

1 [Real Property Lease Amendment - PROXYdevelopment, LLC - Northeast Corner of Octavia
2 Boulevard and Fell Street - Initial Monthly Rent of \$5,573.67]

3 **Resolution approving a Second Amendment to Lease between the City and County of**
4 **San Francisco and PROXYdevelopment, LLC, for property located at the northeast**
5 **corner of Octavia Boulevard and Fell Street, commonly known as a portion of**
6 **Assessor's Block No. 0817, Lot No. 33 (AKA Parcel L), to extend the lease term through**
7 **January 31, 2021, and revise the monthly base rent to \$5,573.67 effective November 1,**
8 **2015.**

9
10 WHEREAS, The State of California transferred certain real property located at the
11 northeast corner of Octavia Boulevard and Fell Street and commonly known as a portion of
12 Assessor's Block No. 0817, Lot No. 33 ("Parcel L") to the City and County of San Francisco
13 ("City") as part of the demolition of the former Central Freeway and on the condition that City
14 use the proceeds from any disposition of Parcel L in connection with City's Octavia Boulevard
15 project and for transportation and related purposes set forth in Section 72.1(f)(1) of the
16 California Streets and Highways Code; and

17 WHEREAS, A four year lease (Original Lease) of Parcel L to PROXYdevelopment, LLC
18 ("Tenant"), for an initial monthly base rent of \$2,000, adjusted annually, and a share of bonus
19 rent, was authorized through Resolution No. 385-10, adopted by the Board of Supervisors on
20 August 3, 2010, and approved by the Mayor on August 12, 2010, a copy of which is on file
21 with the Clerk of the Board of Supervisors in File No. 100669; and

22 WHEREAS, The Board of Supervisors authorized an Amendment to Lease to the
23 Original Lease extending the lease term from four years to five years for Parcel L under
24 Resolution No. 382-11 ("First Amendment"), adopted by the Board of Supervisors on
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1 September 20, 2011, and approved by the Mayor on September 26, 2011, a copy of which is
2 on file with the Clerk of the Board of Supervisors in File No. 110916; and

3 WHEREAS, Tenant and City wish to extend the term of the First Amendment through
4 January 31, 2021 under a Second Amendment to Lease substantially in the form on file with
5 the Clerk of the Board of Supervisors in File No. 150820 ("Second Amendment"); and

6 WHEREAS, The terms and conditions of the Second Amendment shall include an
7 increase in rental revenue to the City, with a base rent set at the greater of \$5,573.67 per
8 month, or 5.25% of annual average gross revenues received from businesses operating on
9 the site since the lease's inception, effective approximately November 1, 2015, increasing
10 annually thereafter pursuant to said Second Amendment; and

11 WHEREAS, The Director of Planning, by letter dated May 14, 2010, a copy of which is
12 on file with the Clerk of the Board of Supervisors in File No. 110916, found that the proposed
13 Lease is categorically exempt from environmental review and in conformance with the City's
14 General Plan; now, therefore, be it

15 RESOLVED, That in accordance with the recommendation of the Director of Office of
16 Economic and Workforce Development and the Director of Property, the Director of Property
17 is hereby authorized to execute the Second Amendment; and, be it

18 FURTHER RESOLVED, That all actions heretofore taken by any City employee or
19 official with respect to the Second Amendment are hereby approved, confirmed and ratified;
20 and, be it

21 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of
22 Property to enter into any amendments or modifications to the Second Amendment that the
23 Director of Property determines, in consultation with the City Attorney, are in the best interest
24 of the City, do not materially reduce the rent or otherwise materially increase the obligations or
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1 liabilities of the City, are necessary or advisable to effectuate the purposes of the Second
2 Lease Amendment and are in compliance with all applicable laws, including City's Charter.

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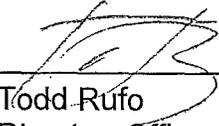
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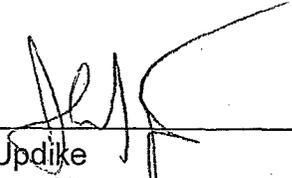
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RECOMMENDED:



Todd Rufo
Director, Office of Economic
and Workforce Development



John Updike
Director of Property

Item 17
File 15-0720

Department:
 Office of Economic Workforce Development (OEWD)

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would approve Amendment No. 2 to the Original Lease between the City and Proxy Development, LLC (Proxy), extending the term for an additional five years and three months, from the current termination date of November 1, 2015 to the new termination date of January 31, 2021, and expand the permitted uses of the Premises, presently for sale of food and beverages and the operation of restaurants, to include arts and cultural activities.

Key Points

- In November 2000, the State of California transferred 22 parcels, at no cost to the City, in Hayes Valley to the City as part of the cooperative agreement related to the demolition of the Central Freeway, including Parcel L, which is located at the northeast corner of Octavia Boulevard and Fell Street.
- Of the 22 parcels, seven were set aside for affordable housing development, and 15 for market-rate housing development. Parcel L is intended for market-rate housing development.
- In 2009, the Office of Economic and Workforce Development (OEWD) leased Parcel L for interim uses to Proxy for four years, which currently provides retail activities on the empty lot, including the sale of food and beverages and the operation of restaurants.
- The original lease term of four years was extended by an additional year in Lease Amendment No. 1 for a total lease term of five years, through November 1, 2015.
- The Board of Supervisors should consider approving a shorter lease term of one year or less. This would allow the City to issue an RFP to sell Parcel L to a developer for market rate housing given the current demand for housing in the City and the high demand for land to develop housing. Selling Parcel L to a developer for market rate housing in the near term would (1) provide new funds to the City for transportation, bicycle and pedestrian improvements, and (2) require the inclusion of 15 percent affordable housing in the development.

Fiscal Impact

- The proposed Amendment No. 2 to the lease between the City and Proxy would result in an annual rent paid by Proxy, LLC to the City in the greater amount of (1) \$66,884, or (2) 5.25 percent of the average annual gross revenues between November 1, 2010 and December 31, 2014. Total estimated annual rent paid by Proxy to the City would be \$370,482.

Recommendations

- Amend the proposed resolution to approve a shorter lease term of one year or less. The Office of Economic and Workforce Development should issue an RFP to sell Parcel L to a developer for market rate housing, as it was originally intended.
- Approve the proposed resolution, as amended.

MANDATE STATEMENT / BACKGROUND**Mandate Statement**

City Charter Section 9.118(c) states that any lease of real property for a period of ten years or more or that has revenue to the City of \$1 million or more is subject to Board of Supervisors approval.

Background

In 1998, San Francisco residents voted to replace the Central Freeway in Hayes Valley with a ground level boulevard from Market Street along Octavia Boulevard. In November 2000, the State of California transferred 22 parcels, at no cost to the City, in Hayes Valley to the City as part of the cooperative agreement related to the demolition of the Central Freeway. A condition of the property transfer was that the City must use the proceeds earned from the Central Freeway parcels on transportation and related purposes connected to the City's Octavia Boulevard project.

Of the 22 parcels available for development along Octavia Boulevard, seven were set aside for affordable housing development, and 15 for market-rate housing development. To date, four affordable housing projects have been completed, and nine market-rate housing parcels have been sold to developers. The other nine parcels are in a variety of planning and development stages.

The City decided to lease Parcel L, which was intended for market-rate housing, located on the northeast corner of Octavia Boulevard and Fell Street, for interim uses that provide public amenities and promote economic development until the parcel is sold. In 2009, the Office of Economic and Workforce Development (OEWD) issued a Request for Proposals for a lease for interim uses for Parcel L, which was awarded to Proxy Development, LLC (Proxy), a company associated with Berkeley-based architecture firm, envelope a+d. Proxy currently provides retail activities on the empty lot, including the sale of food and beverages, and the operation of restaurants.

Original Lease

The original lease term approved by the Board of Supervisors in 2010 (File No. 10-0669) was four years beginning November 1, 2010 through November 1, 2014, at a monthly base rent of \$2,000 per month, or \$24,000 per year adjusted annually by the Consumer Price Index, payable by Proxy to the City.

Lease Amendment No. 1

In September 2011, the Board of Supervisors approved Amendment No. 1, which extended the lease from four to five years through November 1, 2015. The permits for Biergarten, one of the restaurants at the site, took almost a year to obtain after the lease was already in place. The tenant wanted to add an additional year to the lease to offset the time lost obtaining permits in order to maintain economic viability. Amendment No. 1 did not include any change to the rental price payable to the City.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve Amendment No. 2 to the Original Lease between the City and Proxy, extending the term for an additional five years and three months, from the current termination date of November 1, 2015 to the new termination date of January 31, 2021, and expand the permitted uses of the Premises, presently for sale of food and beverages and the operation of restaurants, to include arts and cultural activities.

