

File No. 161314

Committee Item No. 2
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS
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Committee: Budget & Finance Sub-Committee Date March 2, 2017

Board of Supervisors Meeting Date _____

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Completed by: Linda Wong Date February 24, 2017
Completed by: Linda Wong Date _____



City and County of San Francisco
Department of Elections

John Arntz, Director

February 14, 2017

Honorable Malia Cohen
Chair, Budget and Finance Committee
San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place,
City Hall, Room 244
San Francisco, California 94102

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BOARD OF SUPERVISORS
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Subject: Amended Request for the Release of Reserve Funds for Relocation of the Department of Elections' Warehouse

Dear Supervisor Cohen:

The San Francisco Department of Elections (Department) respectfully requests that the Budget and Finance Committee (Committee) release \$2,067,934 of the \$2,500,000 placed on reserve during the fiscal year 2014/2015 budget process so that the Department can fund capital project expenses related to the relocation of its warehouse operations to Pier 31.

The Committee previously placed \$2,500,000 on reserve from the Department's proposed 2014/2015 budget pending the Department obtaining a lease for a warehouse site and providing detailed justification of expenditures.

After several years of reviewing and visiting sites and with assistance from the Department of Real Estate, real estate brokers, and the San Francisco Port Commission (Port), the Port agreed to lease Pier 31 to the Department and has developed a draft Memorandum of Understanding (MOU) for this purpose (Attachment A). The date by which the Department takes possession of the space is dependent on the Port completing renovations of the structure.

The Department of Public Works (DPW) has drafted an initial scope of work for the Department's improvements of the site that will commence when the Port completes its renovations. Attachment B provides cost estimates for the improvements and for costs associated with relocating items to Pier 31 from the current warehouse location on Pier 48. The improvements include work such as leveling the floor, adding a security system, constructing restrooms, and installing secure fencing for voting equipment.

Releasing the reserve funds will allow the Department to continue in its efforts to properly identify, plan, and then commence work necessary to facilitate the relocation of the Department's warehouse operations.

Respectfully

John Arntz, Director

Enclosures: **Attachment A** – "Memorandum of Understanding, M-16135, between the San Francisco Port Commission and the Department of Elections, Pier 31"
Attachment B – "Tenant Improvement and Warehouse Relocation Project Budget Analysis"

<p>Item 2 File 16-1314</p>	<p>Department: Department of Elections (DOE)</p>
<p>EXECUTIVE SUMMARY</p>	
<p style="text-align: center;">Legislative Objectives</p>	
<ul style="list-style-type: none"> The Department of Elections is requesting the release of \$2,067,937 on Budget and Finance Committee reserve. 	
<p style="text-align: center;">Key Points</p>	
<ul style="list-style-type: none"> The Department of Elections (DOE) currently leases warehouse space at Pier 48 from the Port of San Francisco (Port) for ballot processing operations and equipment, materials, and archival ballot storage. The DOE has been on a month-to-month holdover since its three-year Memorandum of Understanding (MOU) with the Port expired in December 2015, and must vacate Pier 48 by the end of May 2017. The Port has agreed to lease Pier 31 to the DOE beginning May 1, 2017 and drafted an MOU for this purpose. In FY 2014-15, the Budget and Finance Committee placed \$2,500,000 on reserve for relocation of DOE’s warehouse operations, pending the submission of a lease for a new site and detailed justification of expenditures. Under the current MOU, DOE pays annual rent of \$991,176 or \$11.40 per square foot per year for 86,945 gross square feet (gsf) at Pier 48. Under the proposed five-year MOU, DOE would pay annual rent of \$1,137,900 or \$16.20 per square foot per year for the first year, an increase of 14.8 percent, for 70,241 gsf at Pier 31. After the first year, monthly rent would increase by 3 to 4 percent on an annual basis as specified in the MOU. The DOE would require site improvements for Pier 31, including floor leveling, the addition of a security system, restroom construction, and the installation of secure fencing for voting equipment. 	
<p style="text-align: center;">Fiscal Impact</p>	
<ul style="list-style-type: none"> The total budget for DOE site improvements and relocation costs is \$2,067,937, based on an initial scope of work by the Department of Public Works (DPW). The requested release of \$2,067,937, out of the total of \$2,500,000 placed on reserve, would leave a balance of \$432,066. The Budget and Legislative Analyst recommends that the balance of \$432,066 be returned to the City’s General Fund. Including the costs of utilities, janitorial services, and security services, over the five-year term of the proposed lease, the total estimated annual costs to DOE would be \$6,138,464, which would be funded from the City’s General Fund and would be included in DOE’s annual operating budgets, subject to appropriation approval by the Board of Supervisors. 	
<p style="text-align: center;">Recommendations</p>	
<ul style="list-style-type: none"> Approve the requested release of \$2,067,934 out of the total of \$2,500,000 on Budget and Finance Committee reserve. Return the balance of \$432,066, previously on Budget and Finance Committee reserve, to the City’s General Fund. 	

MANDATE STATEMENT

City Administrative Code Section 3.3(e) states that the Budget and Finance Committee of the Board of Supervisors has jurisdiction over the City's budget and may reserve proposed expenditures to be released at a later date subject to Board of Supervisors approval.

BACKGROUND

The Department of Elections (DOE) currently leases warehouse space at Pier 48 from the Port of San Francisco (Port) for ballot processing operations and equipment, materials, and archival ballot storage. Pier 48 is located at the northeast tip of Mission Bay adjacent to Terry Francois Boulevard. The DOE occupies Pier 48 Shed B, an 86,945 gross square foot (gsf) steel-framed warehouse, and one of two buildings located at the pier.

The warehouse at Pier 48 is comprised of fixed programming space, the use of which does not vary depending on the stage of the election cycle, and flexible programming space, the use of which varies depending on the stage of the election cycle. Most of the fixed programming space, which accounts for less than 50 percent of total warehouse space, is allocated to the secure storage "cage"—where equipment and old election ballots are stored, and the remaining space is comprised of administrative space, restrooms, and a break area for a staff of three full-time equivalent positions (FTEs). On-site staff may increase to over 100 people during the election cycle¹ when the flexible program space is used for pre-election, election day, and post-election tasks.

In 2012, the Board of Supervisors approved a five-year lease between the City, on behalf of the Port, and the China Basin Ballpark Company, LLC (CBBC)² for Seawall Lot 337³, Pier 48 Shed A, Pier 48 Shed C, and Pier 48 Valley⁴ with an option to expand the agreement to include Pier 48 Shed B (File 12-0200). CBBC is exercising their option to take possession of Pier 48 Shed B, as master tenant, and will be subleasing all of Pier 48 to Anchor Brewing Co starting in mid-2017.

By the end of 2013, the DOE began searching for a new site for its warehouse operations. The DOE has been on a month-to-month holdover since its three-year Memorandum of Understanding (MOU) with the Port expired in December 2015 and must vacate Pier 48 by the end of May 2017.

In FY 2014-15, the Budget and Finance Committee placed \$2,500,000 on reserve for relocation of DOE's warehouse operations, pending the submission of a lease for a new site and detailed justification of expenditures.

¹ The election cycle, in this report, is defined as the period two months before an election until one month after.

² CBBC is a subsidiary of San Francisco Baseball Associates (dba San Francisco Giants) that was specifically established to develop, construct, and operate AT&T Park and the related parking lots.

³ Location of Parking Lot A at AT&T Park.

⁴ Pier 48 Valley is the open space between Pier 48 Shed A and Pier 48 Shed B.

DETAILS OF PROPOSED LEGISLATION

The Department of Elections (DOE) is requesting the Budget and Finance Committee of the Board of Supervisors to release \$2,067,937 out of the total of the \$2,500,000 previously placed on Budget and Finance Committee reserve in FY 2014-15 for relocation of the Department's warehouse operations from Pier 48 to Pier 31, which is also owned by the Port.

