lobby Improvements). The cost of that compliance shall be included in the Construction Budget.

23.29 Counterparts

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

23.30 Effective Date

The date on which this Lease shall become effective (the "**Effective Date**") is the date upon which (a) City's Mayor and Board of Supervisors, in their sole and absolute discretion, adopt a resolution approving this Lease in accordance with all applicable laws and (b) this Lease is duly executed by the parties hereto.

23.31 Certification by Landlord

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

23.32 Sunshine Ordinance

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

23.33 Conflicts of Interest

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

23.34 Notification of Limitations on Contributions

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

23.35 Preservative-Treated Wood Containing Arsenic

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

23.36 Cooperative Drafting

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

23.37 Force Majeure

Neither Landlord nor City shall be held responsible for delays in the performance of its obligations hereunder when caused by strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental restrictions, governmental regulations, governmental controls, delay in issuance of permits, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of such party ("Force Majeure"). "Force Majeure" shall not include any performance delays resulting from a party's failure to timely pay its monetary obligations.

23.38 Exhibits

All exhibits attached hereto are hereby incorporated into this Lease and made a part hereof. In the event of any conflict between such exhibits and the terms of this Lease, such exhibits shall control.

23.39 AB 1103

If City is billed directly by a public utility with respect to City's electrical usage at the Premises, upon request from time to time, City shall provide electrical utility usage for the Premises to Landlord for the period of time requested by Landlord (in electronic or paper format) or, at Landlord's option, provide any written authorization or other documentation required for Landlord to request information regarding City's electricity usage with respect to the Premises directly from the applicable utility company. Furthermore, City will cooperate with Landlord in connection with any energy saving programs, provided such cooperation will not impose additional costs on City or interfere with City's use of the Premises pursuant to this Lease.

Landlord may be required to disclose certain information concerning the energy performance of the Premises pursuant to California Public Resources Code Section 25402.10 and the regulations adopted pursuant thereto (collectively the "Energy Disclosure Requirements"). City has been in possession of the Premises since November 9, 1992, and during that occupancy has obtained electrical service directly from the public utility and possesses all of the information necessary for the creation of, or that would be disclosed by, a Data Verification Checklist, as defined in the Energy Disclosure Requirements (the "Energy Disclosure Information"). Because the information required to create the Energy Disclosure Information is in the possession and control of City, Landlord has not been able to create the Energy Disclosure Information prior to the execution and delivery of this Lease. If and to the extent not prohibited by applicable law, City hereby waives any right City may have to receive the Energy Disclosure Information, including, without limitation, any right City may have to terminate the Lease as a result of Landlord's failure to disclose such information. Further, City hereby releases Landlord from any and all losses, costs, damages, expenses and/or liabilities relating to, arising out of and/or resulting from the Energy Disclosure Requirements, including, without limitation, any liabilities arising as a result of Landlord's failure to disclose the Energy Disclosure Information to City prior to the execution of this Lease. City hereby agrees to disclose to Landlord the electrical usage information necessary to create the Energy Disclosure Information no later than City's execution and delivery of this Lease and Landlord agrees to diligently seek to obtain the Energy Disclosure Information and provide it to City within 90 days thereafter.

23.40 Civil Code Section 1938

Pursuant to California Civil Code Section 1938, City is hereby notified that, as of the date hereof, the Property has not undergone an inspection by a "Certified Access Specialist."