Table 1: Key Lease Terms

Lease Term	November 1, 2010 – January 31, 2021 (total 10 years and three months)
Size of Property	4,579 SF
Permitted Uses	<ul style="list-style-type: none"> - Retail activities including the sale of food and beverages - Operation of restaurants - Improvements for arts and cultural activities, including performances, exhibitions, and rehearsals, provided that such other uses are permitted under laws applicable to such uses at the Premises.
Rent Payable by Proxy	<p>As of November 1, 2015, rent shall be an amount equal to the greater of:</p> <ul style="list-style-type: none"> (i) minimum rent of \$66,884* or (ii) 5.25% of the annual average gross revenues for the period from November 1, 2010 to December 31, 2014
Rent Adjustments ¹	<p>Annual 2.5% increase to minimum rent as of November 1, 2016.</p> <p>In November 2018, the City will adjust the percentage rent to equal 5.25% of annual average gross revenues for the period from January 1, 2015 to December 31, 2017</p>
Tenant Improvements	Tenant shall improve the City fence and provide signage at the site. The fence work will be reimbursed through rent credits (see below). The signage will be installed at no cost to the City.
Rent Credits	Fence Work Rent Credit – Tenant shall receive a rent credit for the maximum amount in the fence budget, at an estimated cost of \$25,000.

*This amount is based on 5.25 percent of annual average gross revenues through December 2013.

Environmental Review

In May 29, 2010, the Director of Planning found that the original lease for Parcel L was categorically exempt from environmental review and in conformance with the City’s General Plan.

FISCAL IMPACT

The proposed Amendment No. 2 to the lease between the City and Proxy would result in an annual rent paid by Proxy, LLC to the City in the greater amount of (1) \$66,884, or (2) 5.25 percent of the average annual gross revenues between November 1, 2010 and December 31, 2014. The minimum annual rental amount of \$66,884 represents a 157 percent increase in rent, or an increase of \$40,863, from the current annual rent of \$26,021.

The minimum annual rent would increase by 2.5 percent annually for the duration of the lease, through January 31, 2021. This would result in an estimated minimum rent of \$370,482 to the City over the duration of the lease, from November 1, 2015 through January 31, 2021, as shown in Table 2 below. Rent to the City may be higher if annual average gross revenues result in percentage rent that is higher than minimum rent.

Table 2: Estimated Annual Rent paid by Proxy Development to the City

Year	Minimum Annual Rent
November 1, 2015 to October 31, 2016	\$66,884
November 1, 2016 to October 31, 2017	\$68,556
November 1, 2017 to October 31, 2018	\$70,270
November 1, 2018 to October 31, 2019	\$72,027
November 1, 2019 to October 31, 2020	\$73,827
November 1, 2020 to January 31, 2021	\$18,918
Total	\$370,482

Fence Work Rent Credit

Improvements to the fencing around the temporary restaurant, Biergarten, are estimated to cost \$24,645. This fence work will initially be paid for by the Tenant, and then reimbursed by the City, up to \$25,000, through rent credits. OEWD will approve the actual design and budget once it is available.

Less the approximately \$25,000 in fence work rent credits, the City can expect to receive an estimated net minimum rent of \$345,482.

Parcel L Revenues

Rental revenue earned from Parcel L is deposited into the Octavia Boulevard Special Fund, and is to be expended for transportation improvements in the adjacent area. This special fund subject to Board of Supervisors appropriation approval was approved in 1999 by the voters through Proposition I.

POLICY CONSIDERATION

The City has designated Parcel L as a location for future market-rate housing development. According to the 2010 resolution approving the original lease between the City and Proxy for Parcel L, the “City intends to sell Parcel L when current economic conditions improve”. According to Ms. Sarah Dennis-Phillips, Project Director at OEWD, OEWD has proposed extending the existing Parcel L lease with Proxy for an additional five years and three months through January 31, 2021, rather than sell Parcel L to be developed as market-rate housing, to correspond to the expected development date of the adjacent Parcel K, which will be 100 percent affordable housing. The timing for Parcel K’s development was determined based on funding availability.

According to Ms. Dennis-Phillips, the benefit of having the two developments come online at the same time is to ensure that new market rate housing development is balanced with new affordable housing development in the neighborhood. Proposition K, passed by voters in November 2014, and its subsequent legislation, Ordinance No. 53-15, requires the Planning Department to monitor the ratio of new market rate housing to new affordable housing production, and publish a bi-annual Housing Balance Report. This legislation additionally requires an annual hearing by the Board of Supervisors for strategies to achieve and maintain the Proposition K goal that 33 percent of all new housing shall be affordable.

Hayes Valley Housing Pipeline

According to OEWD, there are 2,878 residential units underway within a 15-minute walk of Parcel L. 1,913 units are actively under construction, 499 are ready to begin construction and 466 are currently seeking approval. Of these 2,878 units, 365 will be affordable (12.7 percent) and 2,513 will be market-rate (87.3 percent), as shown in Table 3 below.

Table 3: Residential Units within 15-Minute Walk of Parcel L

Construction Phase	Market Rate Units	Affordable Units	Total Number of Units
Actively under construction	1,553	360	1,913
Ready to begin construction	499	0	499
Seeking approval	461	5	466
	2,513 (87.3 percent)	365 (12.7 percent)	2,878 (100 percent)

Source: OEWD

Of the 22 parcels transferred by the State to the City, at no cost to the City, from the Central Freeway demolition, Parcel L is the only one being held off the market at this time. The Central Freeway parcels slated for market-rate development, including Parcel L, are required to have a 15 percent base level affordable inclusionary requirement, which is higher than the City-wide affordable inclusionary level of 12 percent.

OEWD proposes to extend the Parcel L lease by five years and three months for food and beverage retail sales and arts and cultural activities rather than issue an RFP to sell Parcel L for market-rate housing as was originally intended. The Board of Supervisors should consider approving a shorter lease term of one year or less. This would allow the City to issue an RFP to

sell Parcel L to a developer for market rate housing, as it was originally intended, given the current demand for housing in the City and the high demand for land to develop housing. Selling Parcel L to a developer for market rate housing in the near term would (1) provide new funds to the City for transportation, bicycle and pedestrian improvements, and (2) require the inclusion of 15 percent affordable housing in the development.

RECOMMENDATIONS

1. Amend the proposed resolution to approve a shorter lease term of one year or less. The Office of Economic and Workforce Development should issue an RFP to sell Parcel L to a developer for market rate housing, as it was originally intended.
2. Approve the proposed resolution, as amended.

SECOND AMENDMENT TO LEASE

(Parcel L)

THIS SECOND AMENDMENT TO LEASE (this "Second Amendment") is made as of _____, 2015, in San Francisco, California, by and between CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), and PROXYDEVELOPMENT, LLC, a California limited liability company ("Tenant").

RECITALS

A. City and Tenant are parties to a Lease dated as of July 14, 2010 (the "Original Lease"), as amended by a First Amendment to Lease dated as of September 28, 2011 (the "First Amendment") for premises located near the northeast corner of Fell and Octavia Streets, San Francisco, as further depicted in Exhibit A to the Original Lease. All undefined, initially-capitalized terms used in this Second Amendment shall have the meaning given to such terms in the Original Lease. The Original Lease, as amended by the First Amendment and this Second Amendment, shall be referred to as the "Lease".

B. Tenant wishes to extend the term of the Original Lease for an additional six years and two months and expand the permitted uses of the Premises, and City consents to such extension on the terms and conditions as set forth in this Second Amendment.

AGREEMENT

NOW, THEREFORE, in consideration of the matters described in the foregoing recitals, and for other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, City and Tenant agree as follows:

1. Approval Date. This Second Amendment shall be effective on the later to occur of (a) City's Board of Supervisors and the Mayor, in their sole and absolute discretion, adopting a resolution approving this Second Amendment in accordance with all applicable laws and (b) this Second Amendment is duly executed and delivered by City and Tenant.

2. Term. Section 4.2 of the Original Lease is hereby deleted in its entirety and replaced with the following language:

4.2 Commencement Date and Expiration Date. The "Commencement Date" shall be November 1, 2010, and the "Expiration Date" shall be January 31, 2021.

3. Rent. Section 15.4 of the Original Lease shall be deleted in its entirety. As of November 1, 2015, all references to the "Base Rent" in the Original Lease shall be automatically modified to refer to the "Extended Term Rent", and Section 5.1 of the Original Lease shall be deleted in its entirety and replaced with the following language:

5.1 Rent.

(a) **Extended Term Rent.** As of November 1, 2015, the "Extended Term Rent" shall mean an amount equal to the greater of (i) the minimum guaranteed amount of \$66,884.04 and (ii) 5.25% of the annual average Gross Revenues (as defined below) for the period between November 1, 2010 and December 31, 2014. As of November 1,

2018, the "Extended Term Rent" shall mean an amount equal to the greater of (i) the minimum guaranteed amount of \$66,884.04 and (ii) 5.25% of the annual average Gross Revenues for the period between January 1, 2015 and December 31, 2017.

Notwithstanding that Gross Revenues are used to determine the Extended Term Rent, City shall have no right to seek an increase in Gross Revenues by directing the operation of the business operations of Tenant or Subtenant at the Premises, including how such businesses are run or the days or hours they are open for business.