The DOE worked with the City's Real Estate Division, private real estate brokers, and the Port to identify a relocation site. According to Mr. Jeff Bauer, Leasing Manager at the Port, Pier 31 was the only available site that was large enough and suitable for use as a storage facility in order to use for ballot processing operations for the DOE.⁵ The Port agreed to lease Pier 31 to the DOE and drafted an MOU for this purpose. The five-year MOU is not subject to Board of Supervisors approval because it is an agreement between two City departments. The five-year agreement provides for:

- Monthly rent payable by DOE to the Port of \$94,825 for the first year and an annual increase of between 3 and 4 percent (specified by year in the MOU) beginning May 1, 2017 over the term of the five-year agreement⁶
- Utilities, janitorial services, and security services to be paid by the DOE
- Options to extend the MOU for a total of five years (one three-year option and one-two year option) at rent levels equal to the greater of (a) current rent levels increased by three percent or (b) the then-current parameter rent⁷ approved by the Port Commission

Pier 31 is located at the northeast edge of North Beach on the Embarcadero between Bay Street and Chestnut Street. The DOE would occupy a 70,241 gross square foot building⁸, one of two buildings located on the pier. The Port is currently renovating the site⁹, and the date when the DOE would take possession depends on when those renovations are completed, but would occur no later than May 1, 2017. According to Mr. Bauer, the majority of renovations are complete, and the remaining renovations are on track to be completed in time for move-in on May 1.

The DOE would require site improvements beyond the renovations completed by the Port, including floor leveling, the addition of a security system, restroom construction, and the installation of secure fencing for voting equipment. The Department of Public Works (DPW) has drafted an initial scope of work for these site improvements and provided cost estimates for the improvements and relocation costs.

⁵ Pier 19 and Pier 23 were also available, but both are planned for retail or active recreation uses.

⁶ The monthly rent of \$94,825 in the first year equals \$1.35 per square foot for 70,241 square feet. According to Mr. Bauer, rent of \$1.35 per square foot is consistent with the Port's FY 2016-17 rental rate schedule.

⁷ Parameter rent refers to the Port's minimum rental rates approved by the Port Commission on an annual basis. Mr. Bauer states that minimum parameter rental rates are determined for each of the Port's properties are based on market rate surveys and Port leasing activity for the previous year. The Port contracts with a third party consultant to review the proposed rental rate schedule before seeking approval by the Port Commission. Keyser Marston Associates (KMA) reviewed the FY 2016-17 rental rate schedule.

⁸ This is a reduction of 16,704 gsf—or 19%—compared to the warehouse space of 86,945 gsf at Pier 48.

⁹ According to Mr. Bauer, site renovations, including the replacement of the roof, structural columns, and overhead lighting, will cost the Port approximately \$8 million.

The DOE expects to occupy both sites during the month of May 2017.¹⁰ DOE warehouse staff would move equipment and other assets from Pier 48 to Pier 31 during this time. If construction or other factors prevent staff from working at either site during or after the transition, they would work from the Department's main office in City Hall. Construction for the site improvements is scheduled to begin in June 2017 and end in December 2017. According to Mr. Sandro Burgos, Financial Manager at the Department of Elections, the Department expects site improvements to be completed before the start of pre-election activities in March 2018.¹¹

FISCAL IMPACT

Site Improvements and Relocation Costs

The total budget for DOE site improvements and relocation costs is \$2,067,937, as shown in Table 1 below. The DOE is now requesting release of \$2,067,937 placed on Budget and Finance Committee reserve in FY 2014-15 to cover relocation costs. The requested release of \$2,067,937, out of the total of \$2,500,000 placed on reserve, would leave a balance of \$432,066. The Budget and Legislative Analyst recommends that the balance of the reserve funds of \$432,066 be returned to the City's General Fund.

¹⁰ The DOE would only pay rent for Pier 48 in May. According to Mr. Bauer, the Port has agreed to waive the first month of rent at Pier 31.

¹¹ The next scheduled election will be held on June 5, 2018. Mr. Burgos states that if construction extends into this period, the Department will make every effort to minimize its interference with the election process.

Table 1: Proposed Tenant Improvement Costs

Description	Quantity	Unit Cost	Total
Office	700 sf	\$250 per sf	\$175,000
Staff Break Room	300 sf	250 per sf	75,000
Restroom	500 sf	250 per sf	125,000
Multi-purpose room	400 sf	250 per sf	100,000
Vertical Circulation	500 sf	250 per sf	125,000
PSD/Security Checkpoint	350 sf	250 per sf	87,500
Storage (Soft Material/Office supplies)	100 sf	250 per sf	25,000
Subtotal, Administrative Space	2,850 sf	\$250 per sf	\$712,500
Security Gate (at lease space boundary)	111 lf*	120 per lf	\$13,320
Standard Security Fence	676 lf	120 per lf	81,120
Floor Leveling			35,000
Security System			25,000
Mechanical			85,000
Plumbing			85,000
Electrical			75,000
Fire Protection			50,000
Furniture, Fixture, and Equipment			13,000
Moving			30,000
Subtotal, Base Cost			\$1,204,940
Soft Costs			
Architecture and Project Management			\$198,000
Structural Engineering			74,250
Mechanical/Plumbing			111,375
Electrical			111,375
Construction Management Services			135,000
Cost Estimator			20,902
Permits			24,098
Subtotal, Soft Costs			\$675,000
Project Contingency (10%)			187,994
Total Project Costs			\$2,067,934

Source: Preliminary Project Budget Analysis, Attachment B

*linear feet

According to Mr. Tony Leung, Senior Architect at DPW, DPW estimated the unit cost for administrative space at \$250 per sf based on a review of comparative bids. Mr. Leung also states that the project will require structural work since it involves building a structure inside of the pier to house administrative space as well as restroom construction. DPW will obtain more detailed cost estimates from an independent consultant¹² at least twice prior to going to bid for construction services to ensure that the scope of work is feasible based on budget constraints and to plan contingencies in the event that bids come in lower or higher than anticipated. After completion of the design phase, the construction firm for the DOE site improvements will be

¹² The independent consultant would be selected from an as-needed pool of cost-estimators that have been previously selected through a competitive process as part of a Request for Qualifications (RFQ).

selected by DPW based on a competitive bid process pursuant to Administrative Code Chapter 6.

Pier 31 Rent and Operating Expenses

The monthly rent for the space currently leased by DOE at Pier 48 is \$82,598 per month, equal to \$0.95 per square foot for 86,945 gsf. The proposed monthly rent for the space to be leased by DOE at Pier 31 in the first year is \$94,825 or \$1.35 per square foot for 70,241 gsf. Although the DOE would receive a reduction of 16,704 gsf in the proposed Pier 31 location as compared to the existing space in Pier 48, the increase in rent in the first year is \$12,227 per month or 14.8 percent. The total annual rent would be \$1,137,900, an increase of \$146,724 or 14.8 percent, for the year. As mentioned previously, the Port is waiving the first month’s rent at Pier 48. Therefore, annual rent for Year 1 would include 11 months of rental payments. After the first year, monthly rent would increase by 3 to 4 percent on an annual basis as specified in the MOU. As noted above, the proposed MOU, which specifies the terms of the new lease between the Port and DOE, is not subject to Board of Supervisors approval.

The proposed monthly rent reflects the minimum parameter rental rate for Pier 31 approved by the Port Commission in 2016. According to Mr. Bauer, the increase in rent reflects higher property values in the Northeast Waterfront, where Pier 31 is located, compared to South Beach/China Basin, where Pier 48 is located.

In addition to the annual rent for Pier 31, DOE would be responsible for paying annual utilities, janitorial services, and security services, at an estimated cost of \$23,040.¹³ Assuming operating costs increase at an annual rate of 3 percent, the total estimated cost of the proposed five-year MOU would be \$6,138,464, as shown in Table 2 below.