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, LANDLORD ACKNOWLEDGES AND AGREES THAT NO OFFICER OR

EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY HERETO UNLESS AND UNTIL CITY'S BOARD OF SUPERVISORS SHALL HAVE DULY ADOPTED A RESOLUTION APPROVING THIS LEASE AND AUTHORIZING CONSUMMATION OF THE TRANSACTION CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON ADOPTION OF SUCH A RESOLUTION, AND THIS LEASE SHALL BE NULL AND VOID UNLESS CITY'S MAYOR AND BOARD OF SUPERVISORS APPROVE THIS LEASE, IN THEIR RESPECTIVE SOLE AND ABSOLUTE DISCRETION, AND IN ACCORDANCE WITH ALL APPLICABLE LAWS. APPROVAL OF THIS LEASE BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ADOPTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

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

LANDLORD:

SAN FRANCISCO UNIFIED SCHOOL DISTRICT,
a political subdivision of the State of California

By: Joseph C. Scarioli
Its: Chief Financial Officer

Date: June 16th, 2014

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
JOHN UPDIKE
Director of Property

Date: _____

RECOMMENDED:

Trent Rhorer, Executive Director
Human Services Agency

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

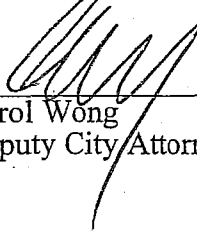
By: 
Carol Wong
Deputy City Attorney

EXHIBIT A

LEGAL DESCRIPTION OF LAND

All that certain real property situated in the City and County of San Francisco, State of California, described as follows:

PARCEL ONE:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHEASTERLY LINE OF MISSION STREET AND THE SOUTHWESTERLY LINE OF EIGHTH STREET; RUNNING THENCE SOUTHWESTERLY, ALONG SAID LINE OF MISSION STREET 100 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 80 FEET; THENCE AT A RIGHT ANGLE NORTHEASTERLY 100 FEET TO THE SOUTHWESTERLY LINE OF EIGHTH STREET; THENCE NORTHWESTERLY ALONG SAID LINE OF EIGHTH STREET 80 FEET TO THE POINT OF BEGINNING.

BEING PART OF VARA BLOCK NO. 415.

Assessors Lot 001, Block 3728

PARCEL TWO:

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF MISSION STREET, DISTANT THEREON 100 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF EIGHTH STREET; RUNNING THENCE SOUTHWESTERLY ALONG SAID LINE OF MISSION STREET 25 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 80 FEET; THENCE AT A RIGHT ANGLE NORTHEASTERLY 25 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 80 FEET TO THE POINT OF BEGINNING.

BEING PART OF 100 VARA BLOCK NO. 415.

Assessors Lot 083, Block 3728

PARCEL THREE:

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF MISSION STREET, DISTANT THEREON 175 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF EIGHTH STREET; RUNNING THENCE SOUTHWESTERLY ALONG SAID LINE OF MISSION STREET 1.79 FEET AND 5-1/8 INCHES TO A POINT DISTANT THEREON 195 FEET AND 6-7/8 INCHES NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF NINTH STREET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 80 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 6-7/8 INCHES; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 80 FEET TO THE NORTHWESTERLY LINE OF MINNA STREET THENCE NORTHEASTERLY ALONG SAID LINE OF MINNA STREET 275 FEET TO A POINT DISTANT THEREON 80 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF EIGHTH STREET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 80 FEET

THENCE AT A RIGHT ANGLE SOUTHWESTERLY 95 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 80 FEET TO THE POINT OF BEGINNING.

BEING A PART OF 100 VARA BLOCK NO. 415.

Assessors Lot 089, Block 3728

PARCEL FOUR:

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF MISSION STREET, DISTANT THEREON 150 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF EIGHTH STREET; RUNNING THENCE SOUTHWESTERLY ALONG SAID LINE OF MISSION STREET 25 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 80 FEET; THENCE AT A RIGHT ANGLE NORTHEASTERLY 25 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 80 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK NO. 415.

Assessors Lot 081, Block 3728

EXHIBIT B

NOTICE OF COMMENCEMENT DATE

[Date]

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

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

Dear Mr. Updike:

This letter will confirm that for all purposes of the Lease, the Commencement Date (as defined in Section 3.2 of the Lease) is _____, 20__.