"Gross Revenues" shall mean all amounts received and receivable from all sales, business, performances, or other activities conducted in, from or attributable to the Premises by Tenant or by any other party conducting any of such activities in, upon, or from any part of the Premises as Tenant's sublessee, licensee, concessionaire, contractor or subcontractor (each, a "Subtenant"), including amounts received from orders or bookings for rental or sales of merchandise made by telephone, mail or online or through third parties. The following items shall be excluded from Gross Revenues for purposes of calculating the Extended Term Rent: (i) returns and refunds and (ii) the amount of any sales tax, parking tax, or similar tax or imposition, imposed on all sales or charges where such sales tax, similar tax or imposition is billed to the purchaser as a special item.

(b) Extended Term Rent Adjustments. Commencing on November 1, 2015, but excluding November 1, 2018, the Extended Term Rent payable by Tenant shall be increased on each November 1 (each, an "Adjustment Date") to equal 102.5% of the Extended Term Rent payable for the twelve (12) month period immediately preceding such Adjustment Date.

(c) Payment. Throughout the Term beginning on November 1, 2015, Tenant shall pay to City the Extended Term Rent, as such amount is adjusted pursuant to the foregoing subsection (b). The Extended Term Rent shall be paid to City in advance, without prior demand and without any deduction, setoff or counterclaim whatsoever, together with all Additional Charges due and payable at such time, on or before the first day of each month. All sums payable by Tenant to City hereunder shall be paid in cash or by good (cashier's or certified) check to the City and County of San Francisco in care of the Director of Property at 25 Van Ness Avenue, San Francisco, California 94102, or such other place as City may designate in writing. If Tenant pays by check and such check is not honored, then City may require Tenant to make all future payments in cash or by cashier's check. If the Term expires on a day other than the last day of a calendar month, then the Extended Term Rent for such fractional month shall be prorated based on a thirty (30) day month.

If the applicable annual average Gross Revenues is not determined at the time any monthly Extended Term Rent payment is due, Tenant shall pay City the minimum guaranteed amount applicable to such period and described in subsection (a) above. In such event, once the applicable annual average Gross Revenues is established for such period, if such amount is higher than such minimum guaranteed amount, Tenant shall deliver the remaining portion of monthly Extended Term Rent amounts owed for such period to City within thirty (30) days of receiving City's written determination of the applicable annual average Gross Revenues for such period.

4. Determination of Gross Revenues.

4.1 First Determination. On or before June 30, 2015, Tenant shall deliver to City a statement certified as being true and correct by an authorized officer or manager of Tenant and otherwise in form satisfactory to City (a "Gross Receipts Statement"), showing taxes paid and the Gross Receipts for the period between November 1, 2010 and December 31, 2014, together with copies of the state and federal tax returns filed by Tenant during such period and all backup documentation reasonably requested by City to verify the accuracy of such Gross Receipts Statement. If City disapproves of a delivered Gross Receipts Statement, City shall deliver written notice of such disapproval, and the reason therefor, to Tenant. If Tenant agrees with City's stated reason for disapproving a submitted Gross Receipts Statement, Tenant shall promptly deliver a corrected Gross Receipts Statement to City for review. If Tenant does not agree with City's stated reason for disapproving a submitted Gross Receipts Statement, Tenant shall notify City of such disagreement in writing within ten (10) days of receiving City's notice of disapproval of such Gross Receipts Statement and, within ten (10) days of City's receipt of such notice from Tenant, City and Tenant shall meet to discuss and resolve such matter.

If City approves of a delivered Gross Receipts Statement, as may be modified pursuant to the foregoing paragraph, City shall confirm such approval in a writing to Tenant, which writing shall confirm the annual average Gross Revenues for the period between November 1, 2010 and December 31, 2014, and the Extended Term Rent applicable for the period between November 1, 2015 and October 31, 2018.

4.2 Second Determination. On or before June 30, 2018, Tenant shall deliver to City a Gross Receipts Statement for the period between January 1, 2015 and December 31, 2017, together with copies of the state and federal tax returns filed by Tenant during such period and all backup documentation reasonably requested by City to verify the accuracy of such Gross Receipts Statement. If City disapproves of a delivered Gross Receipts Statement, City shall deliver written notice of such disapproval, and the reason therefor, to Tenant. If Tenant agrees with City's stated reason for disapproving a submitted Gross Receipts Statement, Tenant shall promptly deliver a corrected Gross Receipts Statement to City for review. If Tenant does not agree with City's stated reason for disapproving a submitted Gross Receipts Statement, Tenant shall notify City of such disagreement in writing within ten (10) days of receiving City's notice of disapproval of such Gross Receipts Statement and, within ten (10) days of City's receipt of such notice from Tenant, City and Tenant shall meet to discuss and resolve such matter.

If City approves of a delivered Gross Receipts Statement, as may be modified pursuant to the foregoing paragraph, City shall confirm such approval in a writing to Tenant, which writing shall confirm the annual average Gross Revenues for the period between January 1, 2015 and December 31, 2017, and the Extended Term Rent applicable for the period between November 1, 2018 and the Expiration Date.

4.3 Cash Register Receipts. A "Subtenant" shall mean each party that Tenant allows to conduct operations at, or use, any portion of the Premises, including Licensee. On or before January 1, 2015, Tenant shall install a cash register that has separate function keys with non-resettable daily sequential transaction numbers and non-resettable daily cumulative sales totals and of a type that can print and save receipts (each, an "Approved Cash Register") for all of its sales operations at the Premises, and shall require each of its Subtenants conducting any sales operations at the Premises to conduct its operations at the Premises with an Approved Cash Register at the Premises. Tenant shall further comply, and cause its Subtenants to comply, with the following provisions:

(a) Each Approved Cash Register shall register every transaction made at the Premises, including every type of Gross Receipts, and the tape or digital record of each such

Approved Cash Register shall be accessible to and subject to inspection by the City's Director of Property or his/her designee, provided that such inspection shall be conducted in a manner reasonable designed to minimize interference with the conduct of business using such Approved Cash Register, and City shall not perform such inspection unless a manager of the business using such Approved Cash Register is present. Tenant shall make, and shall have each Subtenant make, a manager available to City for such inspection during business hours upon request (which may be oral) by City.

(b) Any Approved Cash Register that is a mechanical cash register must have a non-resettable cumulative total, a detail audit tape, a transaction number with a four-digit capacity, an indicator readily visible to customers as the amount rung, and a seven-digit capacity or greater, as determined by the City's Director of Property based on the type of business, with a four-digit overrun counter. If computerized cash registers or other similar electronic devices are used, that system must accurately record all sales on the Premises and be no more subject to tampering than mechanical cash registers.

(c) Each sale or other transaction on the Premises must be recorded at the time of each sale or other transaction, in the presence of the customer, and Tenant or the applicable Subtenant shall present a receipt from such sale or other transaction to the customer. Each customer must be issued a receipt or sales slip for each transaction, which transaction must be recorded either on serially numbered sales slips or cash register types. All cash receipts must include the identification of Tenant or Subtenant, as applicable. Each Approved Cash Register (including computerized cash registers or other similar electronic devices) shall be serviced by an established contractor approved by City's Director of Property. At City's Director of Property request, Tenant must furnish to City a statement from an established contractor that the transaction number, the cumulative total and the overrun counter have been sealed in a manner approved by City's Director of Property.

(d) Upon the installation or removal of any Approved Cash Register (including computerized cash registers or other similar electronic devices) used on the Premises, Tenant must immediately furnish to City's Director of Property notice in writing stating make, model number, serial number and cumulative total reading and overrun counter reading of the cash register(s) (including computerized cash registers or other similar electronic devices). Any repair contractor employed to repair or replace any cash register (including computerized cash registers or other similar electronic devices if used) on the Premises is hereby authorized and directed to disclose and furnish to City or its auditors any information obtained by the contractor in the course of making such repair or replacement pertaining to such cash register (including computerized cash registers or other similar electronic devices if used). City shall have the right during business hours to examine the totals of the Approved Cash Register(s) (including computerized cash registers or other similar electronic devices if used) used on the Premises and to inspect for compliance with this Section.

4.4. Books and Records; Annual Reporting; Audits

(a) Tenant agrees to keep, and to cause its Subtenants to keep, accurate books and records according to generally accepted accounting principles. For purposes herein "books and records" shall include, but not be limited to, daily sales journals, cash register tapes, pre-numbered receipts, guest checks, sales tickets, monthly sales summaries summarizing daily sales, general ledgers, income statements, sales tax returns, income tax returns and any other bookkeeping documents Tenant utilizes in its business operations. Tenant shall not co-mingle personal funds with business funds.

(b) Commencing as of June 30, 2016, and on each April 1 thereafter through June 30, 2018 (each, a "Reporting Date"), Tenant shall deliver to City a statement (the "Annual Gross Receipts Statement"), certified as correct by Tenant's authorized officer or manager, certified or audited by a certified public accountant, and otherwise in form satisfactory to City. The Annual Gross Receipts Statement shall set forth the Gross Receipts, as defined above and shown on Tenant's books, for the calendar year immediately preceding such Reporting Date broken down by category.

