

File No. 16 0409

Committee Item No. 21

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance

Date September 7, 2016

Board of Supervisors Meeting

Date _____

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
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Completed by: Victor Young Date September 2, 2016

Completed by: _____ Date _____

1 [Real Property Lease - BC Capp, LLC - 165 Capp Street - \$240,500 Annual Base Rent]

2
3 **Resolution authorizing the lease of approximately 6,500 square feet at 165 Capp Street**
4 **with BC Capp, LLC, a California limited liability company, for a five year term**
5 **commencing upon approval by the Board of Supervisors and the Mayor, with two**
6 **options to extend for five years, at the monthly base rent of \$20,041.67 for a total**
7 **annual base rent of \$240,500.**

8
9 WHEREAS, The Human Services Agency (the "HSA") currently operates a
10 neighborhood homeless drop-in and referral center with administrative offices at 165 Capp
11 Street providing valuable services to the community since 2000; and

12 WHEREAS, The Real Estate Division on behalf of the HSA has negotiated a new lease
13 substantially the form on file with the Clerk of the Board of Supervisors in File No. 160409,
14 which is hereby declared to be a part of this resolution as if set forth fully herein (the "Lease")
15 to continue the HSA services at the site comprising approximately 6,500 square feet; and

16 WHEREAS, The term of the Lease shall be for five (5) years commencing upon
17 approval by the Board of Supervisors and Mayor; and

18 WHEREAS, The City shall have two (2) additional five (5) year option terms to extend
19 the Lease at 95% of the then prevailing fair market rent, subject to the enactment of a
20 resolution by the Board of Supervisors and the Mayor, in their respective sole and absolute
21 discretion, approving and authorizing the same; and

22 WHEREAS, The base monthly rent of \$20,041.67 is subject to annual adjustments of
23 three (3%) percent; and

24 WHEREAS, The City shall continue to pay for its janitorial, pest, debris, and utility costs
25 in addition to operating expenses estimated to be \$2,500 per year; now, therefore, be it

1 RESOLVED, That in accordance with the recommendation of the Director of the
2 Human Services Agency and the Director of Property, the Director of Property is hereby
3 authorized to take all actions, on behalf of the City and County of San Francisco as Tenant to
4 enter into the Lease; and, be it

5 FURTHER RESOLVED, The monthly base rent for the initial five year term shall be
6 \$20,041.67 (approximately \$3.08 per square foot), subject to annual adjustments of three
7 (3%) percent, exclusive of utilities, janitorial, pest and debris services and additional operating
8 expenses estimated to be \$2,500 per year; and, be it

9 FURTHER RESOLVED, The City shall have two (2) additional option terms of five (5)
10 years each at 95% of the then prevailing fair market rent subject to the enactment of a
11 resolution by the Board of Supervisors and the Mayor, in their respective sole and absolute
12 discretion, approving and authorizing the same; and, be it

13 FURTHER RESOLVED, The City agrees to indemnify, defend, and hold harmless
14 Landlord and its agents from and against any and all claims, costs, and expenses, including
15 without limitation, reasonable attorney fees, incurred as a result of (a) City's use of the
16 Premises, (b) any default by the City in the performance of any of its obligations under the
17 lease, or (c) any acts or omissions of City or its agents, in, on or about the Premises or the
18 property on which the Premises are located, provided however City shall not be obligated to
19 indemnify Landlord or its agents to the extent any claim, cost and expense arises out of
20 active gross negligence or willful misconduct of Landlord or its agents; and, be it

21 FURTHER RESOLVED, That any action heretofore taken by any City employee or
22 official with respect to the exercise of the lease as set forth herein is hereby approved,
23 confirmed and ratified; and, be it

24 FURTHER RESOLVED, The Board of Supervisors approves the lease in substantially
25 the form in the Board's File and authorizes the Director of Property to take all actions, on

1 behalf of City, to enter into any amendments or modifications (including without limitation, the
2 exhibits) to the lease on the terms and conditions herein and form approved by the City
3 Attorney that the Director of Property determines, in consultation with the City Attorney, are in
4 the best interest of the City, do not increase the rent or otherwise materially increase the
5 obligations or liabilities of the City, are necessary or advisable to effectuate the purposes of
6 the lease and are in compliance with all applicable laws, including City's Charter; and, be it

7 FURTHER RESOLVED, The City shall occupy the entire Premises for the full term of
8 the lease unless funds for the City's rental payments are not appropriated in any subsequent
9 fiscal year at which time City may terminate the lease with reasonable advance written notice
10 to Landlord. Such termination shall then be effective upon surrender of the Premises. Said
11 lease shall be subject to certification of funds by the Controller pursuant to Section 3.105 of
12 the Charter of the City and County of San Francisco; and, be it

13 FURTHER RESOLVED, That within thirty (30) days of the lease agreement being fully
14 executed by all parties the Director of Property shall provide a copy of the Lease agreement to
15 the Clerk of the Board to include into the official file.


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RECOMMENDED:

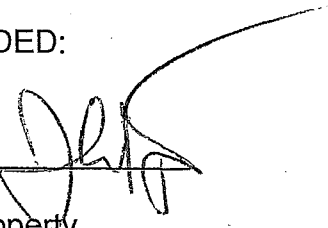
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Index Code No. 45HLOH


Controller
Fiscal Year 2015-2016

RECOMMENDED:


Trent Rhorer, Executive Director
Human Services Agency

RECOMMENDED:


John Updike
Director of Property
Real Estate Division

Item 21 File 16-0409	Department: Human Services Agency (HSA)
EXECUTIVE SUMMARY	
<p style="text-align: center;">Legislative Objectives</p> <p>The proposed resolution would approve a new lease between BC Capp, LLC, as landlord, and the City and County of San Francisco, as tenant. The initial term of the lease is five years, with two five-year options to extend and is for the continued use of the building located at 165 Capp Street as a homeless resource center.</p> <p style="text-align: center;">Key Points</p> <ul style="list-style-type: none"> • The proposed new lease is for the entire building of approximately 6,500 square feet located at 165 Capp Street, which currently serves as a neighborhood homeless drop-in and referral center. Responsibility for the neighborhood homeless drop-in and referral center and the lease would be transferred from the Human Services Agency (HSA) to the new Department of Homelessness and Supportive Housing. • The proposed lease has an estimated commencement date of August 1, 2016 with annual base rent of \$240,500 (\$37 per square foot per year) and increases of 3 percent per year, for a five-year term, ending in 2021. Two options to extend the lease may be exercised for five years each, with terms ending in 2026 and 2031. <p style="text-align: center;">Fiscal Impact</p> <ul style="list-style-type: none"> • The proposed new lease would expend \$1,276,847 in rent payments over the initial five-year term, and \$4,473,039 over the full fifteen-year term if both options to extend are exercised. • The Department of Homelessness & Supportive Housing's FY 2016-17 and FY 2017-18 budgets, approved by the Board of Supervisors in July 2016, include funds to pay for the proposed lease. <p style="text-align: center;">Recommendation</p> <ul style="list-style-type: none"> • Approve the proposed resolution. 	

MANDATE STATEMENT

San Francisco Administrative Code Section 23.37 states that leases on behalf of the City as tenant are subject to approval by the Board of Supervisors by resolution.

BACKGROUND

In 2000, the Board of Supervisors approved a ten-year lease for the 6,500 square-foot building at 165 Capp Street between the Human Services Agency (HSA) as tenant and BC Capp, LLC, as landlord. HSA uses the location as a homeless drop-in and referral center. HSA seeks to continue the location's use as a neighborhood homeless drop-in and referral center as well as administrative offices.

According to Ms. Claudine Venegas, Senior Real Property Officer at the City's Real Estate Division, upon expiration of the initial lease in December 2010, HSA continued as tenant on a month-to-month basis. Mr. Robert Walsh, HSA Contracts Manager, and Ms. Venegas both note that HSA did not commit to a new lease upon expiration of the original lease term and elected instead to continue month-to-month due to the uncertainty of General Fund appropriations to the homeless drop-in and referral center in HSA's annual budget. During the holdover period from December 2010 through June 2016, the rent paid by HSA remained unchanged from the annual rent of \$222,037 in 2010.¹

HSA requested in September 2015 that the Real Estate Division begin reviewing comparable properties and negotiate a new lease. According to Ms. Venegas, the Real Estate Division and HSA determined that the existing location at 165 Capp Street was the most suitable property for use as the homeless drop-in and referral center because (1) HSA had already spent approximately \$167,839 on significant renovations to the property, including installation of showers and medical exam rooms; and (2) the price per square foot under the proposed lease is less than comparable properties in the neighborhood.²

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve a new five-year lease, with two five-year options to extend, between the City, on behalf of the new Department of Homelessness and Supportive Housing, as tenant, and BC Capp, LLC, as landlord, for 6,500 square feet of space for the continued use as a homeless drop-in and referral center. Table 1 below summarizes the major provisions of the proposed new five-year lease.

¹ According to Ms. Venegas, the original lease allowed the landlord to increase the rent by 10 percent during the holdover period. If the lease were to remain in holdover status, the landlord requested a 10 percent increase, effective July 1, 2016, which would increase the rent to \$244,240.

² The monthly rent per square foot for 165 Capp Street under the proposed lease is approximately \$3.08, which is at the low end of the rent per square foot for eight locations in the neighborhood, which ranged from \$2.89 per square foot to \$4.58 per square foot. According to Ms. Venegas, only one of the eight locations was comparable in size to 165 Capp Street, and that location, which consisted of 7,400 square feet, had a monthly rent per square foot of \$4.58.

Table 1: Summary of the Major Lease Provisions	
Premises	Entire building comprising approximately 6,500 square feet
Permitted Use	Neighborhood homeless drop-in and referral center plus administrative office and incidental uses, provided the premises may not be used as a shelter for temporary or permanent housing
Initial Lease Term	Five (5) years, estimated commencement date of August 1, 2016 and end of July 31, 2021
Option to Extend	Two five-year options to extend through July 2031
First Year Rent	\$240,500
Rent per Square Foot	\$37 per year
Rent Increases in Initial Term	3% per year
Rent Adjustment on Exercise of Options to Extend	Rent will be set at 95% of the prevailing market rate
Utilities & Services	City will be responsible for costs of electricity, gas, telecommunications, and water utility services provided to the premises in addition to janitorial, pest, and debris services
Maintenance & Repairs	Landlord will be responsible for maintenance of the exterior and structural portions of the building and the building systems such as the heating, ventilating, air conditioning, plumbing, and electrical systems. City will be responsible for maintenance and repairs to the interior portions of the premises
Building Insurance	Landlord will obtain property insurance for the building and City will reimburse landlord up to \$2,500 per year for the insurance premium
Tenant Improvement Allowance	None

FISCAL IMPACT

HSA currently pays annual rent to BC Capp, LLC for 165 Capp Street of \$222,037, which would increase in the first year by 8.3 percent, or \$18,463 to \$240,500. According to Ms. Venegas, the 8.3 percent increase in rent is reasonable because (1) the landlord has not increased the rent since expiration of the original lease in December 2010, and (2) the rent represents fair market value.

The total rent payments for the initial five-year lease term are \$1,276,847, as shown in Table 2 below.

Table 2: Rent Costs for 165 Capp Street for the Initial Five-Year Lease Term

Lease Year	Rent Costs*
Lease Year 1	\$ 240,500
Lease Year 2	\$ 247,715
Lease Year 3	\$ 255,146
Lease Year 4	\$ 262,801
<u>Lease Year 5</u>	<u>\$ 270,685</u>
<i>Total five-year initial rent</i>	<i>\$ 1,276,847</i>

*Annual increases are 3% per year

The Department of Homelessness & Supportive Housing’s FY 2016-17 and FY 2017-18 budgets, approved by the Board of Supervisors in July 2016, include funds to pay for the proposed lease.

RECOMMENDATION

Approve the proposed resolution.

LEASE

between

BC CAPP, LLC
as Landlord

and

CITY AND COUNTY OF SAN FRANCISCO,
as Tenant

For the lease of
165 Capp Street,
San Francisco, California

February 25, 2016

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- EXHIBIT A – Floor Plan(s) of Premises
- EXHIBIT B – Notice of Commencement Date
- EXHIBIT C – Right of First Refusal

LEASE

THIS LEASE (this "Lease"), dated for reference purposes only as of February 25, 2016, is by and between BC CAPP, LLC, a California limited liability company ("Landlord"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City" or "Tenant").