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

Very truly yours,

By: _____
Title: _____

Accepted and Agreed:

By: _____
John Updike
Director of Property

Dated: _____

EXHIBIT C

DETERMINATION OF FAIR MARKET RENT

1. The Fair Market Rent of the Premises (or applicable portion thereof) shall be the amount that a willing, comparable, new (i.e., non-renewal), non-equity tenant would pay, and that a willing landlord of a comparable space in the vicinity of the Building would accept at arms' length. Appropriate consideration shall be given to (A) the annual rental rate per rentable square foot; (B) the definition of rentable square feet for purposes of comparing the rate; (C) location, quality and age of the Building; (D) the financial condition (e.g., creditworthiness) of Tenant; (E) escalation (including type, base year and stop) and abatement provisions reflecting tree rent and/or no rent during the period of construction; (F) brokerage commissions, if any; (G) length of the new lease term; (H) size and location (including floor level) of the Premises; (I) building standard work letter and/or tenant improvement allowance, if any; provided, however, the Fair Market Rent shall not include any tenant improvements or any alterations made by Tenant; (J) condition of space; (K) lease takeover / assumptions; (L) moving expenses and other concessions; (M) extent of services to be provided; (N) distinctions between "gross" and "net" leases; (O) base year figures or expense stops for escalation purposes for both operating costs and ad valorem/real estate taxes; (P) the time the particular rental rate under consideration becomes or is to become effective; (Q) applicable caps on the amount of real estate taxes and assessments passed through to tenants; and (R) other generally applicable conditions of tenancy for the space in question. Tenant shall obtain the same rent and other benefits that Landlord would otherwise give to any comparable prospective tenant.

2. The final determination of Fair Market Rent shall be as provided this Section 2.

(a) Negotiated Agreement. Landlord and Tenant shall diligently attempt in good faith to agree on the Fair Market Rent on or before the date (the "Outside Agreement Date") that is five (5) months prior to the date upon which the applicable Extended Term is to commence.

(b) Parties' Separate Determinations. If Landlord and Tenant fail to reach agreement on or before the Outside Agreement Date, Landlord and Tenant shall each make a separate determination of the Fair Market Rent and notify the other party of this determination within five (5) days after the Outside Agreement Date.

(i) Two Determinations. If each party makes a timely determination of the Fair Market Rent, those determinations shall be submitted to arbitration in accordance with subsection (c).

(ii) One Determination. If Landlord or Tenant fails to make a determination of the Fair Market Rent within the five-day period, that failure shall be conclusively considered to be that party's approval of the Fair Market Rent submitted within the five-day period by the other party.

(c) Arbitration. If both parties make timely individual determinations of the Fair Market Rent under subsection (b), the Fair Market Rent shall be determined by arbitration under this subsection (c).

(i) Scope of Arbitration. The determination of the arbitrators shall be limited to the sole issue of whether Landlord's or Tenant's submitted Fair Market Rent is the closest to the actual Fair Market Rent as determined by the arbitrators, taking into account the requirements of Section 1.

(ii) Qualifications of Arbitrator(s). The arbitrators must be licensed real estate brokers who have been active in the leasing of commercial multi-story properties in the Market Area over the five-year period ending on the date of their appointment as arbitrator(s).

(iii) Parties' Appointment of Arbitrators. Within fifteen (15) days after the Outside Agreement Date, Landlord and Tenant shall each appoint one arbitrator and notify the other party of the arbitrator's name and business address.

(iv) Appointment of Third Arbitrator. If each party timely appoints an arbitrator, the two (2) arbitrators shall, within ten (10) days after the appointment of the second arbitrator, agree on and appoint a third arbitrator (who shall be qualified under the same criteria set forth above for qualification of the initial two (2) arbitrators) and provide notice to Landlord and Tenant of the arbitrator's name and business address.

(v) Arbitrators' Decision. Within thirty (30) days after the appointment of the third arbitrator, the three (3) arbitrators shall decide whether the parties will use Landlord's or Tenant's submitted Fair Market Rent and shall notify Landlord and Tenant of their decision. The decision of the majority the three (3) arbitrators shall be binding on Landlord and Tenant.