Table 2: Total Costs by Year under Proposed MOU

Year	Annual Rent	Annual Operating Costs*	Total Cost
Year 1	\$1,043,079**	\$23,040	\$1,066,119
Year 2	1,180,049	23,731	1,203,780
Year 3	1,222,193	24,443	1,246,636
Year 4	1,264,338	25,176	1,289,514
Year 5	1,306,483	25,932	1,332,415
Total	\$6,016,142	\$122,322	\$6,138,464

Source: MOU, DOE

*Assumes annual increase of 3%

**Annual rent for Year 1 includes 11 months of rent, as the Port would waive rent for the first month

According to Mr. Burgos, the funding source of the proposed MOU, including rent and related costs, would be the City’s General Fund, and would be included in DOE’s annual operating budgets, subject to appropriation approval by the Board of Supervisors.

¹³ Mr. Burgos assumes operating costs at Pier 31 would be comparable to current operating costs at Pier 48—\$23,040

RECOMMENDATIONS

1. Approve the requested release of \$2,067,934 out of the total of \$2,500,000 on Budget and Finance Committee reserve.
2. Return the balance of \$432,066, previously on Budget and Finance Committee reserve, to the City's General Fund.



CITY AND COUNTY OF SAN FRANCISCO

EDWIN M. LEE, MAYOR
MEMORANDUM OF UNDERSTANDING (“MOU”)

M-16135

BY AND BETWEEN

THE SAN FRANCISCO PORT COMMISSION

and

DEPARTMENT OF ELECTIONS

PIER 31

Elaine Forbes
Executive Director

SAN FRANCISCO PORT COMMISSION

Willie Adams, President
Kimberly Brandon, Vice President
Leslie Katz, Commissioner
Eleni Kounalakis, Commissioner
Doreen Woo Ho, Commissioner

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EXHIBIT A: DESCRIPTION OF PREMISES
SCHEDULE 1: ASBESTOS NOTIFICATION AND INFORMATION
SCHEDULE 2: SUBSTRUCTURE REPORT(S)
SCHEDULE 3: FEMA DISCLOSURE NOTICE

**MEMORANDUM OF UNDERSTANDING
NO. M-16135**

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is entered into by and between the DEPARTMENT OF ELECTIONS ("DOE"), an agency of the City and County of San Francisco, and the SAN FRANCISCO PORT COMMISSION, an agency of the City and County of San Francisco ("Port").

RECITALS

A. Under the Burton Act (Chapter 1333 of Statutes 1968, as amended), and San Francisco Charter of Section B 3.581, the administration and control of real property transferred to the City of San Francisco by the State of California pursuant to the legislative trust grant, including the area encompassing the real property which is the subject of this MOU, is vested in the Port.

B. DOE and Port entered MOU M-14989 for use of portions of Pier 48 effective January 1, 2008. DOE wishes to and the Port agrees to relocate the DOE operation to Pier 31 to continue the use consistent with the Port's current parameter leasing policy and in accordance with the terms and conditions set forth in this MOU which will replace MOU M-14290.

C. DOE acknowledges that Pier 31 is scheduled for a construction project to replace the roof, structural columns, and overhead lighting. If DOE occupies Pier 31 prior to the completion of the scheduled construction project, DOE agrees not to seek rent credits or other consideration.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

AGREEMENT

1. RECITALS.

The foregoing recitals are true and correct and are incorporated herein by this reference.

2. TERM.

The Effective Date of this MOU shall be the date of full execution by Port and DOE. The Term will commence upon delivery of the Premises to DOE which the parties agree shall be no later than May 1, 2017 ("Commencement Date") and shall continue for a period of sixty (60) months ("Expiration Date"). The parties will document the actual Effective Date, Commencement Date and Expiration Date in writing.

Any holding over after the Expiration Date, shall not constitute a renewal of this MOU, but be deemed a month-to-month agreement upon the terms, conditions, and covenants of this MOU, except for the amount of Rent as provided below. Either party may cancel the month-to-month agreement upon thirty (30) days written notice to the other party.

"Term" shall refer to the total time period during which this MOU exists as a binding agreement between the parties, including all extension periods (see Section 3 below) and month-to-month holdover periods.

DOE shall hold Port harmless from and against any and all loss or liability resulting from DOE's delay in surrendering the Premises including, without limitation, any loss or liability resulting from any claim against Port made by any succeeding tenant or prospective tenant or developer founded on or resulting from such delay and losses to Port due to lost opportunities to lease any portion of the Premises to any such succeeding tenant or prospective tenant or developer, together with, in each case, actual attorneys' fees and costs.

3. TERM; EXTENSION OPTION(S).

DOE may seek to extend the Term through two (2) extension options which may be granted or denied by Port in its sole discretion. The "first extension option" shall have a term of thirty-six (36) months. The "second extension option" shall have a term of twenty-four (24) months. DOE must request an extension option by written notice to Port no later than ninety (90) days prior to the relevant expiration date. Port will notify DOE of its approval or rejection within thirty (30) days of DOE's request. If the first extension option is not requested or granted, then the second extension option shall be null and void.

The terms for any extension term shall cover the entire Premises and shall be upon all of the terms, covenants and conditions of this MOU, except that Rent during an extension term will be the greater of the (i) the current rent increased by three percent (3%) or (ii) the then-current parameter rent approved by the Port Commission. In either case, Rent will increase by three percent (3%) on each anniversary date of the extension term. Port will notify DOE in writing of Port's determination of the Rent for an extension term not later than thirty (30) days prior to commencement of the relevant extension term.

4. PREMISES.

a. For the Rent and subject to the terms and conditions of this MOU, Port hereby authorizes DOE to use the area located at PIER 31, in the City and County of San Francisco, California, shown on Exhibit A, attached hereto and made a part hereof, consisting of approximately 70,241 square feet of enclosed shed area (the "Premises" or the "Facility"). In addition, on a temporary and non-exclusive basis only, DOE shall have the right to access those portions of the Pier 31 front entry area as necessary for vehicle access, parking, and deliveries to the Premises on and around the days DOE holds elections. DOE acknowledges that there are or may be current and future tenants, licensee or other third parties with rights to use the Pier 31 front area and other portions of Pier 31 and agrees to work cooperatively with them and the Port during the periods of DOE's use.

b. As Is Condition. DOE ACKNOWLEDGES AND AGREES THAT DOE IS FAMILIAR WITH THE PREMISES, THE PREMISES ARE BEING LEASED AND ACCEPTED IN ITS "AS IS" CONDITION, WITHOUT ANY IMPROVEMENTS OR ALTERATIONS BY PORT, WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, AND SUBJECT TO ALL APPLICABLE LAWS GOVERNING ITS USE,

OCCUPANCY AND POSSESSION. DOE REPRESENTS AND WARRANTS TO PORT THAT DOE HAS INVESTIGATED AND INSPECTED, EITHER INDEPENDENTLY OR THROUGH AGENTS OF DOE'S OWN CHOOSING, THE CONDITION OF THE PREMISES AND THE SUITABILITY OF THE PREMISES FOR DOE'S BUSINESS AND INTENDED USE. DOE FURTHER ACKNOWLEDGES THAT IT HAS RECEIVED AND REVIEWED THE FEMA DISCLOSURE NOTICE ATTACHED AS SCHEDULE 1 AND THE STRUCTURAL REPORTS ATTACHED AS SCHEDULE 2. DOE ACKNOWLEDGES AND AGREES THAT NEITHER PORT NOR ANY OF ITS AGENTS HAVE MADE, AND PORT HEREBY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE RENTABLE AREA OF THE PREMISES, THE PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PREMISES OR THE FACILITY (INCLUDING, BUT LIMITED TO THE SUBSTRUCTURE), THE PRESENT OR FUTURE SUITABILITY OF THE PREMISES FOR DOE'S BUSINESS, OR ANY OTHER MATTER WHATSOEVER RELATING TO THE PREMISES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