Landlord and City hereby agree as follows:

1. BASIC LEASE INFORMATION

The following is a summary of basic lease information (the "Basic Lease Information"). Each item below 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:	February 25, 2016
Landlord:	BC CAPP, LLC
Tenant:	CITY AND COUNTY OF SAN FRANCISCO
Building (<u>Section 2.1</u>):	165 Capp Street, San Francisco, CA 94103
Premises (<u>Section 2.1</u>):	Entire Building comprising approximately 6,500 square feet
Rentable Area of Premises (<u>Section 2.1</u>):	Approximately 6,500 rentable square feet
Term (<u>Section 3</u>):	Estimated commencement date: April 1, 2016 Expiration date: Fifth (5 th) anniversary of Commencement Date
Extension Options (<u>Section 3.4</u>):	Two (2) additional terms of five (5) years (each), exercisable by City by notice to Landlord given not less than six (6) months in advance, with rent equal to 95% of prevailing market rate
Base Rent (<u>Section 4.1</u>):	Annual Base Rent: \$240,500.00 (\$37 per sq. ft.) Monthly payments: \$20,041.67 (\$3.08 per sq. ft.)
Adjustment Dates (<u>Section 4.2</u>):	Rent shall increase by three (3%) percent on each anniversary of the Commencement Date during the Initial Term.
Use (<u>Section 5.1</u>):	Neighborhood homeless drop-in and referral center plus administrative office and incidental

uses, provided the Premises may not be used as a shelter for temporary or permanent housing.

Landlord Leasehold Improvements (Section 6) None.

Utilities (Section 9.1):

Landlord shall furnish electrical, gas, telecommunication and water services to the Premises, and City shall pay directly or reimburse Landlord for the actual cost of the utility services pursuant to invoices provided by the applicable utility company. Said payments will include the standby fee payable to SF-Water for the fire sprinkler system.

Services (Section 9.2):

City shall provide for any janitorial and debris services it desires for the Premises at its sole cost.

Building Insurance (Section 17.2):

Landlord to obtain property insurance for the Building at its sole cost; provided that City shall reimburse Landlord up to \$2,500 per year for the premium of such insurance within thirty (30) days of receiving an invoice and proof of payment for such premium.

Notice Address of Landlord (Section 23.1):

Captmond Lau and Bonnie Lau
45 San Jacinto Way
San Francisco, CA 94127
lauclarence@hotmail.com

Key Contact for Landlord:

Clarence Lau

Landlord Contact Telephone No.:

415 810-7415

Notice Address for Tenant (Section 23.1):

Real Estate Division
25 Van Ness Avenue, Suite 400
San Francisco, California 94102
Attn: John Updike,
Director of Property
Re: 165 Capp St., SF, CA
Fax No.: (415) 552-9216

with a copy to:

Human Services Agency
170 Otis Street, 8th Floor San Francisco,
California 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: 165 Capp St., SF, CA
Fax No.: (415) 554-4757

Key Contact for Tenant:

David Curto
170 Otis Street, 8th Floor
San Francisco, California 94103

Tenant Contact Telephone No.:

(415) 557-5581

Alternate Contact for Tenant:

Cathy Perdue/Scot Walton

Alternate Contact Telephone No.:

(415) 557-6486/(415) 557-6445

Brokers (Section 23.8):

None

Other Noteworthy Provisions (Section 22):

Should Landlord decide to sell the Property during the Term, Landlord grants to City a First Right of Refusal to Purchase the Property.

2. PREMISES

2.1 Lease Premises

Landlord leases to City and City leases from Landlord, subject to the provisions of this Lease, the entire building identified in the Basic Lease Information (the "Building") and shown on the floor plan(s) attached hereto as Exhibit A (the "Premises"). The Premises contain the rentable area of the Building specified in the Basic Lease Information. The Building, land upon which the Building is located and all other improvements on or appurtenances to such land are referred to collectively as the "Property."

2.2 Disability Access

California Civil Code Section 1938 requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist ("CASp") to determine whether the property meets all applicable construction-related accessibility requirements. City is hereby advised that the Premises have not been inspected by a CASp.

3. TERM

3.1 Term of Lease

The Premises are leased for an initial term (the "Initial Term") commencing on the date the City's Mayor and Board of Supervisors have approved the transaction contemplated by this Lease, in their respective sole and absolute discretion, as further provided in this Lease. The Initial Term of this Lease shall end on the fifth (5th) anniversary of the Commencement Date 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), below. The word "Term" as used herein shall refer to the Initial Term and any Extended Term(s) if City exercises any of the Extension Options as provided below.

3.2 Commencement Date and Expiration Date

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

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, with Base Rent equal to 95% of prevailing market rate, as determined pursuant to Section 4.4. City may exercise the Extension Options, if at all, by giving written notice to Landlord no later than six (6) 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 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 notice of exercise is given.

3.4 Termination of 2001 Lease

Immediately prior to the Commencement Date, City leased the Premises from Landlord pursuant to a Lease between Landlord's predecessors in interest, Captmond Lau and Bonnie Lau, and City, dated as of January 1, 2001 (the "2001 Lease"). Upon the Commencement Date, Landlord and City agree that the 2001 Lease, and City's lease of the Premises under the 2001 Lease, shall automatically terminate as of 11:59 p.m. of the day immediately preceding the Commencement Date.

4. RENT

4.1 Initial Term Base Rent

Beginning on the Commencement Date, City shall pay to Landlord during the Initial Term the annual Base Rent specified in the Basic Lease Information (the "Base Rent"). 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 Adjustments in Initial Term Base Rent

On each date specified in the Basic Lease Information for the adjustment of Base Rent (an "Adjustment Date") during the Initial Term, the Base Rent payable under Section 4.1 shall be adjusted to equal one hundred three percent (103%) of the annual Base Rent payable for the twelve (12) month period immediately preceding such Adjustment Date.