(c) Tenant agrees to make its books and records available to City, or to any City auditor, or to any auditor or representative designated by City, for the purpose of examining such books and records to determine the accuracy of Tenant's earnings from Tenant's operations with respect to the Premises. Such books and records shall be kept through January 31, 2025 and shall be maintained and/or made available in San Francisco to City's representative for the purpose of auditing or re-auditing these accounts; except that, if an audit is made before January 31, 2025 within such four-year period and City claims that errors or omissions have occurred, the books and records shall be retained and made available until those matters are resolved. If an audit reveals that Tenant has understated its Gross Receipts, Tenant shall pay City, promptly upon demand, the difference between the amount Tenant has paid and the amount it should have paid to City. If Tenant understates its Gross Receipts by three percent (3%) or more, the cost of the audit shall be borne by Tenant. If Tenant understates its Gross Receipts with knowledge of such understatement or by reason of gross negligence, then, in addition to paying for the cost of the audit, on the first such occasion Tenant shall pay City ten (10) times the amount of the difference between the amount City should have received and amount City actually received.

5. Permitted Uses. In addition to the permitted uses of the Premises specified in Section 7.1 of the Original Lease, Tenant may use the Premises and the permitted Improvements for arts and cultural activities, including performances, exhibitions, and rehearsals, provided that such other uses are permitted under Laws applicable to such uses at the Premises. Tenant acknowledges and agrees that City is entering into this Second Amendment in its proprietary capacity as a property owner, and not in its regulatory capacity, and that any such uses of the Premises may not be permitted, or subject to restrictions established, by City acting in its regulatory capacity. Tenant further acknowledges and agrees that placing or removing any works of art placed on or from the Premises requires the prior consent of City's Art Commission.

6. Fence and Sign Improvements.

6.1 Fence Work. Tenant shall improve the City Fence, which is chain link, in a manner that is more visually attractive but continues to provide security for the Premises and allows for visibility into the Premises from the adjacent streets (the "Upgraded Fence"), within the six (6) month period immediately following the Approval Date. Tenant shall provide City with the draft plans, and written cost estimate, to City for review within sixty (60) days following the Approval Date. If City does not approve of such submitted plans or cost estimate, City shall provide Tenant with written notice for such disapproval and Tenant shall promptly provide revised plans or a revised cost estimate, as applicable, to City for review. Any plans for improvements to the existing City Fence (the "Fence Work") approved by City in writing shall be the "Final Fence Plans" and any written cost estimate for the Fence Work approved by City in writing shall be the "Fence Budget". Once City approves of the Final Fence Plans, Tenant shall promptly obtain and deliver copies of any permits required under Law for the Fence Work to City's Director of Property, and following such delivery, Tenant shall promptly commence, and diligently pursue to completion, the Fence Work in strict accordance with the Final Fence Plans and the Fence Budget, which may not be modified without City's prior written consent to such modification.

6.2 Signage. Tenant shall install, at its sole cost, the signage depicted in the attached Exhibit A (the "Future Use Sign") within sixty (60) days following the Approval Date. The Future Use Sign shall be placed in a location that is visible from the portion of Octavia Street that abuts the Premises and shall be no less than three feet by three feet. The creation and installation of the Future Use Sign shall be the "Signage Work".

6.3 Performance Requirements.

(a) Tenant shall require from each contractor and subcontractor performing any Fence Work or Signage Work on or about the Premises a policy of general public liability insurance, with such limits as may reasonably be required by City at the time of approving the Final Plans, but in any event not less than Two Million Dollars (\$2,000,000) combined single limit. Such insurance shall also be in compliance with the requirements set forth in Section 18.2(c) of the Original Lease.

(b) The Fence Work and Signage Work shall be done (i) by duly licensed and bonded contractors or mechanics approved by the City, (ii) in a good and professional manner, (iii) in strict compliance with all Laws, including any regulatory permits or approvals required therefor, (iv) in compliance with the applicable prevailing wage and local hire requirements specified in Section 10 below, and (v) subject to all other conditions that the City may reasonably impose, including, without limitation, provision of such completion security as is acceptable to City.

(c) City shall have the right to inspect the performance of the Fence Work and the Signage Work at the Premises at all times.

6.4 Ownership; Maintenance. The New Fence and Future Use Sign shall be Tenant's personal property during the Term, but shall automatically become the City's property on the termination or expiration of the Lease. Tenant shall maintain, at its sole cost, the New Fence and Future Use Sign in a good, first class condition during the Term, and perform all maintenance, repairs, and replacements necessary to keep the New Fence and Future Use Sign in such condition. If Tenant installs any plantings at the Premises, Tenant shall further maintain, at its sole cost, such plantings in a good and neat condition during the Term.

6.5 Fence Work Rent Credit. If Tenant completes the Fence Work in compliance with this Section, Tenant shall have the right to receive a rent credit for the amounts it pays third parties for the performance of the Fence Work, up to the maximum amount in the Fence Budget, as follows. Within thirty (30) days of completing the Fence Work, Tenant shall deliver the invoices and other documents reasonably request by City that evidence Tenant's payment of third party costs for the Fence Work. If City approves of such documentation, which approval shall not be unreasonably withheld, City shall notify Tenant of such approval in writing (the "Cost Approval Notice"), and the next installment of monthly Base Rent payable after Tenant's receipt of the Cost Approval Notice shall be reduced by the third party costs approved by City in the Cost Approval Notice.

7. Tenant's Licensee. Tenant represents and warrants that Licensee is the only party operating at the Premises or otherwise authorized by Tenant to use or occupy the Premises. Prior to the Approval Date, Tenant shall deliver to City an estoppel certificate in the form attached hereto as Exhibit B ("Estoppel"), duly completed and executed by Tenant and Licensee, and a copy of any written agreement ("License") between Tenant and Licensee with respect to Licensee's use of the Premises.

8. Security Deposit. As of the Approval Date, the sum for the security deposit specified in Section 1 of the Original Lease shall be automatically adjusted to be \$ _____. On November 1, 2015, and each first day of November thereafter, the sum for such security deposit shall be automatically adjusted to be the monthly amount of Extended Term Rent on such day.

9. Insurance Requirements. The minimum limit required for comprehensive or commercial general liability insurance under Section 18.1(b) of the Original Lease shall be modified to be a minimum limit of not less than Two Million Dollars (\$2,000,000) each occurrence, and the following subsection shall be added to Section 18.1 of the Original Lease:

"(d) **Food Products and Liquor Liability Insurance**. Food Products Liability Insurance and Liquor Liability Insurance, each with limits of not less than One Million Dollars (\$1,000,000)."

10. Prevailing Wages. Section 24.21 of the Original Lease is hereby deleted in its entirety and replaced with the following language:

24.21 Prevailing Wages.

(a) **Fence Work, Improvements, and Public Works**. Tenant agrees that any person performing labor for Tenant for the Fence Work, for any Improvements, or for any "public works" at the Premises 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. The terms "public work" and "paid for in whole or part out of public funds" as used in this Section are defined in California Labor Code Section 1720 et seq., as amended. Tenant shall include in any contract for such labor for the Fence Work, any Improvements, and any public work 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. Tenant shall require any contractor to provide, and shall deliver to City upon request, certified payroll reports with respect to all persons performing such labor at the Premises.

(b) **Theatrical Workers**. Tenant acknowledges that City law entitles individual engaged in theatrical or technical services related to the presentation of a Show at the Premises, including individuals engaged in rigging, sound, projection, theatrical lighting, videos, computers, draping, carpentry, special effects, and motion picture services, to be paid not less than the Prevailing Rate of Wages (which includes fringe benefits or matching equivalents) fixed by the Board of Supervisors, unless the Show is free and open to the public or meets any of the other exemptions in San Francisco Administrative Code Section 21C.4(b). Capitalized terms in this subsection shall have the meanings provided in San Francisco Administrative Code Section 21.C4. As a condition of this Second Amendment, Tenant agrees as follows:

(1) Tenant shall comply with the obligations in San Francisco Administrative Code Section 21C.4, and shall require its subtenants, contractors, and subcontractors to comply with the obligations in San Francisco Administrative Code Section 21C.4, including the payment of Prevailing Rate of Wages to individuals engaged in theatrical or technical services related to the presentation of a Show at the Premises. In addition, if Tenant or its subtenant, contractor, or any subcontractor fails to comply with

these obligations, City shall have all available remedies against Tenant to secure compliance and seek redress for workers who provided the services as described in San Francisco Administrative Code Section 21C.7, together with the remedies set forth in this Lease.

(2) City may inspect and/or audit any workplace, job site, books and records pertaining to the presentation of a Show at the Premises, and may interview any individual who provides, or has provided, work involving theatrical or technical services for the Show at the Premises.

(3) Tenant shall provide to City (and to require any Subtenant who maintains such records to provide to City), upon request, immediate access to all workers' time sheets, payroll records, and paychecks for inspection in so far as they relate the presentation of a Show at the Premises.