5. RENTAL PAYMENTS.

- a. Rent. DOE will cause Rent to be paid to Port on the first day of each calendar month during the Term (the "Due Date") according to the following schedule:

<i>Monthly Base Rent:</i>	Months	Sq. Ft.	Monthly Base Rate	Total Monthly Base Rent
	0-1	70,241	\$00.00	\$00.00
	2-12	70,241	\$1.35	\$94,825.35
	13-24	70,241	\$1.40	\$98,337.40
	25-36	70,241	\$1.45	\$101,849.45
	37-48	70,241	\$1.50	\$105,361.50
	49-60	70,241	\$1.55	\$108,873.55
First extension option	61-96	70,241	See § 3	
Second extension option	97-120	70,241	See § 3	

If DOE fails to pay or cause to be paid Rent or any portion of Rent within ten (10) days following the Due Date, such unpaid amount shall be subject to a late payment charge (the "Late Charge") equal to one and one-half percent (1.5%) of all undisputed amounts which remain unpaid, and/or one and one-half percent (1.5%) of all undisputed amounts which are more than five (5) business days late. Such Late Charge may be assessed without notice and cure periods. The Late Charge shall start accruing as of the original Due Date of the owed amount notwithstanding the five (5) calendar day grace period provided herein.

- b. Holdover Rent. Should DOE hold over, the monthly Rent shall be increased on the Expiration Date and on each subsequent annual anniversary during any holdover period by three percent (3%).

6. FINANCIAL ASSURANCES.

DOE and the Port mutually agree that the existing security deposit held by Port for the Pier 48 location under MOU M-14989 in the amount of \$181,248.62 will be transferred and will not be increased during the Term to secure DOE's obligations under this MOU ("Security Deposit").

7. PERMITTED USES.

a. DOE may use the Premises for the following "permitted uses" and no others: (i) administrative office, secure storage, programming, electrical charging, maintenance and repair of City voting machines and related maintenance and operating requirements; (ii) vehicular storage, parking, and access for delivery, distribution, retrieval and returning of City voting machines, and voting materials and records; (iii) storage of City voting materials and storage of archival voting records and material; and (iv) training exercises for City poll workers and supervisors. -

b. Restrictions On Use:

DOE shall not use or permit the Premises; or any part thereof, to be used for any purposes other than the purposes set forth in this MOU. DOE shall not handle or store Hazardous Materials as defined in Section 10. DOE shall not perform any act which will cause a cancellation of any insurance policy covering the Premises or any part thereof. DOE shall be prohibited from the following activities: storage of hazardous waste, Hot works, welding, and cutting, vehicle washing, maintenance or fueling.

c. Operational Requirements:

DOE may: store/use two (2) propane-powered forklifts and store up to 10 gallons of household cleaners and cleaning supplies. DOE shall: store liquid household cleaners within secondary containment (e.g., drip pans, metal trays, containment pallets, storage bins, or comparable) and obtain a San Francisco Fire Department permit for the handling, use, or storage of any amount of Liquid Propane Gas. Use of compressed and flammable gases may require a permit from the San Francisco Department of Public Health (SFDPH) Hazardous

Materials Unified Program Agency (HMUPA). Use of propane-powered forklifts or any other compressed or flammable gases requires registration with the SFDPH HMUPA or filing a "Disclaimer Notice" which will be verified by SFDPH inspection staff. For more information, go to:

<http://www.sfdph.org/dph/EH/HMUPA/HMUPAFormsMenu.asp> or call (415) 252-3900.

If the amount of the oil waste is less than 27 gallons per month, then a City sponsored program can be used for disposal. This program is called the Very Small Quantity Generators (VSQG) program and allows businesses to use a drop-off program by making an appointment to take their own waste to the City's Household Hazardous Waste Facility. VSQG drop-off days are held once or twice a month (usually the last Wednesday of the month). Motor oil can be dropped off during all business hours. To schedule an appointment, call SF Recycling & Disposal at (415) 330-1425.

8. BCDC PERMIT.

Port shall cooperate with DOE in obtaining any necessary BCDC permits and approvals, including, if necessary, joining with DOE as a co-applicant, provided that DOE pay all fees and satisfy all conditions incurred in the BCDC process.

9. MAINTENANCE, IMPROVEMENTS, UTILITIES. SURRENDER OF PREMISES.

Except as otherwise provided herein, DOE will be strictly responsible for the security of the Premises, and maintenance of the Premises and all utilities thereon in good and serviceable order and repair. DOE will pay, or cause to be paid for, all utility services provided to the Premises, including but not limited to electricity, water, sewer, gas and telephone, and will provide any scavenger service necessitated by its use of the Premises. At the expiration or sooner termination of this MOU, DOE shall surrender the Premises clean and free of any Hazardous Materials or other materials introduced and stored on the Premises by DOE or its subtenants and shall repair any damage to the Premises occasioned by DOE's use, excluding ordinary wear and tear.

DOE's maintenance obligations notwithstanding, Port shall maintain the roof and roof structure and the exterior walls of the Premises (but not the doors, roll-up doors or glazing) in a watertight condition.

DOE shall be obligated, at its sole cost and expense, to repair and maintain in good operating condition all utilities located within the Premises and all utilities installed by DOE (whether within or outside the Premises) except the sanitary sewer below the slab. If DOE requests Port or City to perform such maintenance or repair, whether emergency or routine, Port may, in its sole discretion, elect to do so, and Port shall charge DOE for the cost of the work performed at the then prevailing standard rates, and DOE agrees to pay said charges to Port promptly upon billing. DOE shall pay for repair of utilities located outside the Premises (regardless of who installed the same) which are damaged by or adversely affected by DOE's use of such utility and shall be responsible for all damages, liabilities and claims arising therefrom.

The parties agree that DOE, at its sole cost and expense, will make certain improvements in the Premises, subject to Port approval, and that DOE will not be entitled to any rent credit or other

consideration, including any extension of the Term, in exchange for such improvements. The parties agree that any and all utility and other improvements shall become part of the realty, are not trade fixtures and shall remain in the Premises upon surrender by DOE unless otherwise specified by Port. DOE shall apply for building permits from Port for the installation of bathrooms, fences, office trailers, storage racks, or other improvements and structures.

10. HANDLING HAZARDOUS MATERIALS/ENVIRONMENTAL LAWS

a. Requirements for Handling. Neither DOE nor its Agents or Invitees may Handle or permit any other person to Handle any Hazardous Material in, on, under or about the Premises or any other Port property.

b. DOE Responsibility. DOE agrees to protect its Agents and Invitees in its operations in the Premises from hazards associated with Hazardous Materials in accordance with all Environmental Laws and also agrees, for itself and on behalf of its Agents and Invitees, that during its use and occupancy of the Premises, each of them:

1. will not permit any Hazardous Materials to be present in, on, under or about the Premises, any other part of the Facility, or other Port property;
2. will not cause or permit any Hazardous Material Condition; and
3. will comply with all Environmental Laws relating to the Premises and any Hazardous Material Condition, and will not engage in or permit any activity at the Premises or any other Port property, or in the operation of any vehicles or vessels used in connection with the Premises in violation of any Environmental Laws.

c. DOE's Environmental Condition Notice Requirements.

1. DOE must notify Port immediately, orally or by other means that will transmit the earliest possible notice to Port staff, followed within twenty-four (24) hours by written notice, of and when DOE learns or has reason to believe Hazardous Materials were Released or Handled, in, on, or about the Premises, any other Port property, or the environment, or from any vehicles or vessels that DOE, its Agents or Invitees use during DOE's occupancy of the Premises, whether or not the Release or Handling is in quantities that would be required under Environmental Laws to be reported to a Regulatory Agency.