4.3 Taxes; Additional Charges and Services

(a) Landlord shall, at its sole cost, pay all the real estate taxes applicable to the Building and Property, including any annual increases or any increases from any reassessments. City shall not be responsible for any increase in real estate taxes due to any reassessment resulting from Landlord's transfer or sale of the Property.

(b) City shall pay to Landlord any charges or other amounts required under this Lease as additional rent ("Additional Charges"). All such Additional Charges shall be payable to Landlord at the place where the Base Rent is payable. Landlord shall have the same remedies for a default in the payment of any Additional Charges as for a default in the payment of Base Rent. The Base Rent and Additional Charges are sometimes collectively referred to below as "Rent."

(c) City (acting through the Director of Property) reserves the right to request that Landlord perform, at City's cost, lease related services or incur additional expenses not covered under this Lease. If City requests any such additional services, Landlord and City shall agree in writing and in advance of any work, on the charges or amounts City shall reimburse Landlord for Landlord's performance of such work. If the parties do not agree upon such amount in writing, then Landlord shall not be required to perform the requested work. If the parties do agree on the amount in writing, then Landlord shall perform the requested work and City shall reimburse Landlord the agreed upon costs within thirty (30) days of Landlord's completion of the requested work and delivery of an invoice for the completed work, together with reasonable supporting documentation.

4.4 Extended Term Base Rent

At the commencement of an Extended Term, the Base Rent shall be adjusted to equal the prevailing market rate for space of comparable size and location to the Premises then being offered for rent in other buildings similar in age, location and quality to the Premises situated within the Mission District area of San Francisco ("Reference Area"); provided, however, in no event shall the Base Rent be reduced below the Base Rent for the lease year prior to commencement of such Extended Term. As used herein, the term "prevailing market rate" shall mean the base rental for such comparable space, taking into account (i) any additional rental and all other payments and escalations payable hereunder, (ii) floor location and size of the premises covered by leases of such comparable space, (iii) the duration of the renewal term and the term of such comparable leases, (iv) free rent given under such comparable leases and any other tenant concessions, and (v) building standard tenant improvement allowances and other allowances given under such comparable leases.

Within thirty (30) days following City's exercise of the Extension Option, Landlord shall notify City of Landlord's determination of the prevailing market rate for the Premises. If City disputes Landlord's determination of the prevailing market rate, City shall so notify Landlord within fourteen (14) days following Landlord's notice to City of the prevailing market rate and such dispute shall be resolved as follows:

(a) Within thirty (30) days following Landlord's notice to City of the prevailing market rate, Landlord and City shall attempt in good faith to meet no less than two (2) times, at a mutually agreeable time and place, to attempt to resolve any such disagreement.

(b) If within this thirty (30)-day period Landlord and City cannot reach agreement as to the prevailing market rate, they shall each select one appraiser [or commercial real estate broker] to determine the prevailing market rate. Each such appraiser shall arrive at a determination of the prevailing market rate and submit his or her conclusions to Landlord and

City within thirty (30) days of the expiration of the thirty (30) day consultation period described in (a) above.

(c) If only one appraisal is submitted within the requisite time period, it shall be deemed to be the prevailing market rate. If both appraisals are submitted within such time period, and if the two appraisals so submitted differ by less than ten percent (10%) of the higher of the two, then the average of the two shall be the prevailing market rate. If the two appraisals differ by more than ten percent (10%) of the higher of the two, then the two appraisers shall immediately select a third appraiser who will within thirty (30) days of his or her selection make a determination of the prevailing market rate and submit such determination to Landlord and City. This third appraisal will then be averaged with the closer of the two previous appraisals and the result shall be the prevailing market rate.

(d) If City's Director of Property does not approve of the prevailing market rate as determined by the appraisal procedure specified above, the Director of Property shall revoke the exercise of the Extension Option by City.

(e) All appraisers specified herein shall be "MAI" designated members of the Appraisal Institute with not less than five (5) years' experience appraising leases of commercial properties similar to the Premises in the Mission District area. Landlord and City shall pay the cost of the appraiser selected by such party and one-half of the cost of the third appraiser plus one-half of any other costs incurred in the arbitration.

4.5 Late Charges

Subject to the exceptions described in Section 15.1(a), if Base Rent is not received by the fifth (5th) business day following the due date for such payment, then City shall pay Landlord a late fee of five percent (5%) of the overdue amount.

5. USE

5.1 Permitted Use

City may use the Premises for general office uses 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.

5.2 Interference with Access

Landlord shall provide to City access to the Building and the Premises twenty-four (24) hours per day, seven (7) days per week, together with uninterrupted access thereto to the maximum extent possible, including, without limitation, during any power outages affecting the Premises or any portion of the Building; provided, however, that Landlord may, after consultation with the City's Administrator, interrupt City's access to the Premises or the Building in the event of an immediate threat of the Premises being rendered unsafe for human occupancy. If City's use of any of the Premises or access thereto is interrupted as a result of the Premises being rendered unsafe for human occupancy due to Landlord's failure to comply with its obligations under this Lease or for any other reason other than City's default hereunder, then Landlord shall immediately undertake all necessary steps to correct such condition. In the event such condition twenty-four (24) hours and impairs City's ability to carry on its business in the Premises, the Rent payable hereunder shall be abated based on the extent to which such default interferes with City's ability to carry on its business at the Premises. If any such default by Landlord shall continue for thirty (30) days or more after City's use is interrupted and impairs City's ability to carry on its business in the Premises, then City shall have the right, without limiting any of its other rights under this Lease to terminate this Lease, unless Landlord supplies

City with evidence reasonably satisfactory to City that City's normal and safe use will be restored within sixty (60) days of the date City's use was interrupted, and such use is actually restored within such 60-day period. Nothing in this Section shall limit City's rights with respect to any disruption due to casualty pursuant to Section 12 (Damage and Destruction) hereof.

6. LANDLORD LEASEHOLD IMPROVEMENTS

None; provided that Landlord has the repair and maintenance obligations specified in this Lease.