(vi) If Only One Arbitrator is Appointed. If either Landlord or Tenant fails to appoint an arbitrator within fifteen (15) days after the Outside Agreement Date, the arbitrator timely appointed by one of them shall reach a decision and notify Landlord and Tenant of that decision within thirty (30) days after the arbitrator's appointment. The arbitrator's decision shall be binding on Landlord and Tenant.

(vii) If Only Two Arbitrators Are Appointed. If each party appoints an arbitrator in a timely manner, but the two (2) arbitrators fail to agree on and appoint a third arbitrator within the required period, the arbitrators shall be dismissed without delay and the issue of Fair Market Rent shall be submitted to binding arbitration under the real estate arbitration rules of JAMS, subject to the provisions of this section.

(viii) If No Arbitrator Is Appointed. If Landlord and Tenant each fail to appoint an arbitrator in a timely manner, the matter to be decided shall be submitted without delay to binding arbitration under the real estate arbitration rules of JAMS subject the provisions of this Section 2(c).

(ix) Cost of Arbitration. The cost of the arbitration shall be paid by the party whose submitted Fair Market Rent is not selected by the arbitrators.

EXHIBIT D

LOBBY WORK SCHEDULE AND BUDGET

(See Attached)

1235 Mission Lobby Remodel September 2013 thru October 2014

Project Budget

William Duff Arch

architectural fees, Drawings, permits, Job oversight.

KLW Construction

Demo phase 1,2,3 and abatement

Build pony walls & temporary walls

Build concrete ramp in back area

Concrete floor stain

Electrical work

Plumbing work

HVAC work

Store Front window assembly(estimate)

Toilet Partitions

Painting

Tile work for bathrooms

Exterior Manual Roll up door

Ceiling Accoustical treatment

Profit/Overhead 15%

Sound system, security door locks, video monitors, lobby furnishings by Human Services Agency

5/15/2014

\$ 1,300,000.00

\$ 134,303.74

\$ 921,725.00

\$ 76,000.00

\$ 52,000.00

\$ 42,000.00

\$ 61,500.00

\$ 75,000.00

\$ 85,000.00

\$ 145,000.00

\$ 45,000.00

\$ 22,000.00

\$ 78,000.00

\$ 80,000.00

\$ 22,000.00

\$ 18,000.00

\$ 120,225.00

\$ 243,971.00

1235 Mission Street Lobby Remodel Project Schedule

<u>Month</u>	<u>Task</u>	<u>Lead</u>
September-13*	Demolition	KLW
October-13*	Remediation of floor HazMat	KLW
October-13*	Build pony walls rough framing	KLW
November-13*	Concrete work new ADA ramp	KLW
December-13*	Electrical mods/data wiring	KLW/DT
January-14*	Prep Floors for Staining/Paint overhead	KLW
February-14*	Storefront entrance Minna Street overhead lighting	KLW
March-14*	Metal sheathing /granite work	KLW
April-14*	waiting Planning for Minna St exit	Dept of Planning
May-14*	Finish service counters/final finish roll-up door/install phones/modular furnishings/lobby furniture	KLW
June-14*	Phase 1 Lobby open to public	KLW/HAS
July-14*	Phase 2 lobby demo and build out	KLW
August-14*	Painting and flooring	KLW
September-14*	Restrooms	KLW
October -14*	Furnishings/Final Inpsections Open to Public	KLW

<u>Completion Date</u>	<u>STATUS</u>
------------------------	---------------

14-Oct-13	Complete
6-Nov-13	Complete
30-Nov-13	Complete
10-Dec-13	Complete
18-Jan-14	Complete
7-Feb-14	Complete
27-Feb-14	Complete
17-Mar-14	Complete
22-Apr-14	Complete
23-May-14	Complete
16-Jun-14	On-Sched
24-Jul-14	
18-Aug-14	
10-Sep-14	
15-Oct-14	

Print Form

Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion, or Charter Amendment)
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning "Supervisor [] inquires"
- 5. City Attorney request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No. []
- 9. Reactivate File No. []
- 10. Question(s) submitted for Mayoral Appearance before the BOS on []

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission Youth Commission Ethics Commission
- Planning Commission Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative Form.