2. DOE must notify Port immediately, orally or by other means that will transmit the earliest possible notice to Port staff, followed within twenty-four (24) hours by written notice, and contemporaneously provide Port with an electronic copy, of:

(a). Any notice of the Release or Handling of Hazardous Materials, in, on, or about the Premises, any other Port property, or the environment, or from any vehicles or vessels DOE or its Agents or Invitees uses during DOE's occupancy of the Premises that DOE or its Agents or Invitees provides to a Regulatory Agency;

(b). Any notice of a violation, or a potential or alleged violation, of any Environmental Law that DOE or its Agents or Invitees receives from any Environmental Regulatory Agency;

(c). Any other Environmental Regulatory Action that is instituted or threatened by any Environmental Regulatory Agency against DOE or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, or about the Premises,

other Port property, or the environment, or from any vehicles or vessels DOE or its Agents or Invitees use during DOE's use of the Premises;

(d). Any Hazardous Materials Claim that is instituted or threatened by any third party against DOE or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, or about the Premises, other Port property, or the environment, or from any vehicles or vessels that DOE or its Agents or Invitees use during DOE's use of the Premises; and

(e). Any notice of the termination, expiration, or substantial amendment of any Regulatory Approval needed by DOE or its Agents or Invitees for their operations at the Premises.

(f). DOE must notify Port of any meeting, whether conducted face-to-face or telephonically, between DOE and any Environmental Regulatory Agency regarding an Environmental Regulatory Action. Port will be entitled to participate in any such meetings at its sole election.

(g). DOE must notify Port of any Environmental Regulatory Agency's issuance of a Regulatory Approval. DOE's notice to Port must state the issuing entity, the Regulatory Approval identification number, and the date of issuance and expiration of the Regulatory Approval. In addition, DOE must provide Port with a list of any Regulatory Approval, plan or procedure required to be prepared and/or filed with any Environmental Regulatory Agency for operations on the Premises, including a "Spill Pollution Control and Countermeasure Plan." DOE must provide Port with copies of any of the documents within the scope of this Section upon Port's request.

(h). DOE must provide Port with copies of all communications with Regulatory Agencies and all non-privileged communications with other persons regarding potential or actual Hazardous Materials Claims arising from DOE's or its Agents' or Invitees' operations at the Premises. Upon Port's request, DOE must provide Port with a log of all communications withheld under a claim of privilege that specifies the parties to and subject of each withheld communication.

(i). Port may from time to time request, and DOE will be obligated to provide, information reasonably adequate for Port to determine that any and all Hazardous Materials are being Handled in a manner that complies with all Environmental Laws.

d. Requirement to Remediate.

1. DOE's Remediation obligations under this Subsection (1) are subject to Subsection (2).

(a). After notifying Port in accordance with Subsection (C) (DOE's Environmental Condition Notice Requirements), DOE must Remediate at its sole cost in compliance with all Environmental Laws and this MOU, any Hazardous Material Condition occurring during the Term or while DOE or its Agents or Invitees otherwise occupy any part of the Premises. DOE must obtain Port's approval of a Remediation work plan, whether or not required under Environmental Laws, then begin Remediation actions immediately following Port's approval of the work plan and continue diligently until Remediation is complete, as determined by Port, in its sole discretion.

(b). In addition to its obligations under clause (a), before this MOU terminates for any reason, DOE must Remediate at its sole cost in compliance with all Environmental Laws and this MOU: (A) any Hazardous Material Condition caused by DOE's or its Agents' or Invitees' Handling Hazardous Materials during the Term; and (B) any Hazardous Material Condition discovered during DOE's occupancy that any Regulatory Agency requires to be Remediated if Remediation would not have been required but for DOE's use of the Premises.

(c). If Environmental Laws require a Remediation action plan, DOE must provide a draft of its plan to Port for comment and approval before submittal to the appropriate Regulatory Agency, and a copy of the final plan as submitted.

(d). In all situations relating to Handling or Remediating Hazardous Materials, DOE must take all actions that are reasonably necessary in Port's sole judgment to protect the value of the Premises, such as obtaining Regulatory Approvals related to Hazardous Materials and taking measures to remedy any deterioration in the condition or diminution of the value of any portion of the Premises in any manner related directly, or indirectly to Hazardous Materials. Unless DOE or its Agents or Invitees Exacerbate the Hazardous Material Condition, DOE will not be obligated to Remediate any Hazardous Material Condition: (i) caused solely by City, Port, or their Agents during DOE's occupancy of the Premises; or (ii) arising before the Commencement Date or the date of DOE's first use of the Premises, whichever is earlier.

e. Port's Right to Audit. Port will have the right, but not the obligation, to inspect and audit the Premises for any Hazardous Materials.). Port's failure to inspect or obtain samples or to detect conditions attributable to DOE's operations if an inspection is conducted may not be deemed to be a release of any liability for any Hazardous Materials subsequently determined to be DOE's responsibility under this MOU.

f. Failure to Comply. Failure to comply with this Section VIII shall constitute a material default under this MOU. In the event of such default, Port shall have all rights available under this MOU and at law or equity including, without limitation, the right to either:

1. Terminate this MOU and collect damages Port incurs as a result of such default, including, without limitation, Remediation costs incurred by Port resulting from the Remediation of any Hazardous Materials present in, on or under the Premises or any other Port property; or

2. Continue this MOU and require DOE to Remediate such Hazardous Materials at the DOE's sole cost and expense.

g. Storm Water Pollution Prevention. DOE must comply with the applicable provisions of the Statewide General Permit for Discharge of Industrial Storm Water issued by the State Water Resources Control Board, including filing a Notice of Intent to be covered, developing and implementing a site-specific Storm Water Pollution Prevention Plan ("SWPPP"), and conducting storm water monitoring and reporting. DOE's SWPPP and a copy of a Notice of Intent for DOE's Premises must be submitted to Port's Real Estate Division before beginning on-site operations.

In addition to requiring compliance with the permit requirements under Subsection (a), DOE shall comply with the post-construction stormwater control provisions of the Statewide General Permit for Discharge of Stormwater from Small Municipalities and the

San Francisco Stormwater Design Guidelines, subject to review and permitting by the Port's Engineering Division.

h. Presence of Hazardous Materials. California Law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, DOE is hereby advised that Hazardous Materials (as herein defined) may be present on or near the Premises, including, those Hazardous Materials described: *Pre-Renovation Asbestos and Lead-Based Paint Survey Report, Pier 27, 29, 31 and Annex Buildings (Piers 27 1/2 and 29 1/2), RGA Environmental, Inc., August 11, 1999*. Copies of which have been made available to DOE. By execution of this MOU, DOE acknowledges that the notice set forth in this Section satisfies the requirements of California Health and Safety Code Section 25359.7 and related Laws. DOE must disclose the information contained in this Section to any transferee, or assignee of DOE's interest in this MOU. DOE also acknowledges its own obligations pursuant to California Health and Safety Code Section 25359.7 as well as the penalties that apply for failure to meet such obligations.

i. Survival. DOE's obligations under this Section shall survive the expiration or earlier termination of this MOU.

j. For purposes of this MOU, the following terms have the following meanings:

"Environmental Laws" means any Laws relating to Hazardous Material (including its Handling, Release, or Remediation) or to human health and safety, industrial hygiene, or environmental conditions in the environment, including structures, soil, air, bay water, and groundwater, and any environmental mitigation measure adopted under Environmental Law affecting any portion of the Facility.

"Environmental Regulatory Action" when used with respect to Hazardous Materials means any inquiry, investigation, enforcement, Remediation, agreement, order, consent decree, compromise, or other action that is threatened, instituted, filed, or completed by an Environmental Regulatory Agency in relation to a Release of Hazardous Materials, including both administrative and judicial proceedings.