7. ALTERATIONS

7.1 Alterations by City

City shall not make or permit any alterations, installations, additions or improvements (collectively, "Alterations") to the Premises without first obtaining Landlord's written consent, which Landlord shall not unreasonably withhold or delay. However, the installation of furnishings, fixtures, equipment or decorative improvements, none of which affect the heating, ventilating, air conditioning, plumbing, electrical, fire protection, life safety, security and other mechanical, electrical and communications systems of the Building (collectively, the "Building Systems") or structural integrity of the Building, and the repainting and recarpeting of the Premises shall not constitute Alterations requiring Landlord's consent. Any Alterations permitted hereunder shall be made at City's cost in compliance with applicable Laws (as defined below). 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.

7.2 Title to Improvements

Except for City's Personal Property, all appurtenances, fixtures, improvements, equipment, additions and other property permanently installed in the Premises as of the Commencement Date or during the Term shall be and remain Landlord's property. City may not remove such property unless Landlord consents thereto.

7.3 City's Personal Property

All furniture, furnishings, equipment, trade fixtures and articles of movable personal property installed in the Premises by or for the account of City and that can be removed without structural damage to the Premises (collectively, "City's Personal Property") shall be and remain City's property. At any time during the Term or at the expiration thereof, City may remove any of City's Personal Property, provided City shall repair any damage to the Premises resulting therefrom. Upon the expiration or earlier termination of this Lease, City shall remove City's Personal Property from the Premises in accordance with Section 20 (Surrender of Premises), below. Landlord acknowledges that some of City's Personal Property may be financed by an equipment lease financing otherwise subjected to a security interest, or owned by an equipment company and leased to City. Landlord, upon City's reasonable request, shall execute and deliver any 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.

7.4 Alteration by Landlord

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

8. REPAIRS AND MAINTENANCE

8.1 Landlord's Repairs

Landlord shall repair and maintain, at its cost and in first-class condition, the exterior and structural portions of the Building, including, without limitation, the roof, foundation, bearing and exterior walls and subflooring, and the Building Systems. Landlord shall also repair and maintain, at its sole cost, the utility lines leading to the Building to the point of Building entry. Without limiting the foregoing, Landlord shall maintain the Building in a clean, safe and attractive manner and shall not disturb or interfere with City's use of the Premises or permit to be done in or about the Building anything that is illegal, is dangerous to persons or constitutes a nuisance. Notwithstanding the foregoing, Landlord shall not be responsible for maintaining the exterior paint on the Building. The Building shall be painted during the Term, if at all, by Tenant at Tenant's sole cost. Tenant shall be responsible for all repairs and maintenance of any item installed by Tenant and the leasehold improvements provided by Landlord pursuant to Section 6.1 of the Original Lease (the "Original Improvements").

8.2 City's Repairs

Subject to Landlord's warranty under Section 10.1 (Premises Condition), any construction warranties or guaranties received in connection with Landlord's completion of the Original Improvements, and Landlord's repair and maintenance obligations hereunder, City shall repair and maintain at its cost the interior portions 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 that Landlord specifies in writing (i) at City's cost, (ii) by contractors or mechanics selected by City and reasonably approved by Landlord, (iii) so that same shall be at least substantially equal in quality, value and utility to the original work or installation prior to damage thereof, (iv) in a manner and using equipment and materials that will not materially interfere with or impair the operations, use or occupation of the Building 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. At all times during the Term of this Lease, Landlord shall, upon reasonable notice by City, afford City and its Agents with access to those portions of the Building which are necessary to maintain or repair the telecommunications and data and computer cabling facilities and equipment installed by City.

8.3 Liens

City shall keep the Premises free from liens arising out of any work performed, material furnished or obligations incurred by City during the Term. Landlord shall have the right to post on the Premises any notices permitted or required by law or that are needed for the protection of Landlord, the Premises, or the Building, from mechanics' and material suppliers' liens. City

shall give Landlord at least ten (10) days' prior written notice of commencement of any repair or construction by City on the Premises.

9. UTILITIES AND SERVICES

9.1 Landlord's Provision of Utilities

Landlord agrees to furnish or cause to be furnished and maintained the utility lines as set forth in the Basic Lease Information. City shall pay the utility provider directly or reimburse Landlord for the actual charges of delivering the utilities pursuant to invoices or bills received from the applicable utility company. Any change to existing utilities as currently provided and listed below will be at the sole expense of City.

Existing Utility Services:

- Electrical: 200 amperes 120-208 volt 3 phase
- Water: 2" water line from street to meter
- Sewer: 4" sewer line from sewer main in street
- Telephone: 25 pair cable to distribution panel. Distribution from the lines provided from the street will be City's responsibility.
- Gas: 1" gas line from sewer main in street.

9.2 Janitorial and Pest Control Services

City shall provide, at its cost, janitorial and pest control services for the Premises desired by City in accordance with City's standard practice.

9.3 Conservation

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

9.4 Disruption in Essential Utilities or Services

In the event of any failure, stoppage or interruptions of any utilities resulting from Landlord's failure to maintain or repair the utility lines to the Building, Landlord shall diligently attempt to restore service as promptly as possible and shall keep City apprised of its efforts. If such failure or interruption impairs City's ability to carry on its business in the Premises, then the Rent shall be abated based on the extent such interruption impairs City's ability to carry on its business in the Premises. Such abatement shall continue until the utility lines have been restored. The foregoing provision shall apply unless the interruption is caused by City (i.e., sewer lines plugged as a result of City's improper use). If such failure continues for any reason for thirty (30) days or longer, then City may, without limiting any of its other rights or remedies hereunder at law or in equity, terminate this Lease upon written notice to Landlord, unless Landlord supplies City with evidence reasonable satisfactory to City that the utility lines will be restored within sixty (60) days.