Sponsor(s):

Supervisor Kim, Mayor

Subject:

Lease Agreement of Real Property with San Francisco Unified School District at 1235 Mission Street

The text is listed below or attached:

See attached.

Signature of Sponsoring Supervisor: 

For Clerk's Use Only:

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

City Elective Officer Information <i>(Please print clearly.)</i>	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors
Contractor Information <i>(Please print clearly.)</i>	
Name of contractor: San Francisco Unified School District	
<i>Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.</i>	
Board Members: Sandra Lee Fewer, President; Emily Murase, Vice-President; Rachel Norton, Sandra Lee Fewer, Kim-Shree Maufas, Hydra Mendoza-McDonnell, Jill Wynns, Matt Haney Superintendent: Richard Carranza, Deputy Superintendent of Operations: Myong Leigh	
Contractor address: 555 Franklin Street, San Francisco, CA 94102	
Date that contract was approved: <i>(By the SF Board of Supervisors)</i>	Amount of contract: \$30,400,000 (for entire lease term)
Describe the nature of the contract that was approved: Lease Agreement for 1235 Mission Street	
Comments:	

This contract was approved by (check applicable):

the City elective officer(s) identified on this form

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

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

Print Name of Board

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

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

Date Signed

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

Date Signed

<p>Item 15 File 14-0784</p>	<p>Department: Human Services Agency</p>
<p>EXECUTIVE SUMMARY</p>	
<p style="text-align: center;">Legislative Objective</p>	
<ul style="list-style-type: none"> • The proposed resolution will retroactively authorize a new lease agreement between San Francisco Unified School District as the landlord and the Human Services Agency as tenant to occupy the building at 1235 Mission Street from July 1, 2014 through on April 30, 2026. The lease includes the option for two five-year lease extensions through April 30, 2036 at a rent of 95% of fair market rent. 	
<p style="text-align: center;">Key Points</p>	
<ul style="list-style-type: none"> • The Human Services Agency (HSA) has occupied 1235 Mission Street since 1993, which is HSA's main office for the County Adult Assistance Program and for the CalFresh Food Stamps Program. The original lease between HSA and the San Francisco Unified School District (SFUSD) was for ten years through August 31, 2003, which was subsequently extended for two five-year extensions, terminating on August 31, 2013. • When the Board of Supervisors retroactively approved the second five-year extension in 2012, the Real Estate Division reported that they had already begun discussions with SFUSD on the terms of a new lease to begin in September 2013. According to the Real Estate Division, the Real Estate Division and SFUSD were unable to reach agreement on the necessary tenant improvements to the space by September 2013, and therefore, HSA has continued to occupy the space in holdover status from September 2013 to June 2014. HSA began renovations to the lobby of 1235 Mission Street in September 2013 at an estimated cost to HSA of \$1.3 million, which according to Mr. John Updike, Director of Real Estate, was possible because the City Attorney's Office had informed the Real Estate Division that HSA had a valid leasehold for 1235 Mission Street. 	
<p style="text-align: center;">Fiscal Impact</p>	
<ul style="list-style-type: none"> • Under the proposed lease, HSA will pay base rent in FY 2014-15 of \$2,592,172 plus a one-time payment of \$232,706 for total first year rent of \$2,824,878. • Base rent increases by \$1.25 per square foot every two years through FY 2023-24 and by \$1.50 per square foot for the two-year period from FY 2024-25 and FY 2025-26. • Sources of funds for the lease payments are 79% General Fund and 21% state and federal funds from the CalWORKS, MediCAL, and CalFresh programs. • In the first three years of the lease, SFUSD and HSA will also spend up to \$6,000,000 on capital improvements at 1235 Mission Street. SFUSD will contribute up to \$3,500,000 and HSA will contribute up to \$2,500,000. 	
<p style="text-align: center;">Recommendation</p>	
<ul style="list-style-type: none"> • Approve the proposed resolution. 	