(c) Special Events or Trade Shows. Tenant acknowledges that City law entitles individuals engaged in work involving the on-site installation, set-up, assembly, and dismantling of temporary exhibits, displays, booths, modular systems, signage, drapery, specialty furniture, floor coverings, and decorative materials in connection with trade shows, conventions, expositions, and other special events on City property to receive the Prevailing Rate of Wages (which includes fringe benefits or matching equivalents) fixed by the Board of Supervisors, unless the event is free and open to the public or meets any of the other exemptions in San Francisco Administrative Code Section 21C.8(b). Capitalized terms in this subsection shall have the meanings provided in Sections 21.C8. Accordingly, Tenant, as a condition of this Second Amendment, agrees that:

(1) Tenant shall comply with the obligations in San Francisco Administrative Code Section 21C.8, and shall require Tenant's subtenants, contractors, and any subcontractors, to comply with the obligations in Section 21C.8, including the payment of Prevailing Wage Rates to workers engaged in On-site work on Trade Shows or Special Events. In addition, if Tenant or its subtenant, contractor (or any subcontractor) fails to comply with these obligations, City shall have all available remedies against Tenant to secure compliance and seek redress for workers who provided the services as described in Section 21C.7, together with the remedies set forth in this Second Amendment.

(2) City may inspect and/or audit any workplace, job site, books and records pertaining to On-site work on Trade Shows or Special Events at the Premises, and may interview any individual who provides, or has provided, On-site work on Trade Shows or Special Events at the Premises.

(3) Tenant shall provide to City (and to require any subtenant, contractor or subcontractor who maintains such records to provide to City), upon request, immediate access to all workers' time sheets, payroll records, and paychecks for inspection in so far as they relate a Trade Show or Special Event at the Premises.

11. Pesticide Use. Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or "IPM Ordinance") describes an integrated pest management ("IPM") policy to be implemented by all City departments. Tenant shall not use or apply or allow the use or application of any pesticides on the Premises or contract with any party to provide pest abatement or control services to the Premises without first receiving City's written approval of an IPM plan that (i) lists, to the extent reasonably possible, the types and estimated

quantities of pesticides that Tenant may need to apply to the Premises during the term of this Lease, (ii) describes the steps Tenant will take to meet the City's IPM Policy described in Section 300 of the IPM Ordinance and (iii) identifies, by name, title, address and telephone number, an individual to act as the Tenant's primary IPM contact person with the City. Tenant shall comply, and shall require all of Tenant's contractors to comply, with the IPM plan approved by the City and shall comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Tenant were a City department. Among other matters, such provisions of the IPM Ordinance: (a) provide for the use of pesticides only as a last resort, (b) prohibit the use or application of pesticides on property owned by the City, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City's Department of the Environment), (c) impose certain notice requirements, and (d) require Tenant to keep certain records and to report to City all pesticide use at the Premises by Tenant's staff or contractors.

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

12. First Source. Section 24.29 of the Original Lease is hereby deleted in its entirety and replaced with the following language:

24.29 First Source Agreement. Tenant and City are parties to the First Source Agreement attached to this Second Amendment as Exhibit C pursuant to San Francisco Administrative Code, Chapter 83 (the "First Source Agreement"). Any default by Tenant under the First Source Agreement shall be a default under the Lease.

13. Bottled Drinking Water. Unless exempt, Tenant agrees to comply fully with and be bound by, and to cause each Subtenant to comply with, all of the provisions of the San Francisco Bottled Water Ordinance, as set forth in San Francisco Environment Code Chapter 24, including the administrative fines, remedies, and implementing regulations provided therein, as the same may be amended from time to time. The San Francisco Bottled Water Ordinance, among other matters, prohibits the sale or distribution of drinking water in a sealed rigid plastic bottle having a capacity of twenty-one (21) fluid ounces or less at the Premises with attendance of more than 100 people unless otherwise exempted therein. The current provisions of Chapter 24 are attached as Exhibit D to this Second Amendment and, together with any future amendments thereto, are incorporated herein by reference and made a part of the Lease as though fully set forth.

14. Criminal History Inquiries for Employment

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

(b) Tenant shall incorporate by reference the provisions of Chapter 12T in all sublicenses of some or all of the Premises, and shall require all sublicensees to comply with such

provisions. Tenant's failure to comply with the obligations in this subsection shall constitute a material breach of the Lease.

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

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

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

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

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

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

15. No Joint Venture. Neither this Second Amendment nor any activity by the City hereunder creates a partnership or joint venture between the City and Tenant relating to the Premises, the Original Lease or otherwise. This Second Amendment does not constitute authorization or approval by the City of any activity conducted at the Premises by Tenant or any of its Agents (as defined in the Original Lease) or Subtenants, and the City shall in no way be responsible for the acts or omissions of Tenant or any of its Agents or Subtenants on the Premises or otherwise.

16. Attorneys Fees. In the event a dispute arises concerning this Second Amendment, the party not prevailing in such dispute shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Second Amendment, reasonable fees of attorneys of 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.

17. References. No express reference to this Second Amendment is necessary in any instrument or document that refers to the Original Lease. As of the Effective Date, any reference to the Original Lease after the date of this Second Amendment shall be deemed a reference to the Original Lease as amended by this Second Amendment.

18. Applicable Law. This Second Amendment shall be governed by, construed and enforced in accordance with the laws of the State of California.

19. Miscellaneous. Except as expressly modified herein, the terms, covenants and conditions of the Original Lease and First Amendment shall remain unmodified and in full force and effect. This Second Amendment constitutes the entire agreement of the parties concerning the subject matter hereof, and supersedes and conceals any and all previous negotiations, agreements, or understandings, if any, regarding the matters contained herein. The execution of this Second Amendment shall not constitute a waiver of relinquishment of any rights that City may have relating to the Original Lease or the First Amendment. Tenant and City hereby ratify and confirm all of the provisions of the Original Lease and the First Amendment as amended by this Second Amendment.

TENANT:

PROXYDEVELOPMENT, LLC,
a California limited liability company

By: _____
Douglas Burnham, Sole Member

Date: _____

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
John Updike, Director of Property

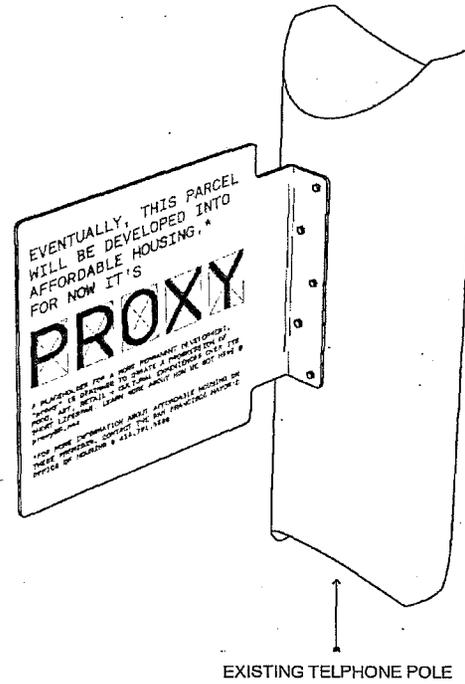
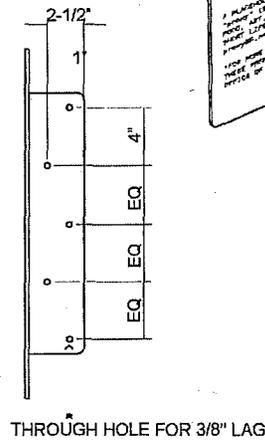
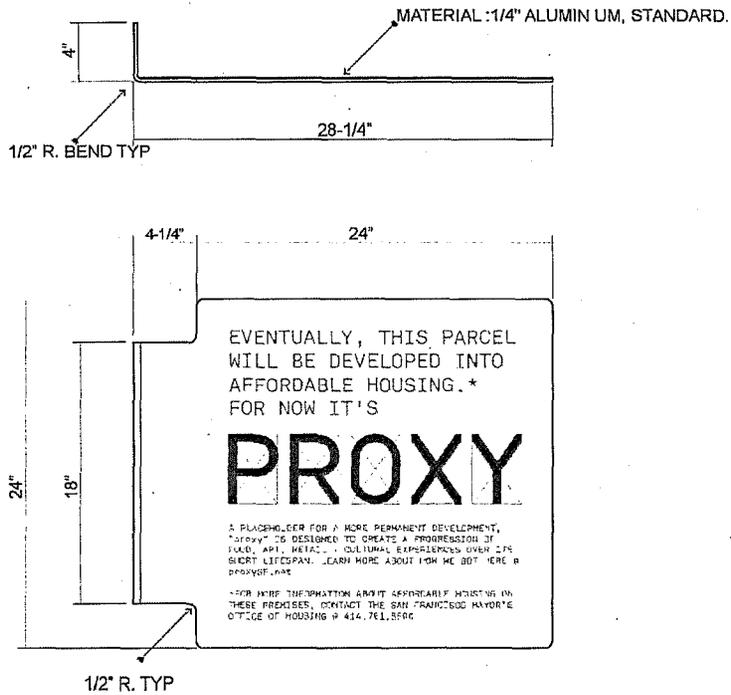
Date: _____

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By:
Carol Wong, Deputy City Attorney

A-1



PROXY_CITY SIGN_03/03/14 SCALE: 2'-1'-0"

Depiction of Future Use Sign

Exhibit A

Exhibit B

Licensee Estoppel Certificate

This Estoppel Certificate (this "Certificate") is made as of _____, 2011 ("Effective Date"), by PROXYDEVELOPMENT, LLC, a California limited liability company ("Tenant"), and Biergarten, LLC, a California limited liability company ("Licensee"), for the benefit of the City and County of San Francisco, a municipal corporation ("City").