"Exacerbate" or "Exacerbating" means any act or omission that increases the quantity or concentration of Hazardous Materials in the affected area, causes the increased migration of a plume of Hazardous Materials in soil, groundwater, or bay water, causes a Release of Hazardous Materials that had been contained until the act or omission, or otherwise requires Investigation or Remediation that would not have been required but for the act or omission. "Exacerbation" has a correlating meaning.

"Hazardous Material" means any substance, waste, or material that is now or in the future designated by any Regulatory Agency to be capable of posing a present or potential risk of injury to human health or safety, the environment, or property. This definition includes anything designated or defined in any Environmental Law as hazardous, hazardous substance, hazardous waste, toxic, pollutant, or contaminant; any asbestos, ACMs, and PACMs, whether or not part of the structure of any existing Improvements on the Premises, any Improvements to be constructed

on the Premises by or on behalf of DOE, or occurring in nature; and other naturally-occurring substances such as petroleum, including crude oil or any fraction, and natural gas or natural gas liquids.

"Hazardous Material Condition" means the presence, Release, or threatened Release of Hazardous Materials in, on, or about the Premises, other Port property, or the environment, or from any vehicles or vessels DOE, or its Agents and Invitees uses during DOE's occupancy of the Premises.

"Hazardous Material Claim" means any Environmental Regulatory Action or any Claim made or threatened by any third party against the Indemnified Parties, or the Premises, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence or Release of any Hazardous Materials, including, without limitation, Losses based in common law. Hazardous Materials Claims include, without limitation, Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the Premises or other Port property, the loss or restriction of the use or any amenity of the Premises or other Port property, and attorneys' fees and consultants' fees and experts' fees and costs.

"Regulatory Agency" means the municipal, county, regional, state, or federal government and their bureaus, agencies, departments, divisions, courts, commissions, boards, officers, or other officials, including the Bay Conservation and Development Commission, any Environmental Regulatory Agency, Port (in its regulatory capacity), other departments, offices, and commission of the City and County of San Francisco (each in its regulatory capacity), Port's Chief Harbor Engineer, the Dredged Material Management Office, the State Lands Commission, the Army Corps of Engineers, the United States Department of Labor, the United States Department of Transportation, or any other governmental agency now or later having jurisdiction over Port property.

"Regulatory Approval" means any authorization, approval, license, registration, or permit required or issued by any Regulatory Agency.

"Release" when used with respect to Hazardous Materials means any actual or imminent spilling, introduction, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the Premises other Port property, or the environment.

"Remediate" or **"Remediation"** when used with respect to Hazardous Materials means to clean up, abate, contain, treat, stabilize, monitor, remediate, remedy, remove, or otherwise control Hazardous Materials, or to restore the affected area to the standard required by the applicable Environmental Regulatory Agency in accordance with applicable Environmental Laws and any additional Port requirements. "Remediation" also includes the creation of a remedial work plan to be approved by the appropriate Environmental Regulatory Agency when required.

11. DAMAGE AND DESTRUCTION.

10.1 Damage and Destruction. If the Premises is damaged by fire or other casualty, then Port shall repair the same provided that funds for such repairs are appropriated by Port, in

its sole discretion, for such purpose and that such repairs can be made within two hundred ten (210) days after the date of such damage (the "**Repair Period**"). In the event such conditions are satisfied, this MOU shall remain in full force and effect except that so long as such damage or casualty is not attributable to DOE, its Agents or Invitees, DOE shall be entitled to a proportionate reduction of Rent during the Repair Period based upon the extent to which such damage and the making of such repairs materially interferes with DOE's use or occupancy of the Premises less any insurance proceeds DOE receives, which proceeds are to be applied against the payment of Rent during any Repair Period.

Port shall use its commercially reasonable efforts to notify DOE within ninety (90) days after the date of such damage whether or not such repairs can be made within the Repair Period, and Port's determination thereof shall be binding on DOE. If such repairs cannot be made within the Repair Period, Port shall have the option to notify DOE of: (a) Port's intention to repair such damage and diligently prosecute such repairs to completion within a reasonable period after the Repair Period, subject to appropriation of funds, in which event this MOU shall continue in full force and effect and the monthly Rent shall be reduced as provided herein; or (b) Port's election to terminate this MOU as of the date mutually agreed by the parties. In case of termination, the monthly Rent shall be reduced as provided above, and DOE shall pay such reduced monthly Rent up to the date of termination.

If Port elects not to appropriate funds for such repair, Port shall give written notice to DOE within sixty (60) days after the date Port elects not to appropriate funds of its election to terminate this MOU as of the date mutually agreed by the parties. In case of termination, the monthly Rent shall be reduced as provided above, and DOE shall pay such reduced monthly Rent up to the date of termination.

If at any time during the last six (6) months of the Term of this MOU, the Premises is damaged or destroyed, then either Port or DOE may terminate this MOU by giving written notice to the other party of its election to do so within thirty (30) days after the date of the occurrence of such damage; provided, however, DOE may terminate only if such damage or destruction substantially impairs its use or occupancy of the Premises for the Permitted Use. The effective date of termination shall be specified in the notice of termination, which date shall not be more than thirty (30) days from the date of the notice.

Notwithstanding anything to the contrary in this MOU, (i) Port shall have no obligation to repair the Premises, (ii) DOE shall not be entitled to any abatement of Rent, and (iii) DOE shall not be entitled to terminate this MOU, in the event the damage or destruction is attributable to any act or omission of DOE, its Agents, or Invitees. In no event shall Port be required to repair any damage to DOE's Property or any paneling, decorations, railings, floor coverings, or any Improvements or other Alterations installed or made on the Premises by or at the expense of DOE. In the event the Premises or the Facility is substantially damaged or destroyed and Port intends to rebuild for public purposes inconsistent with this MOU, Port may terminate this MOU upon written notice to DOE.

10.2 Waiver. Port and DOE intend that the provisions of Section 10 govern fully in the event of any damage or destruction and accordingly, Port and DOE each hereby waives the provisions of Section 1932, subdivision 2, Section 1933, subdivision 4, Sections 1941 and 1942 of the Civil Code of California or under any similar Law now or hereafter in effect.

12. PORT'S ENTRY ON PREMISES.

11.1 Entry for Inspection. Port and its authorized Agents shall have the right to enter the Premises without notice at any time during normal business hours of generally recognized

business days, provided that DOE or DOE's Agents are present on the Premises (except in the event of an emergency), for the purpose of inspecting the Premises to determine whether the Premises are in good condition and whether DOE is complying with its obligations under this MOU.

11.2 General Entry. Port and its authorized Agents shall have the right to enter the Premises at all reasonable times and upon reasonable notice for any of the following purposes:

(a) To perform any necessary maintenance, repairs or restoration to the Premises, or to perform any services which Port has the right or obligation to perform;

(b) To serve, post, or keep posted any notices required or allowed under the provisions of this MOU;

(c) To post "**For Sale**" signs at any time during the Term; to post "**For Lease**" signs during the last six (6) months of the Term or during any period in which DOE is in default;

(d) To show the Premises to prospective real estate brokers, agents, buyers, or persons interested in an exchange, at any time during the Term; to show the Premises to prospective tenants during the last six (6) months of the Term, or during any period in which DOE is in default;

(e) If any excavation or other construction is undertaken or is about to be undertaken on any property or street adjacent to the Premises, to shore the foundations, footings or walls of the Premises and to erect scaffolding and protective barricades around and about the Premises as reasonably necessary in connection with such activities (but not so as to prevent or unreasonably restrict entry to the Premises), and to do any other act or thing necessary for the safety or preservation of the Premises during such excavation or other construction.

(f) To obtain environmental samples and perform equipment and facility testing.

11.3 Emergency Entry. Port may enter the Premises at any time, without notice, in the event of an emergency. Port shall have the right to use any and all means which Port may deem proper in such an emergency in order to obtain entry to the Premises. Entry to the Premises by any of said means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of the Premises, or an eviction of DOE from the Premises or any portion of them.