10. COMPLIANCE WITH LAWS; PREMISES CONDITION

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

The Premises are leased to City in "AS IS" condition. City will inspect the Building and ascertain for itself that the facilities will meet with the requirements of this paragraph. Landlord represents and warrants to City, and covenants with City to the best of Landlord's knowledge, as follows: (a) the physical structure, fixtures and permanent improvements of the Premises (including, without limitation, the Original Improvements and all portions of the Property and the Building along the path of travel to the Premises are now, and as of the Commencement Date will be, in compliance with the requirements of the Americans With Disabilities Act of 1990 and Title 24 of the California Code of Regulations and all other applicable federal, state, local and administrative laws, rules, regulations, orders and requirements intended to provide equal accessibility for persons with disabilities (collectively, "Disabilities Laws"); (b) the Building is not an unreinforced masonry building, and is now, and as of the Commencement Date will be, in compliance with all applicable federal, state, local and administrative laws, rules, regulations, orders and requirements relating to seismic safety (collectively, "Seismic Safety Laws"); (c) the Building and Building Systems serving the Premises are now, and as of the Commencement Date will be, in full compliance with all applicable federal, state, local and administrative laws, rules, regulations, orders and requirements; and (d) there are not now, and as of the Commencement Date will not be, any material physical or mechanical defects in the Premises, Building or the Building Systems that would materially adversely affect City's intended use of the Premises. Landlord shall at all times during the Term maintain, at its cost, the Property and Building in compliance with applicable present or future federal, state, local and administrative laws, rules, regulations, orders and requirements (collectively, "Laws"). Without limiting Section 16.2 (Landlord's Indemnity), Landlord shall indemnify, defend and hold harmless City against any and all Claims arising out of any failure by Landlord to comply with all applicable Laws as required in this Section.

10.2 City's Compliance with Laws; Indemnity

City shall use the Premises during the Term in compliance with applicable Laws, except that City shall not be required to make any structural alterations, additions or other modifications in order to comply therewith unless such modifications are necessary solely because of any Alterations to the Premises made by City pursuant to Section 7 hereof and such modifications are not otherwise Landlord's responsibility under this Lease. 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 Building along the path of travel to the Premises, which 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 Building or any property located therein, (b) result in a refusal by fire insurance companies of good standing to insure the Building or any such property in amounts reasonably satisfactory to Landlord or the holder of any mortgage or deed of trust encumbering the Building, (c) cause an increase in the fire insurance premium for the Building unless City agrees to pay such increase, or (d) subject Landlord to any liability or responsibility for injury to any person or property by reason solely of any business operation being conducted by City in the Premises; provided, however, Landlord shall provide City with reasonable prior written notice of any applicable insurance requirements

and no such insurance requirements shall materially and adversely interfere with City's normal business in the Premises.

11. SUBORDINATION

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

12. DAMAGE AND DESTRUCTION

If the Premises, the Building or any Building Systems are damaged by fire or other casualty, Landlord shall repair the same without delay (and if Landlord is then carrying insurance on the Original Improvements or if City at its sole option makes funds available to Landlord, Landlord shall also repair the Original 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, in the event the Premises are damaged or destroyed by reason of flood or earthquake, and (i) such damage or destruction is not fully covered by insurance proceeds payable under the insurance policies Landlord is required to carry hereunder (excluding any deductible, for which Landlord shall be responsible), and (ii) the cost to repair such damage or destruction is reasonably estimated to exceed One Hundred Thousand Dollars (\$100,000), then Landlord may terminate this Lease by written notice to City within thirty (30) days of the date Landlord receives written notice that such damage is not covered by insurance. Such notice from Landlord shall include adequate written evidence of the denial of insurance coverage. If Landlord does not elect to terminate this Lease as provided above, this Lease shall remain in full force and effect, and Landlord shall repair and restore the Premises as provided above. Notwithstanding anything to the contrary set forth above, City may, upon receipt of a termination notice by Landlord as set forth above, nullify such termination notice within forty-five (45) days of City's receipt of Landlord's termination notice by sending to Landlord a notification that City elects to continue this Lease notwithstanding Landlord's failure to repair the Premises. If City so elects to continue this Lease, then this Lease shall continue without modification for the remainder of the Term, and City may either make its own repairs or occupy the Premises without such repairs to the extent permitted by law.

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

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

15. DEFAULT; REMEDIES

15.1 Events of Default by City

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

(a) City's failure to make any timely payment of Rent 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, any Adjustment Date, or any Extended Term, City shall have twenty (20) days to cure any such nonpayment after written notice thereof from Landlord;

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

(c) City's failure to perform any other covenant or obligation of City hereunder (not involving the payment of money) 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 event of default by City that is not cured within the applicable grace period as provided above, Landlord shall have all rights and remedies available pursuant to law or granted hereunder, including the following:

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

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

15.3 Landlord's Default

If Landlord fails to perform any of its obligations under this Lease, then (without limiting any of City's other cure rights under this Lease) City may, at its sole option, cure such default at Landlord's expense if such default continues after ten (10) 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 ten (10)-day period, such ten (10)-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. Subject to the other provisions of this Lease relating to abatement of Rent, if Landlord fails to cure any default within the cure period provided above, then, whether or not City elects to cure Landlord's default as provided herein, the Base Rent and any other charges hereunder shall be abated based on the extent to which such default interferes with City's ability to carry on its business at the Premises. Notwithstanding the foregoing, if any such default by Landlord continues for sixty (60) days and impairs City's ability to carry on its business in the Premises, then City shall have the right to terminate this Lease upon written notice to Landlord within thirty (30) days after the expiration of such sixty (60)-day period. City's rights hereunder and under Section 5.2 (Interference with Access), and Section 9.4 (Disruption in Essential Utilities or Services) 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

City shall indemnify, defend and hold harmless ("Indemnify") Landlord and its Agents from and against any and all claims, costs and expenses, including, without limitation, reasonable attorneys' fees (collectively, "Claims"), incurred as a result of (a) City's use of the Premises, (b) any default by City in the performance of any of its material obligations under this Lease, or (c) any negligent acts or omissions of City or its Agents in, on or about the Premises or the Property; provided, however, City shall not be obligated to Indemnify Landlord or its Agents to the extent any Claim arises out of the 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

Landlord shall Indemnify City and its Agents against any and all Claims incurred as a result of (a) any default by Landlord in the performance of any of its obligations under this Lease or any breach of any representations or warranties made by Landlord under this Lease, or (b) any negligent acts or omissions of Landlord or its Agents in, on or about the Premises or the Property; provided, however, Landlord 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 insurance with respect to this Lease. City assumes the risk of damage to any of City's Personal Property, except for damage caused by Landlord or its Agents.