RECITALS

A. City owns the property located in San Francisco, California, commonly known as Parcel L and depicted on the attached Schedule 1 ("Premises"), and Tenant leases the Premises pursuant to a Lease dated as of July 14, 2010, as amended by a First Amendment to Lease dated as of September 28, 2011 and a Second Amendment to Lease dated as of _____, 2015 (as amended, the "Lease").

C. Pursuant to a _____ between Tenant and Licensee, dated as of _____ ("License"), Tenant has authorized Licensee to use a portion of the Premises, and Tenant and Licensee wish to confirm certain facts and request City's consent to Licensee's use of the Premises.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Tenant and Licensee each hereby confirms, represents and warrants to City as follows:

1. Accuracy. All of the information specified above and elsewhere in this Certificate is accurate as of the Effective Date.

2. License. A complete and correct copy of the License attached hereto as Schedule 2, which is currently valid and in full force and effect, contains all of the understandings and agreements between Tenant and Licensee with respect to the Premises, and has not been amended, supplemented or changed by letter agreement or otherwise, except as follows (if none, indicate so by writing "NONE" below):

3. License Fee. Licensee is required to pay the following fees, charges and other payments to Tenant in consideration for Licensee's use of the Premises, paid in the manner described below:

4. Improvements. Licensee has installed the following improvements at the Premises:

5. Delivery of Lease. Tenant has delivered a complete and correct copy of the Lease to Licensee, and Licensee acknowledges and agrees as follows: (i) Licensee's rights to use the Premises are subject and subordinate to the terms and conditions of the Lease; (ii) any termination of the Lease shall terminate Licensee's right to use or otherwise occupy the Premises; (iii) Licensee shall not take any action that would cause Tenant to be in default under the Lease; (iv) City has no obligations to Licensee with respect to the Premises; and (v) City shall not be deemed to have approved of the License or Licensee's use of the Premises unless City delivers written consent thereto within sixty (60) days of City's receipt of the License and this Certificate, completed and executed by Tenant and Licensee.

6. Due Execution and Authorization. The undersigned, and any person executing this Certificate on behalf of the undersigned, represent and warrant that they are duly authorized to execute this Certificate.

7. Successors and Assigns. This Certificate will be binding upon and inure to the benefit of Tenant, Licensee and City, as well as their respective heirs, legal representatives, successors and assigns.

IN WITNESS WHEREOF, each of the undersigned has executed this Certificate as of the Effective Date.

TENANT:

PROXYDEVELOPMENT, LLC,
a California limited liability company

By: _____
Douglas Burnham, Manager

Date: _____

LICENSEE:

_____,
a _____

By: _____
Name: _____
Its: _____

Date: _____

By: _____
Name: _____
Its: _____

Date: _____

Schedule 1

Depiction of Premises

[see attached]

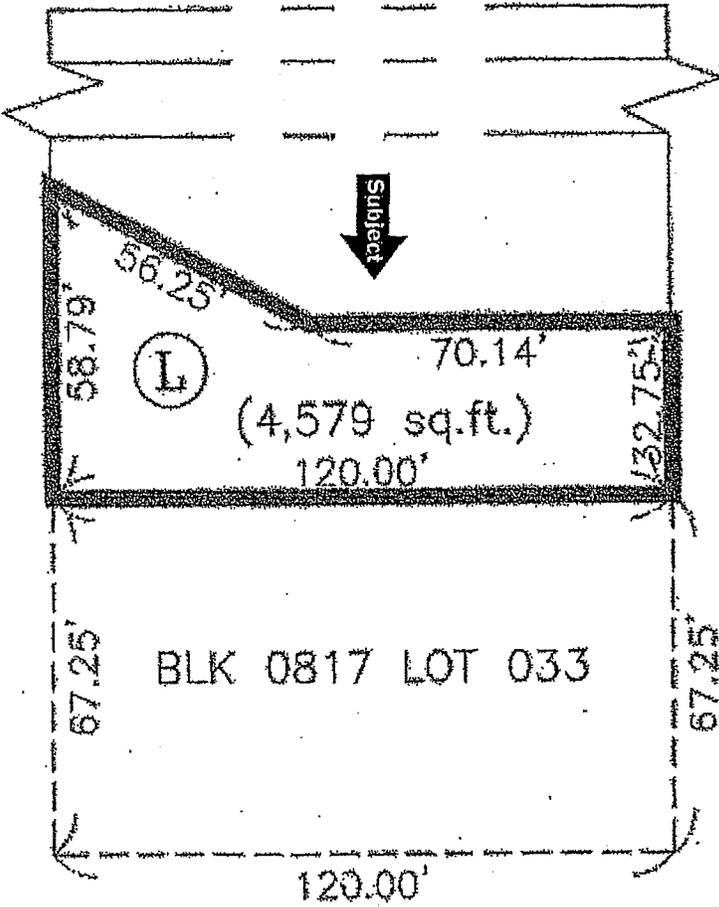
Parcel Map - Parcel L



GOUGH ST.

LINDEN ST.

FELL ST.



(4,579 sq.ft.)

BLK 0817 LOT 033

OCTAVIA BLVD.

Central Freeway Parcel L

C:/EDRIVE/ROMANI/OCTAVIA/IDIVIDUALDRAWINGS/ParcelF,H,andJ.DWG(10-05-07)

Schedule 2

License

[see attached]

Exhibit C

First Source Agreement



Edwin M. Lee, Mayor

Office of Economic and Workforce Development
Workforce Development Division

**First Source Hiring Agreement
For Tenant/Concessionaire/Franchisee/Easement Holder of City Property**

This First Source Hiring Agreement (this "Agreement"), is made as of _____, by and between _____ (the "Lessee"), in favor of the First Source Hiring Administration (the "FSHA"), collectively the "Parties".

RECITALS

WHEREAS, Lessee plans to occupy the property owned by the City and County of San Francisco ("City") at [Address] ("Premises") pursuant to a lease between Lessee and the City dated _____ ("Lease"), which requires a First Source Hiring Agreement between Lessee and FSHA; and,

WHEREAS, as a material part of the consideration given by Lessee under the Lease, Lessee has agreed to execute this Agreement and the First Source Employer's Projection of Entry-Level Positions form attached to this Agreement as *Exhibit A* (the "Projection Form") and participate in the Workforce System managed by the Office of Economic and Workforce Development ("OEWD") as established by the City and County of San Francisco pursuant to Chapter 83 of the San Francisco Administrative Code;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Parties covenant and agree as follows:

1. DEFINITIONS

For purposes of this Agreement, initially capitalized terms shall be defined as follows:

- a. **Entry Level Position:** Any non-managerial position that requires no education above a high school diploma or certified equivalency, and less than two (2) years training or specific preparation, and shall include temporary, permanent, trainee and intern positions.
- b. **Workforce System:** The First Source Hiring Administrator established by the City and managed by OEWD.
- c. **Referral:** A member of the Workforce System who has been identified by OEWD as having the appropriate training, background and skill sets for a Lessee specified Entry Level Position.

2. OEWD WORKFORCE SYSTEM PARTICIPATION

- a. Lessee shall notify OEWD's Business Team of every available Entry Level Position at the Premises (as defined in the Lease) and provide OEWD 10 business days to recruit and refer qualified candidates prior to advertising such position to the general public. Lessee shall provide feedback including but not limited to job seekers interviewed, including name, position title, starting salary and employment start date of those individuals hired by the Lessee no later than 10 business days after date of interview or hire. Lessee will also provide feedback on reasons as to why referrals

were not hired. Lessee shall have the sole discretion to interview any Referral by OEWD and will inform OEWD's Business Team why specific persons referred were not interviewed. Hiring decisions shall be entirely at the discretion of Lessee.

b. This Agreement shall be in full force and effect throughout the term of the Lease.