11.4 No Liability. Port shall not be liable in any manner, and DOE hereby waives any claim for damages, for any inconvenience, disturbance, loss of business, nuisance, or other damage, including without limitation any abatement or reduction in Rent, arising out of Port's entry onto the Premises as provided in Section 11.1 or performance of any necessary or required work on the Premises, or on account of bringing necessary materials, supplies and equipment into or through the Premises during the course thereof, except damage resulting solely from the willful misconduct of Port or its authorized representatives.

11.5 Non-Disturbance. To the extent commercially reasonable, Port shall conduct its activities (such as Port access to the Premises to conduct construction projects and maintenance or emergency response) in a manner that will minimize annoyance or disturbance to DOE.

13. PROPERTY USE CONDITIONS.

12.1. Requirement that Premises be Used. DOE shall continuously use the Premises for the uses specified in this MOU.

12.2 Compliance with Laws and Regulations. DOE, at DOE's cost and expense, shall

comply with all laws, ordinances, judicial decisions, orders and regulations of federal, state, county and municipal governments and the departments, courts, commissions, boards and officers thereof pertaining to DOE's use and occupation of the Premises in effect either at the time of execution of the MOU or at any time during the Term. DOE further understands and agrees to be responsible and comply within the Premises with 42 USCS 1210 1, et seq., commonly known as the Americans with Disabilities Act.

12.3 Mineral Rights. The State of California, pursuant to Section 2 of Chapter 1333 of the Statutes of 1968, as amended, has reserved all subsurface mineral deposits, including oil and gas deposits, on or underlying the Premises. In accordance with the provisions of said' statute, Port and DOE hereby grant to the State of California the right to explore, drill for and extract said subsurface minerals, including oil and gas deposits, from an area located by the California Grid System, Zone 3 beginning at a point where X equals 1,454,000 and Y equals 468,500 extending 1,000 feet south, thence 1000 feet east, thence 1,000 feet north, and thence 1,000 feet west, ending at said point of beginning.

12.4. Alterations and Improvements. DOE is prohibited from conducting any alterations or improvements to the Premises without Port's prior written consent, which may be granted or denied in Port's sole and absolute discretion, and all regulatory approvals, including compliance with the Port Building Code or other permitting and approvals. Since the Premises is within the Embarcadero Historic District, all interior and exterior alterations (including but not limited to any repair, alteration, improvement, or construction to the interior or exterior of the Facility) are subject to review by Port for consistency with the design policies and criteria set forth in the Waterfront Land Use Plan, Design and Access Element, the Secretary of the Interior's Standards for the Treatment of Historic Properties and the Port of San Francisco Historic Preservation Review Guidelines for Pier and Bulkhead Wharf Substructures.

14. INSURANCE.

At no cost or expense to Port, DOE shall cause any vendor or any other subtenant to maintain throughout the Term of this MOU the insurance policies with limits acceptable to the City Risk Manager and Port. All policies shall be endorsed to name as additional ensured the City and County of San Francisco, the San Francisco Port Commission and their officers, directors, employees and agents.

15. DEFAULT; REMEDIES.

Any of the following shall constitute an event of default (the "**Event of Default**") by DOE hereunder:

- a. Failure to pay to Port any Rent or other sum payable hereunder when due;
- b. abandonment or vacation of the Premises by DOE; or
- c. failure to use the Premises solely for the Permitted Use, as determined by Port in its sole and reasonable discretion and such failure continues for a period of twenty-four (24) hours following written notice from Port; provided, however, that notwithstanding the foregoing, failure to use the Premises solely for the Permitted Use shall, at Port's sole and reasonable discretion, be deemed an incurable breach of this MOU, allowing Port to immediately terminate this MOU without notice or demand to DOE; or

d. a Transfer, or attempted Transfer, of this MOU or the Premises by DOE contrary to the provision of Section 16.

Upon the occurrence of an Event of Default by DOE, Port may at its option, and without further notice or demand of any kind to DOE or to any other person, terminate DOE's right to possession of the Premises and this MOU.

16. ASSIGNMENT AND SUBLETTING.

Without Port's prior written consent, DOE is prohibited from any direct or indirect assignment, conveyance, mortgage, encumbrance, hypothecation, alienation, pledge, sale, sublease, or other transfer of DOE's interest in this MOU or in the Premises, or any part thereof or interest therein; or the use of all or part of the Premises by any person or entity other than DOE (a "**Transfer**"). Port may deny, consent to and/or place conditions upon any proposed transfer in its sole and absolute discretion.

Any of the foregoing acts without Port consent shall be void. DOE shall give Port at least ninety (90) days prior written notice of any desired transfer and shall provide Port with all requested information.

DOE shall reimburse Port for all costs, including without limitation attorney's fees, which are incurred by Port in connection with the review, investigation, processing, documentation and/or approval of any proposed Transfer.

17. DAMAGES.

It is the understanding of the parties that Port shall not expend any funds due to or in connection with DOE's use of the Premises, except as otherwise specifically set forth in this MOU. Therefore, DOE agrees to be responsible for all costs associated with all claims, damages, liabilities or losses which arise (i) as a result of the handling of Hazardous Materials on or about the Premises by DOE, its agents or invitees, and its contactors and their subcontractors, agents and invitees; (ii) out of any injuries or death of any person or damage of any property occurring in, on or about the Premises or which arise as a result of DOE's or its agents' or invitees' act or omission; or (iii) out of DOE's failure to comply with the terms of this MOU, including, without limitation, compliance with all laws and regulatory approvals. The foregoing obligation of DOE shall survive the expiration or termination of this MOU.

18. NOTICES.

All notices, demand, consents or approvals which are or may be required to be given by either party to the other under this MOU shall be in writing and shall be deemed to have been fully given when delivered in person to such representatives of Port and DOE as shall from time to time be designated by the parties for the receipt of notice, or when deposited in the United States mail, postage prepaid, and addressed, if to Port to:

Director of Real Estate

Port of San Francisco
Pier 1
San Francisco, CA 94111

FAX No: (415) 274-0508
Telephone No: (415) 274-0501

And if to DOE to: Department of Elections
City and County of San Francisco
Attention: Executive Director
San Francisco, CA 94102
Fax: (415) 554-7666
Tel: (415) 554-4375

19. SUCCESSORS AND ASSIGNS.

The covenants and conditions contained herein shall inure and bind the heirs, successors, executors and assigns of the Port and the DOE.

20. SEVERABILITY.

The invalidity or unenforceability of a particular provision of this MOU shall not affect the other provisions hereof.

21. PIER SUBSTRUCTURE CONDITION AND REPAIR.

In the event that at any time during the Term of this MOU, Port in its sole and reasonable discretion, determines that due to the condition of the pier substructure beneath the Premises or the pier substructure affecting any areas adjacent to the Premises, all or any portion of the Premises cannot be safely used for the uses permitted pursuant to this MOU, the Premises shall be redefined to exclude the area which, in Port's sole opinion, needs to be removed from the Premises in order to safely use the remaining portion of the Premises for the uses permitted by this MOU. The Rent shall be reduced by a fraction, the numerator of which shall be the total square footage removed and the denominator of which shall be the total floor area of the entire Premises.

If in DOE's sole judgment, the removal of a portion of the Premises renders the Premises unusable to DOE for the uses permitted by this MOU, DOE may terminate this MOU upon thirty (30) days prior written notice to Port. In the event of such termination, neither party shall be deemed at fault and Port shall have no further obligations to DOE, including without limitation, any obligation to reimburse DOE any costs related to any Alterations and Improvements DOE may have made to the Premises.

In no event shall the Port be liable to DOE or any other party for any loss of business or and any other costs of losses of any kind or nature whatsoever incurred by DOE or any other party pursuant to this Section or any termination of this MOU resulting therefrom.