MANDATE STATEMENT

Administrative code section 23.27 requires that leases in which the City is a tenant must be approved by resolution of the Board of Supervisors.

BACKGROUND

In 1993 the Human Services Agency (HSA), as tenant, entered into a 10-year lease with San Francisco Unified School District (SFUSD), as landlord, for 117,826 square feet of office space at 1235 Mission Street; which ended on June 30, 2003 (Resolution 20-92). The lease for 1235 Mission Street was subsequently extended for five years in 2003 (Resolution 404-03) and another five years in 2012 (Resolution 342-12) ending on August 31, 2013¹. The building at 1235 Mission Street is HSA's main office for the HSA County Adult Assistance Program and for the CalFresh Food Stamps Program.

According to the Budget and Legislative Analyst's September 19, 2012 report on the prior lease (File 12-0885), the Real Estate Division had already begun discussions with SFUSD on the new lease at that time. According to Mr. John Updike, Director of Real Estate, the Real Estate Division and SFUSD were not able to agree to new lease terms by the August 31, 2013 expiration of the prior lease due to the need for significant tenant improvements.² HSA continued to occupy the space from September 1, 2013 through June 30, 2014 on hold-over status,³ and paid a base rent of \$177,230 per month for use of 1235 Mission Street, which was the rent at the date of the lease termination.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would retroactively authorize a new lease between the San Francisco Unified School District as the landlord and the Human Services Agency as tenant to occupy the building at 1235 Mission Street for a term of 11 years and 10 months, from July 1, 2014 through April 30, 2026. The lease includes options for two five-year extensions through April 30, 2036 at a rent of 95% of fair market rent as determined by the Real Estate Division.

The terms of the proposed lease are summarized in Table 1 below.

¹ In 2012 the Board of Supervisors approved a retroactive five-year extension of the lease through August 31, 2013.

² SFUSD acquired title to the property on September 1, 2013. Prior to that date, the property was held by Encore Bank, N.A. until SFUSD's debt to acquire the property was paid in full.

³ According to Mr. Updike, the City continued to have a valid leasehold during the holdover period.

Table 1: Summary of Lease Terms

Provision	Lease Terms
Square Feet	117,826
Term	July 1, 2014 through April 30, 2026
Rent per Square Foot per Year	\$22 per square foot
First Year Base Rent	\$2,592,172 (\$216,014 monthly)
One-Time Additional Payment	\$232,706
Total First Year Rent	\$2,824,878 Effective rate agreement (\$23.98 per square foot)
Rent Increase	\$1.25 per square foot ever 2 years (see Fiscal Impact Section below)
Options to Extend	Two 5-year options through April 30, 2036
Rent under Options to Extend	95% of Fair Market Value
Tenant Improvements Paid by City	Up to \$2,500,000
Tenant Improvements Paid by Landlord	Up to \$3,500,000
Total Tenant Improvements	Up to \$6,000,000
Utilities, Janitorial, Security	Paid by City
Real Estate Taxes	Paid by City

Source: Proposed Lease Agreement

FISCAL IMPACT

Under the proposed lease, HSA will pay base rent in FY 2014-15 of \$2,592,172 (\$216,014 monthly) plus a one-time payment of \$232,706 for total first year rent of \$2,824,878. The base rent increases by \$1.25 per square foot every two years through FY 2023-24 and by \$1.50 per square foot for the two-year period from FY 2024-25 and FY 2025-26. Total rent over the ten-year term is \$35,256,485, as shown in Table 2 below.