3. GOOD FAITH EFFORT TO COMPLY WITH ITS OBLIGATIONS HEREUNDER

Lessee will make good faith efforts to comply with its obligations under this Agreement. Determination of good faith efforts shall be based on all of the following during the term of the Lease:

- a. Lessee will execute and deliver this Agreement and the Projection Form to OEWD upon entering into the Lease. Lessee will also accurately complete and submit the Projection Form annually to reflect employment conditions.
- b. Lessee agrees to register with OEWD's Referral Tracking System, upon execution of this Agreement.
- c. Lessee shall notify OEWD's Business Services Team of all available Entry Level Positions at the Premises 10 business days prior to posting with the general public. The Lessee must identify a single point of contact responsible for communicating Entry-Level Positions and take active steps to ensure continuous communication with OEWD's Business Services Team.
- d. If Lessee's operations creates Entry Level Positions at the Premises, Lessee will use good faith efforts to meet the hiring goals established by the FSHA for filling open Entry Level Positions with First Source referrals. Specific hiring decisions shall be the sole discretion of the Lessee.
- e. Nothing in this Agreement shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, or existing employment contracts. In the event of a conflict between this Agreement and an existing agreement, the terms of the existing agreement shall supersede this Agreement.

Lessee's failure to meet the criteria set forth in this Section does not impute "bad faith" and shall trigger a review of the referral process and compliance with this Agreement. Failure and noncompliance with this Agreement will result in penalties as defined in SF Administrative Code Chapter 83. Lessee agrees to review SF Administrative Code Chapter 83, and execution of this Agreement denotes that Lessee agrees to its terms and conditions.

4. NOTICE

All notices to be given under this Agreement shall be in writing and sent via mail or email as follows:

ATTN: Business Services, Office of Economic and Workforce Development
1 South Van Ness Avenue, 5th Floor, San Francisco, CA 94103
Email: Business.Services@sfgov.org

5. MISCELLANEOUS

This Agreement contains the entire agreement between the parties as to the subject matter hereof and shall not be modified in any manner except by an instrument in writing executed by the parties or their respective successors. If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected. If

Agreement is executed in one or more counterparts, each shall be deemed an original and all, taken together, shall constitute one and the same instrument. Agreement shall inure to the benefit of and shall be binding upon the parties to this Agreement and their respective heirs, successors and assigns. If there is more than one person comprising Seller, their obligations shall be joint and several. Section titles and captions contained in this Agreement are inserted as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions. This Agreement shall be governed and construed by laws of the State of California.

IN WITNESS WHEREOF, the following have executed this Agreement as of the date set forth above.

Date: _____

Signature: _____

Name of Authorized Signer: _____

Company: _____

Address: _____

Phone: _____

Email: _____



CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF ECONOMIC AND WORKFORCE DEVELOPMENT



FIRST SOURCE HIRING PROGRAM

WORKFORCE PROJECTIONS FORM

EXHIBIT A WORKFORCE PROJECTIONS
FOR BUSINESS, COMMERCIAL, OPERATION AND LEASE OCCUPANCY

Business Name: _____ Phone: _____
Main Contact: _____ Email: _____

Signature of authorized representative*

Date

*By signing this form, the lessee agrees to participate in the Workforce System managed by the Office of Economic and Workforce Development (OEWD) and comply with the provisions of its First Source Hiring Agreement pursuant to San Francisco Administrative Code Chapter 83.

Instructions:

- Upon entering into leases for the commercial space of the building, the Lessee must submit to OEWD, a signed First Source Agreement, including its signature to Exhibit A thereto. Lessee will also complete and submit Exhibit A annually to reflect employment conditions.
- The employer must notify the First Source Hiring Program (Contact Info below) if an **Entry Level Position** becomes available.

Section 1: Select your Industry

- | | | |
|--|---|--|
| <input type="checkbox"/> Auto Repair | <input type="checkbox"/> Entertainment | <input type="checkbox"/> Personal Services |
| <input type="checkbox"/> Business Services | <input type="checkbox"/> Elder Care | <input type="checkbox"/> Professionals |
| <input type="checkbox"/> Consulting | <input type="checkbox"/> Financial Services | <input type="checkbox"/> Real Estate |
| <input type="checkbox"/> Construction | <input type="checkbox"/> Healthcare | <input type="checkbox"/> Retail |
| <input type="checkbox"/> Government Contract | <input type="checkbox"/> Insurance | <input type="checkbox"/> Security |
| <input type="checkbox"/> Education | <input type="checkbox"/> Manufacturing | <input type="checkbox"/> Wholesale |
| <input type="checkbox"/> Food and Drink | <input type="checkbox"/> I don't see my industry (<i>Please Describe</i>) _____ | |

Section 2: Describe Primary Business Activity

Section 3: Provide information on all Entry Level Positions

Entry-Level Position Title	Job Description	Number of New Hires	Projected Hiring Date

Please email, fax, or mail this form SIGNED to:

ATTN: Business Services
Office of Economic and Workforce Development
1 South Van Ness Avenue, 5th Floor, San Francisco, CA 94103
Tel: 415-701-4848
Fax: 415-701-4897
mailto:Business.Services@sfgov.org
Website: www.workforcedevelopmentsf.org

Exhibit D

San Francisco Bottled Water Ordinance

SEC. 2401. TITLE.

The title of this Chapter shall be the San Francisco Bottled Water Ordinance.
(Added by Ord. 28-14, File No. 131207, App. 3/21/2014, Eff. 4/20/2014)

SEC. 2402. DEFINITIONS.

For purposes of this Chapter,

"Bottled Water" means drinking water in a sealed Rigid Plastic Bottle having a capacity of 21 fluid ounces or less.

"City Property" means real property, including any buildings thereon, owned or leased by the City and County of San Francisco ("City"), and in the City's possession or in the possession of a public or private entity under contract with the City to perform a public purpose, including but not limited to the following property: recreational and park property including but not limited to Golden Gate Park, the San Francisco Zoo, and San Francisco's parks and playgrounds, plazas including but not limited to United Nations Plaza and Hallidie Plaza, community centers such as Ella Hill Hutch Community Center, and property of the Department of Recreation and Parks, the Port, and the Public Utilities Commission. "City Property" includes a "City Street."

"City Funds" means all monies or other assets received and managed by, or which are otherwise under the control of: the Treasurer, and any notes, bonds, securities, certificates of indebtedness or other fiscal obligations issued by the City and County.

"City Street" means the public right-of-way owned by the City, including any area across, along, on, over, upon, and within the dedicated public alleys, boulevards, courts, lanes, roads, sidewalks, streets, and ways within the City.

"Event" means any gathering held on City Property, including a City Street, and subject to a City permit, where more than 100 people attend or participate.

"Mineral water" means drinking water containing more than 500 milligrams per liter of total dissolved solids and/or one or more chemical constituents in excess of the concentrations listed in the Federal Bottled Water Quality Standards (Title 21, Code of Federal Regs., Sec. 165.110).

"Participant Athletic Event" means an athletic event in which a group of people collectively walk, jog, run, or bicycle or otherwise participate in a sport on City Property, including a City Street.

"Rigid Plastic Bottle" means any formed or molded container comprised predominantly of plastic resin, having a relatively inflexible fixed shape or form, having a neck that is smaller than the container body, and intended primarily as a single service container. "Rigid Plastic Bottle" includes a compostable plastic bottle meeting these criteria.

"Water" includes: natural spring or well water; water taken from municipal or private utility systems or other sources; distilled, deionized, filtered, or other purified water; or any of the foregoing to which chemicals may be added. "Water" does not include: mineral water; carbonated or sparkling water; soda, seltzer, or tonic water; or flavored water, also marketed as fitness water, vitamin water, enhanced water, energy water, or other similar products. "Water" does not include those food ingredients that are listed in ingredient labeling as "water," "carbonated water," "disinfected water," or "filtered water."

(Added by Ord. 28-14, File No. 131207, App. 3/21/2014, Eff. 4/20/2014)

SEC. 2403. SALE OR DISTRIBUTION OF BOTTLED WATER ON CITY PROPERTY RESTRICTED.

(a) Starting October 1, 2014, no person may sell or distribute Bottled Water at an Event held indoors on City Property.

(b) Starting October 1, 2014, no person may sell or distribute Bottled Water at an Event held outdoors on City Property, including a City Street, where the permitting officer, department, or agency (collectively, "department") allows the Event sponsor access to reliable on-site potable water connections adequate to meet the hydration needs of the Event participants or attendees. By July 1, 2014, departments that issue permits for Events on their properties and in their facilities shall, in consultation with the San Francisco Public Utilities Commission ("SFPUC"), determine which properties that are frequently used for Events have a reliable on-site supply of drinking water that could be used by Event sponsors.

(c) Starting October 1, 2016, no person may sell or distribute Bottled Water at an Event held outdoors on City Property, including a City Street.

(d) The provisions of this Section 2403 shall not apply to the sale or distribution of Bottled Water to participants in a Participant Athletic Event. The provisions of this Section 2403 shall not apply where the City grants the general public access to enter or use City Property in question, including a City Street, without requiring issuance of a permit.

(e) This Section 2403 shall not apply to an event held prior to January 1, 2018 that is sponsored by a not-for-profit entity and that has over 250,000 attendees or participants.

(Added by Ord. 28-14, File No. 131207, App. 3/21/2014, Eff. 4/20/2014)

SEC. 2404. NEW LEASES, PERMITS, AND AGREEMENTS; MOBILE FOOD FACILITIES.