Neither Port nor DOE shall have any obligation to maintain or repair the pier substructure beneath the Premises or substructure of any facilities adjacent or contiguous to the

Premises.

Either party shall have the right, but not the obligation, to make repairs or replacements to the Pier Substructure. In the event either party elects to make repairs or replacements to the Pier Substructure, such work shall be at the sole cost and expense of the party undertaking such work. In the event such repair to or replacement of the Pier Substructure will allow DOE to use a portion of the Premises, the area so affected will return to the Premises. If the Rent was reduced as a part of the removal of the affected area from the Premises, following the completion of any such repairs or replacement, the Rent will be adjusted to reflect the area's reincorporation into the Premises.

22. PROXIMITY OF DEVELOPMENT PROJECT.

In addition to the construction projects in the Premises mentioned in Recital C above, DOE acknowledges that during the Term, the Port expects the Pier 31 vicinity to be included in a development project. DOE is aware that the construction of such projects and the activities associated with them will generate certain adverse impacts which may result in some inconvenience to or disturbance of DOE. Said impacts may include, but are not limited to, increased vehicle and truck traffic, traffic delays and re-routing, loss of street and public parking, dust, dirt, construction noise and visual obstructions. DOE hereby waives any and all claims against Port, City and their Agents arising out of such inconvenience or disturbance, including without limitation any abatement or reduction of Rent.

23. SOLAR POWER.

At any time during the Term of this MOU, Port shall have the sole and absolute discretion to install, or cause another party to install, solar photovoltaic systems ("Solar System") on the roof of the Facility for the purpose of supplying power to the Facility. In the event the Solar System is installed on the roof of the Facility, DOE shall enter into a power purchase agreement (or any other similar agreement) with the operator of the Solar System ("Solar Operator") and from and after the date the Solar System is operational, DOE shall purchase a portion of its power from the Solar Operator in accordance with such power purchase agreement. The balance of power required by DOE shall be purchased by DOE from an energy provider within the general vicinity of the Facility ("Energy Provider"). The cost to DOE on a per kilowatt basis to purchase its power from the Solar Operator shall not be greater than the cost to DOE on a per kilowatt basis to purchase energy from the Energy Provider.

24. SIGNS.

DOE shall not have the right to place, construct or maintain any sign, decoration, video display, advertisement, awning, banner or other exterior decoration or notices on the Premises without Port's prior written consent. any sign that doe is permitted to place, construct or maintain on the Premises shall comply with all laws relating thereto, including but not limited to Port's Tenant Sign Guidelines and building permit requirements, and DOE shall obtain all regulatory approvals required by such laws. Port makes no representation with respect to DOE's ability to obtain such regulatory approval. DOE, at its sole cost and expense, shall remove all signs placed by it on the Premises at the expiration or earlier termination of this MOU.

25. ENTIRE AGREEMENT

This MOU (including attached exhibits) contains the entire understanding between the parties with respect to the subject matter hereof.

[REMAINDER OF PAGE LEFT BLANK.]

IN WITNESS WHEREOF, THE PARTIES HAVE CAUSED THIS AGREEMENT TO BE EXECUTED AS OF THE DATE FIRST WRITTEN ABOVE.

AGREED TO AS WRITTEN ABOVE:
SAN FRANCISCO PORT COMMISSION

AGREED TO AS WRITTEN ABOVE:
DEPARTMENT OF ELECTIONS

By: _____
ELAINE FORBES
Executive Director
Port of San Francisco

By: _____
JOHN ARNTZ
Executive Director
Department of Elections

REVIEWED:
DENNIS J. HERRERA, City Attorney

By: _____
Deputy City Attorney

Prepared by: Jeffrey A. Bauer, Senior Leasing Manager _____ (initial)

EXHIBIT A
DESCRIPTION OF PREMISES

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SCHEDULE 1
ASBESTOS NOTIFICATION AND INFORMATION

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SCHEDULE 2
SUBSTRUCTURE REPORT(S)

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SCHEDULE 3
FEMA DISCLOSURE NOTICE

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Project: Department of Election - Pier 31 Relocation

Location: Pier 31, San Francisco, CA

Client: Department of Election

Description: Tenant Improvement

Date: September 2016

Preliminary Project Budget Analysis					
Item	Description	Quantity	Unit	Cost(\$)	Total (\$)
1	TI - Office	725	SF		
2	TI - Staff Break	400	SF		
3	TI- Restroom	1020	SF		
4	TI - Multi-purpose room	400	SF		
5	TI - Storage (Soft Material/Office Supplies)	0	SF		
	Subtotal	2545	SF	200	509,000
6	Custom Security Gate @ lease space boundary	111	LF	150	16,650
7	Standard Security Fence (Chain Link) @ "cage"	676	LF	125	84,500
8	Floor leveling (Allowance)				60,000
9	Security System (Allowance)				100,000
10	Mechanical (Allowance)				175,000
11	Plumbing (Allowance)				150,000
12	Electrical (Allowance)				150,000
13	Fire protection(Allowance)				65,000
14	FF&E (Allowance)				40,000
15	Moving (Allowance)				40,000
	Base Cost				1,390,150
	5% Design Allowance				69,508
	15% Construction Contingency				208,523
	Total Construction Cost (TCC)				1,668,180
	Project Soft Cost (40%)				667,272
	Project Contingency (10%)				166,818
	Total Project Cost				2,502,270



City and County of San Francisco
Department of Elections

John Arntz, Director

November 29, 2016

Honorable Mark Farrell
Chair, Budget and Finance Committee
San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place,
City Hall, Room 244
San Francisco, California 94102

Subject: Request for the Release of Reserve Funds for Relocation of the Department of Elections' Warehouse

Dear Supervisor Farrell:

The San Francisco Department of Elections (Department) respectfully requests that the Budget and Finance Committee (Committee) release \$2,500,000 placed on reserve during the fiscal year 2014/2015 budget process so that the Department can fund capital project expenses related to the relocation of its warehouse operations to Pier 31.

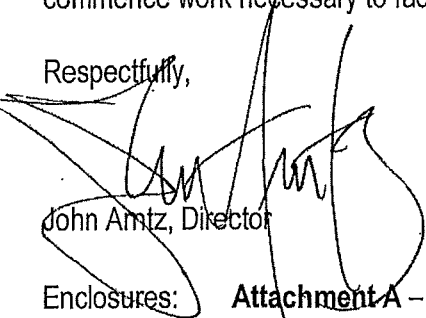
The Committee previously placed \$2,500,000 on reserve from the Department's proposed 2014/2015 budget pending the Department obtaining a lease for a warehouse site and providing detailed justification of expenditures.

After several years of reviewing and visiting sites and with assistance from the Department of Real Estate, real estate brokers, and the San Francisco Port Commission (Port), the Port agreed to lease Pier 31 to the Department and has developed a draft Memorandum of Understanding (MOU) for this purpose (Attachment A). The date by which the Department takes possession of the space is dependent on the Port completing renovations of the structure.

The Department of Public Works (DPW) has drafted an initial scope of work for the Department's improvements of the site that will commence when the Port completes its renovations. Attachment B provides DPW's cost estimates for the improvements and for costs associated with relocating items to Pier 31 from the current warehouse location on Pier 48. The improvements include work such as leveling the floor, adding a security system, constructing restrooms, and installing secure fencing for voting equipment.

Releasing the reserve funds will allow the Department to continue in its efforts to properly identify, plan, and then commence work necessary to facilitate the relocation of the Department's warehouse operations.

Respectfully,


John Arntz, Director

Enclosures: **Attachment A** – "Memorandum of Understanding, M-16135, between the San Francisco Port Commission and the Department of Elections, Pier 31"

Attachment B – "Tenant Improvement and Warehouse Relocation Project Budget Analysis"