17.2 Landlord's Insurance

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

Landlord shall, at its sole cost, pay the premium for the Insurance Policy; provided, however, that on receipt of an annual invoice and proof of payment for such premium, City shall reimburse Landlord for such premium in an amount not to exceed Two Thousand Five Hundred Dollars (\$2,500) per calendar year. If the Insurance Policy premium is applicable for any period before the Commencement Date or after the Expiration Date, City's reimbursement obligation shall be prorated based on a 365-day year to cover only those periods applicable to the Term.

17.3 Waiver of Subrogation

Notwithstanding anything to the contrary in this Lease, Landlord hereby waives any right of recovery against City for any loss or damage relating to the Building or the Premises or any operations or contents therein, whether or not such loss is caused by the fault or negligence of

City, to the extent (i) such loss or damage is actually recovered from valid and collectible insurance covering the Landlord, and (ii) the Landlord's insurance carrier agrees to its written waiver of right to recover such loss or damage. The waiver of any subrogation endorsement by Landlord's insurance company will be subject to the written approval and acknowledgment of said insurance company.

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 six (6) months of the Term of this Lease, tenants, (d) posting notices of non-responsibility, and (e) altering, improving or repairing the Premises and any portion of the Building, and Landlord may for that purpose erect, use and maintain necessary structures in and through the Premises where reasonably required by the character of the work to be performed, provided that the entrance to the Premises shall not be blocked thereby, and further provided that City's use shall not be interfered with.

19. ESTOPPEL CERTIFICATES

Either party, from time to time during the Term upon not less than ten (10) 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 Building 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 Original Improvements. City's obligations under this Section shall survive the expiration or earlier termination of 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 Building or are naturally occurring substances on or about the Property; and petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids.

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

21.2 Landlord's Representations and Covenants

Landlord represents and warrants to City that, to the best of Landlord's knowledge, the following statements are true and correct and will be true and correct as of the Commencement Date: (a) the Property is not in violation of any Environmental Laws; (b) the Property is not now, nor has it 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 does not consist of any landfill or contain any underground storage tanks; (d) the Building does not consist of any asbestos-containing materials or building materials that contain any other Hazardous Material, nor do the Premises contain any lead-based paints; (e) there has been and is no Release of any Hazardous Material in the Building or in, on, under or about the Property; and (f) the Property is not subject to any claim by any governmental regulatory agency or third party related to the Release of any Hazardous Material, and there is no inquiry by any governmental agency (including, 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 Building or in, on, under or about the Property, or the migration of Hazardous Material from or to other real property. Subject to City's obligations under this Section below, Landlord shall maintain the Property throughout the Term in compliance with all Environmental Laws that could affect the health, safety and welfare of City's employees or City's use, occupancy or enjoyment of the Premises for their intended purposes.

21.3 Landlord's Environmental Indemnity

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

21.4 City's Covenants

Neither City nor its Agents shall 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.

21.5 City's Environmental Indemnity

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

22. FIRST RIGHT OF REFUSAL TO PURCHASE THE PROPERTY

Landlord hereby grants to City a First Right of Refusal to Purchase the Property upon the terms and conditions described in the attached Exhibit C.

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 or email to the telefacsimile number or email address set forth in the Basic Lease Information or such other number or email address as may be provided from time to time; however, neither party may give official or binding notice by facsimile or email.

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) 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 ten percent (110%) 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.

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 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 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 assertion that would interfere with City's right to quiet enjoyment as provided in this Section.

23.19 Bankruptcy

Landlord represents and warrants to City that Landlord has neither filed nor been the subject of any filing of a petition under the federal bankruptcy law or any federal or state insolvency laws or laws for composition of indebtedness or for the reorganization of debtors, and, to the best of Landlord's knowledge, no such filing is threatened. Landlord and City agree that City's leasehold estate created hereby includes, without limitation, all rights to receive and enjoy all services, facilities and amenities of the Premises and the Building as provided herein, and that if any of such services, facilities or amenities are terminated, or materially limited or restricted on account of any such case or proceeding, or for any other reason, City shall have the right to (a) contract directly with any third-party provider of such services, facilities or amenities to obtain the same, and (b) offset against the Base Rent or other charges payable hereunder any and all reasonable costs and expenses incurred by City in obtaining such services, facilities or amenities.

23.20 Transfer of Landlord's Interest

Landlord shall have the right to transfer its interest in the Property, the Building or this Lease 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.

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

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 reasonable efforts to give Landlord not less than six (6) months advance notice of such termination.

23.24 Prevailing Wages

Landlord agrees that any person performing labor in the construction of any improvements to the Premises that Landlord provides under this Lease and are paid for in whole or in part out of public funds, as defined in California Labor Code Section 1720 (including any construction, alteration, demolition, installation, repair, carpet laying, or refuse hauling), shall be paid not less than the highest prevailing rate of wages consistent with the requirements of Section 6.22(E) of the San Francisco Administrative Code, and 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 improvements, a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Landlord 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 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) CMD Form

As a condition to this Lease, Landlord shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form CMD-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Contract Monitoring Division (the "CMD"). Landlord hereby represents that prior to execution of the Lease: **(a)** Landlord executed and submitted to the CMD Form CMD-12B-101 with supporting documentation, and **(b)** the CMD 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 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, Section 155.3, of the San Francisco Planning Code (the "Planning Code") requires the provision of bicycle parking at City-leased buildings at no cost to Landlord. During the Term, City shall have the right to install and maintain, at its sole cost, all Class 1 Bicycle

Parking Spaces (as defined in the Planning Code) and all Class 2 Bicycle Parking Spaces (as defined in the Planning Code) in the Building locations required under the Planning Code.

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 City buildings. Landlord hereby agrees that it shall not prevent City from complying with all applicable provisions of such code sections.

23.29 Counterparts

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

23.30 Effective Date

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

23.31 Certification by Landlord

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

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.