(a) Starting October 1, 2014, all new leases, permits, management agreements or other agreements awarded by the City allowing any person to use City Property, including a City Street, for purposes that contemplate or would allow the sale or distribution of beverages (collectively, "permits") shall specifically require that the permittee comply with this Chapter. This requirement shall also apply to any such permit renewed, extended, or materially amended after October 1, 2014.

(b) Starting October 1, 2014, no City officer or department shall issue a bid proposal or solicitation, request for bid or proposal, or contract for vendors or concessions to be operated on City Property that would require or permit the sale or distribution of Bottled Water on such property.

(c) This Section 2404 does not apply to concessions/vendors at San Francisco Airport facilities. This Section 2404 does not apply to permits for the use of City Property, including a City Street, for a Participant Athletic Event, if the permit provides that the Event sponsor may only sell or distribute Bottled Water, or allow the sale or distribution of Bottled Water, to participants in the Participant Athletic Event and not to any other persons. This Section 2404 will not apply to concessions/vendors at the Moscone Center facility until (1) the City Administrator certifies to the Board of Supervisors that the first phase of the expansion of the facility, the plans for which include installation of bottle filling stations, has been completed, or (2) January 1, 2018, whichever is sooner.

(d) Starting October 1, 2016, all Mobile Food Facility permits issued or renewed under Article 5.8 of the Public Works Code shall specifically provide that the permittee shall not sell or distribute or allow the sale or distribution of Bottled Water as part of the operation of the Facility.

(Added by Ord. 28-14, File No. 131207, App. 3/21/2014, Eff. 4/20/2014)

SEC. 2405. BARRING USE OF CITY FUNDS FOR PURCHASE OF BOTTLED WATER.

(a) No City officer, department, or agency (collectively, "department") shall use City Funds to purchase Bottled Water for its own general use. A department may use City Funds to purchase Bottled Water for uses specifically exempted from or allowed under this Chapter.

(b) It shall be City policy not to have drinking water systems in City offices or facilities that use plastic water bottles of any size where satisfactory alternatives exist and are feasible at the location under consideration. It shall further be City policy to conform drinking water systems in City offices or facilities to this goal where reasonable by the end of 2016.

(Added by Ord. 28-14, File No. 131207, App. 3/21/2014, Eff. 4/20/2014)

SEC. 2406. WAIVERS AND EXCLUSIONS.

(a) A City officer, department, or agency (collectively, "department") responsible for permitting an Event on or issuing a lease for City Property may waive the requirements of Sections 2403 and 2404 in full or in part if the Event sponsor or lessee demonstrates to the satisfaction of the department that strict application of the requirement would not be feasible, would create an undue hardship or practical difficulty, or that circumstances otherwise warrant granting of the waiver. The department's decision to grant a waiver shall be in writing and shall be final.

(b) The provisions of Sections 2403 and 2404 shall not apply where the department finds that the inclusion or application of such provisions would violate or be inconsistent with the terms or conditions of a grant, subvention or contract with an agency of the State of California or the United States or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or contract.

(c) The provisions of Sections 2403, 2404, and 2405(a) shall not apply where the department finds that relying on Bottled Water is necessary in a given situation to protect the public health, safety and welfare, and no reasonable alternative to Bottled Water will serve the same purpose.

(d) Departments shall annually report all waivers granted under subsection (a) and determinations of non-applicability made under subsections (b) and (c) to the Director of the Department of the Environment, and include the reason for each waiver.

(Added by Ord. 28-14, File No. 131207, App. 3/21/2014, Eff. 4/20/2014)

SEC. 2407. IMPLEMENTATION.

(a) This Chapter shall not apply to an Event held on City Property, including a City Street, where the sponsor applied for or received the permit prior to July 1, 2014. Nothing in this Chapter shall be construed to impair a contract, lease, management agreement or other legally-binding agreement to which the City is a party on the effective date of this Chapter.

(b) The Department of the Environment and the Public Utilities Commission shall take appropriate steps to educate and inform City departments about the requirements of this Chapter.

(c) The Director of the Department of the Environment shall submit an annual report to the Mayor and the Board of Supervisors on the implementation of this Chapter. The report shall include the number of waivers granted by City officers or departments under Section 2406(a) and determinations of non-applicability made under Section 2406(b) and (c), and a brief explanation of the justifications for the same.

(Added by Ord. 28-14, File No. 131207, App. 3/21/2014, Eff. 4/20/2014)

SEC. 2408. ENFORCEMENT AND PENALTIES.

(a) Any person who violates any provision of Section 2403 or of an administrative regulation adopted under this Article to implement that Section may be punished by administrative fines imposed by the Director of the Department of the Environment in the amount of:

- (1) Up to \$500 for the first violation;
- (2) Up to \$750 for a second violation within a twelve-month period; and,
- (3) Up to \$1,000 for a third and subsequent violations within a twelve-month period.

(b) Except as provided in subsection (a), setting forth the amount of administrative fines, Administrative Code Chapter 100, "Procedures Governing the Imposition of Administrative Fines," as may be amended from time to time, is hereby incorporated in its entirety and shall govern the imposition, enforcement, collection, and review of administrative citations issued by the Director to enforce this Article or any administrative regulation adopted under this Article.

(Added by Ord. 28-14, File No. 131207, App. 3/21/2014, Eff. 4/20/2014)

SEC. 2409. INCREASING THE CITY'S COMMITMENT TO PROVIDING PUBLIC WATER.

(a) It shall be City policy to increase the availability of clean, free drinking water in public areas. City departments shall take all reasonable and appropriate steps to promote and facilitate achievement of the goals and policies of this Chapter, including helping Event sponsors and other City departments to meet the requirements of this Chapter.

(b) The SFPUC, in consultation with the Department of Public Health and other appropriate City departments, shall investigate standards and procedures for allowing Event sponsors to access additional City-controlled or -operated water supplies. The SFPUC shall report its findings and recommendations to the Board of Supervisors by July 1, 2014.

(c) The SFPUC, in consultation with appropriate City departments, shall investigate installing backflow preventers and related plumbing equipment on existing potable water systems, to facilitate public access to such potable water in the park sites most frequently used for special events. The SFPUC shall report its findings and recommendations to the Board of Supervisors by July 1, 2014.

(d) It shall be City policy that any City department undertaking a capital improvement in a park, plaza, playground, or other public space shall install bottle-filling stations, drinking fountains, and or potable water hook-ups for public use, if the department finds that the installation is proximate and feasible with the scale and scope of the capital improvement.

(e) It shall be City policy to encourage the inclusion of bottle-filling stations or drinking fountains for public use in Privately-Owned Public Open Spaces as defined in Planning Code Section 135(a), as amended.

Print Form

Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp
or meeting date

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

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

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

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

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

Sponsor(s):

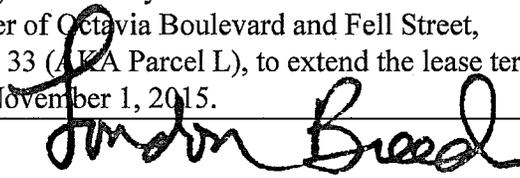
Breed

Subject:

Real Property - Lease Amendment – PROXYdevelopment, LLC - NEC of Octavia Boulevard and Fell Street - term through January 31, 2021 – initial rent of \$5,573.67 per month

The text is listed below or attached:

Resolution approving a Second Amendment to Lease between the City and County of San Francisco and PROXYdevelopment, LLC, for property located at the northeast corner of Octavia Boulevard and Fell Street, commonly known as a portion of Assessor's Block No. 0817, Lot No. 33 (AKA Parcel L), to extend the lease term through January 31, 2021 and revise the monthly base rent effective November 1, 2015.

Signature of Sponsoring Supervisor: 

For Clerk's Use Only:

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Rm 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Todd Ruffo, Director, Office of Economic & Workforce Development

FROM: Derek Evans, Assistant Clerk, Board of Supervisors

DATE: August 3, 2015

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors Budget and Finance Committee has received the following legislation, introduced by Supervisor Jane Kim on July 28, 2015, which is being referred to your department.

File No. 150820

Resolution approving a Second Amendment to Lease between the City and County of San Francisco and PROXYdevelopment, LLC, for property located at the northeast corner of Octavia Boulevard and Fell Street, commonly known as a portion of Assessor's Block No. 0817, Lot No. 33 (aka Parcel L), to extend the lease term through January 31, 2021, and revise the monthly base rent to \$5,573.67 effective November 1, 2015.

If you wish to submit any comments or reports, please forward those to the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

cc: Ken Rich, Office of Economic & Workforce Development
Lisa Pagan, Office of Economic & Workforce Development
Linda Wong, Office of the Clerk of the Board of Supervisors

**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: PROXYdevelopment, 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>	
Douglas Burnham, Principal & Founder	
Contractor address: envelope a+d 2212 Sixth Street Berkeley, CA 94710	
Date that contract was approved: <i>(By the SF Board of Supervisors)</i>	Amount of contract: Rent to City of at least \$5573.67/month
Describe the nature of the contract that was approved: Lease agreement through 1/31/2021	
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