Table 2: Base Rent Paid by HSA to SFUSD for 117, 826 Square Feet

Year	Rent per Square Foot per Year	Increase	Total
FY 2014-15	\$22.00	n/a	\$2,592,172
One-time	n/a	n/a	232,706
Subtotal, FY 2014-15			2,824,878
FY 2015-16	\$22.00	\$0.00	2,592,172
FY 2016-17	\$23.25	\$1.25	2,739,455
FY 2017-18	\$23.25	\$0.00	2,739,455
FY 2018-19	\$24.50	\$1.25	2,886,737
FY 2019-20	\$24.50	\$0.00	2,886,737
FY 2020-21	\$25.75	\$1.25	3,034,020
FY 2021-22	\$25.75	\$0.00	3,034,020
FY 2022-23	\$27.00	\$1.25	3,181,302
FY 2023-24	\$27.00	\$0.00	3,181,302
FY 2024-25	\$28.50	\$1.50	3,358,041
FY 2025-26 (10 months)	\$28.50	\$0.00	2,798,368
Total			\$35,256,485

Source: Proposed Lease Agreement

According to Mr. John Updike, Director of Real Estate, first year base rent of \$22.00 per square foot represents fair market value based on evaluation of the market data.

Sources of funds for the proposed lease are HSA General Funds (79% of the base rent or \$2,047,816 in FY 2014-15) and CalWORKS, MediCAL, and CalFresh funds (21% of the base rent or \$544,356 in FY 2014-15). According to Mr. David Curto, HSA Director of Contracts, the State and Federal funding for CalWORKS, MediCAL, and CalFresh are anticipated to be available throughout the course of the lease and will cover the same proportion of the base rent each lease year.

The City will also pay a one-time rental payment to SFUSD of \$232,706 to compensate for the reduced base rent HSA paid during negotiations from September 1, 2013 through June 30, 2014. During the 10 month negotiations, HSA paid \$177,230 per month approximately \$1.50 per square foot per month (equivalent to \$18.05 per square foot per year). The one-time rental payment of \$232,706 adds approximately \$0.20 per square foot per month for total rent of \$1.70 per square foot per month (equivalent to approximately \$20.42 per square foot per year).

In the first three years of the lease, SFUSD and HSA will also spend up to \$6,000,000 on capital improvements at 1235 Mission Street. SFUSD will contribute up to \$3,500,000 and HSA will contribute up to \$2,500,000 to:

- Remodel the lobby.
- Upgrade electrical systems and the redistribution of power throughout the building.
- Upgrade the heating, ventilation, and air conditioning systems.
- Upgrade plumbing to include new water conservation toilets and sinks.
- Re-roof the building.

According to Mr. Curto, \$2.5 million in funds to pay the tenant improvements were appropriated by the Board of Supervisors the Department's FY 2013-14 budget (\$1.5 million) and FY 2014-15 and FY 2015-16 budgets (\$1.0 million).

HSA began the remodel of the lobby for 1235 Mission Street in September 2013 with the expected completion of the lobby remodel by October 2014. According to Mr. Updike, although the new lease was not yet enacted when HSA began the lobby remodel, the City Attorney's Office considered that HSA has a valid leasehold interest for 1235 Mission Street in which to conduct the remodel. The lobby remodel will cost approximately \$1,300,000, which will be paid by the City.

According to the proposed lease, the City and SFUSD with use "good faith efforts" to mutually agree to the additional tenant improvements and the associated costs, of which the City is responsible to pay up to \$1,200,000 (total of \$2,500,000 in tenant improvement costs when combined with lobby work) and SFUSD is responsible to pay up to \$3,500,000.

The City's total first year costs of the proposed lease are \$4,124,878, as shown in Table 3 below.

Table 3: HSA's FY 2014-15 Costs under the Proposed Lease

Expenditures	FY 2014-15
Annual Base Rent	\$2,592,172
One-Time Payment	232,706
Rent Subtotal	\$2,824,878
Tenant Improvements	1,300,000
Total	\$4,124,878

RECOMMENDATION

Approve the proposed resolution.