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]

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

LANDLORD:

BC CAPP, LLC, a California limited liability company

By: _____

Its: _____

Date: _____

By: _____

Its: _____

Date: _____

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____

JOHN UPDIKE
Director of Property

Date: _____

RECOMMENDED:

Human Services Agency

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____

Carol Wong
Deputy City Attorney

EXHIBIT A

FLOOR PLAN(S)

CONSISTING OF _____ PAGE(S)

EXHIBIT B

NOTICE OF COMMENCEMENT DATE

[Date]

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

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

Dear Mr. 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

RIGHT OF FIRST REFUSAL

In the event Landlord should decide to sell the Property during the Term, Landlord shall first offer the Property to the City at the purchase price that the Property will be offered to the real estate market. Said purchase price shall be contained in a written notice ("Sale Notification") from Landlord to City and said purchase price shall be subject to adjustment as provided below. The City shall have forty five (45) days from its receipt of the Sale Notification to submit (i) an offer to purchase at the price contained in the Sale Notification and on the business terms contained in this Exhibit or (ii) counter offer at a lesser price and on business terms that differ from those in this Exhibit.

City's offer to purchase shall be subject to (a) the approval of the Board of Supervisors and the Mayor within seventy five (75) days of execution of a purchase and sale agreement based on City's standard form, as may be mutually modified by Landlord and City (a "Purchase Agreement"), incorporating the terms herein, (b) the title company being willing to issue ALTA Title Insurance acceptable to City, and (c) City's successful issuance of debt to fund the purchase. City and Landlord shall negotiate in good faith on the form of the Purchase Agreement during the thirty (30) day period immediately following Landlord's approval of City's offer or counter offer. If City and Landlord agree on such form, Landlord and City's Director of Property shall execute the Purchase Agreement.

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

Close of escrow shall occur on or before one hundred and fifty five (155) days from the date of City's notice of the approval by City's Board of Supervisors and Mayor of the Purchase Agreement. At closing, City shall pay for the cost of the premium of any title insurance it elects to receive, one half the escrow fees, and one half of the other typical closing expenses. Landlord shall pay transfer taxes, one half the escrow fees and one half the other typical closing expenses such as notary fees and overnight express charges. Landlord shall deliver the following (among other customary items) through a mutually agreeable escrow company:

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

If City does not make an offer or counter offer to purchase the Property within the forty-five (45) day period following City's receipt of a Sale Notification, then this right of first refusal shall terminate and Landlord shall be free to sell the Property to any person whomever and upon any terms whatsoever without any obligation to sell to City. If, however, City while not accepting the purchase price set forth in the Sale Notification, made an all-cash-on-closing counter offer (the "City's Counter Offer") within the forty five (45) day period that was not accepted by

Landlord, then Landlord may sell the Property, free of any claim of City to purchase the Property, to any potential buyer who is willing to pay a gross purchase price (an amount determined without regard to any brokerage commission liability, but reduced by any Landlord credits or give backs to the potential buyer for such items as existing building conditions or improvements herein after to referred to as "Gross Purchase Price") exceeding the amount of City's Counter Offer.

In the event Landlord is unable to sell the Property for more than City Counter Offer, Landlord shall give another Sale Notification with a reduced purchase price to City and the above procedure for City's first right of refusal shall be repeated.

THIS FIRST RIGHT OF REFUSAL SHALL TERMINATE AND BE OF NO FURTHER EFFECT IF A SALE OF THE PROPERTY TO AN ARM'S LENGTH THIRD PARTY IS CONSUMMATED IN ACCORDANCE WITH THE FOREGOING PROVISIONS.

City and County of San Francisco



Edwin M. Lee, Mayor

Human Services Agency

Department of Human Services
Department of Aging and Adult Services

Trent Rhorer, Executive Director

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

2016 APR 22 AM 9:45

BY TRB

April 21, 2016

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

Re: Lease of 165 Capp Street, San Francisco

Dear Board Members:

Attached for your consideration is a Resolution authorizing the lease renewal by the City of the Building comprising approximately 6,500 square feet at 165 Capp Street, San Francisco, California, for the continued use by the Human Services Agency's neighborhood homeless drop-in and referral center.

The proposed lease of the Building is for an initial term of five (5) years commencing upon approval by the Board of Supervisors and Mayor, in their respective sole and absolute discretion.

City shall have two additional five (5) year option periods to extend the lease term based on the same terms and conditions except that the rent shall be adjusted to 95% of the then prevailing rent for similar buildings, subject to the enactment of a resolution by the Board of Supervisors and the Mayor, in their respective sole and absolute discretion, approving and authorizing the same.

On behalf of the Human Services Agency, the Real Estate Division negotiated the lease at a fair market rent of \$20,041.67 per month (approximately \$3.08 psf), subject to annual adjustments of three percent (3%). Furthermore, City shall continue to pay for its janitorial, pest, debris, and utility costs in addition to operating expenses estimated to be \$2,500 per year.

The Human Services Agency recommends approval of the proposed lease. Funds are available in index code 45HLOH.

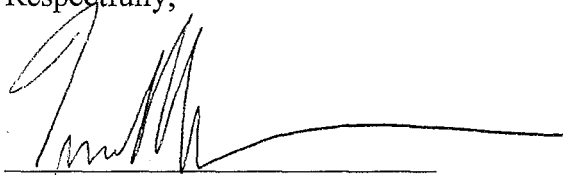
Honorable Board of Supervisors

Page 2

April 21, 2016

If you have any questions in this regard, please contact Dan Kaplan of this office at 415-557-5641 or Claudine Venegas with the General Services Agency's Real Estate Division at 415-554-9872.

Respectfully,

A handwritten signature in black ink, appearing to read 'Trent Rhorer', written over a horizontal line.

Trent Rhorer, Executive Director
Human Services Agency

cvh:\165CappBOS1-27-16

Attachments

cc: Dan Kaplan, Human Services Agency
John Updike, Director, Real Estate Division
Naomi Kelly, City Administrator
Claudine Venegas, Real Estate Division

**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: BC Capp, LLC	
<i>Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.</i>	
Captmond Lau and Bonnie Yu Kuen Lau, Managers	
Contractor address: 45 San Jacinto Way, San Francisco, CA 94127	
Date that contract was approved: <i>(By the SF Board of Supervisors)</i>	Amount of contract: Rent : \$20,041.67 per month
Describe the nature of the contract that was approved: Lease of entire building located at 165 Capp St., San Francisco, CA, comprising approximately 6,500 s.f.	
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