



City and County of San Francisco
Tails
Resolution

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 190405

Date Passed: May 21, 2019

Resolution authorizing the Director of Real Estate to exercise a Second Amendment to a Lease between Ruth Mellinger, as landlord, and the City and County of San Francisco, as tenant, for the real property located at 70 Oak Grove Street for use by the Sheriff's Department, amending the first extended term from May 30, 2019, to May 31, 2019, and exercise a second five-year extension term to commence on June 1, 2019, through May 31, 2024, with an additional third five-year option to extend at the monthly base rent of \$39,920.90 for a total annual base rent of \$479,050.80.

May 15, 2019 Budget and Finance Sub-Committee - RECOMMENDED

May 21, 2019 Board of Supervisors - ADOPTED

Ayes: 11 - Brown, Fewer, Haney, Mandelman, Mar, Peskin, Ronen, Safai, Stefani, Walton and Yee

File No. 190405

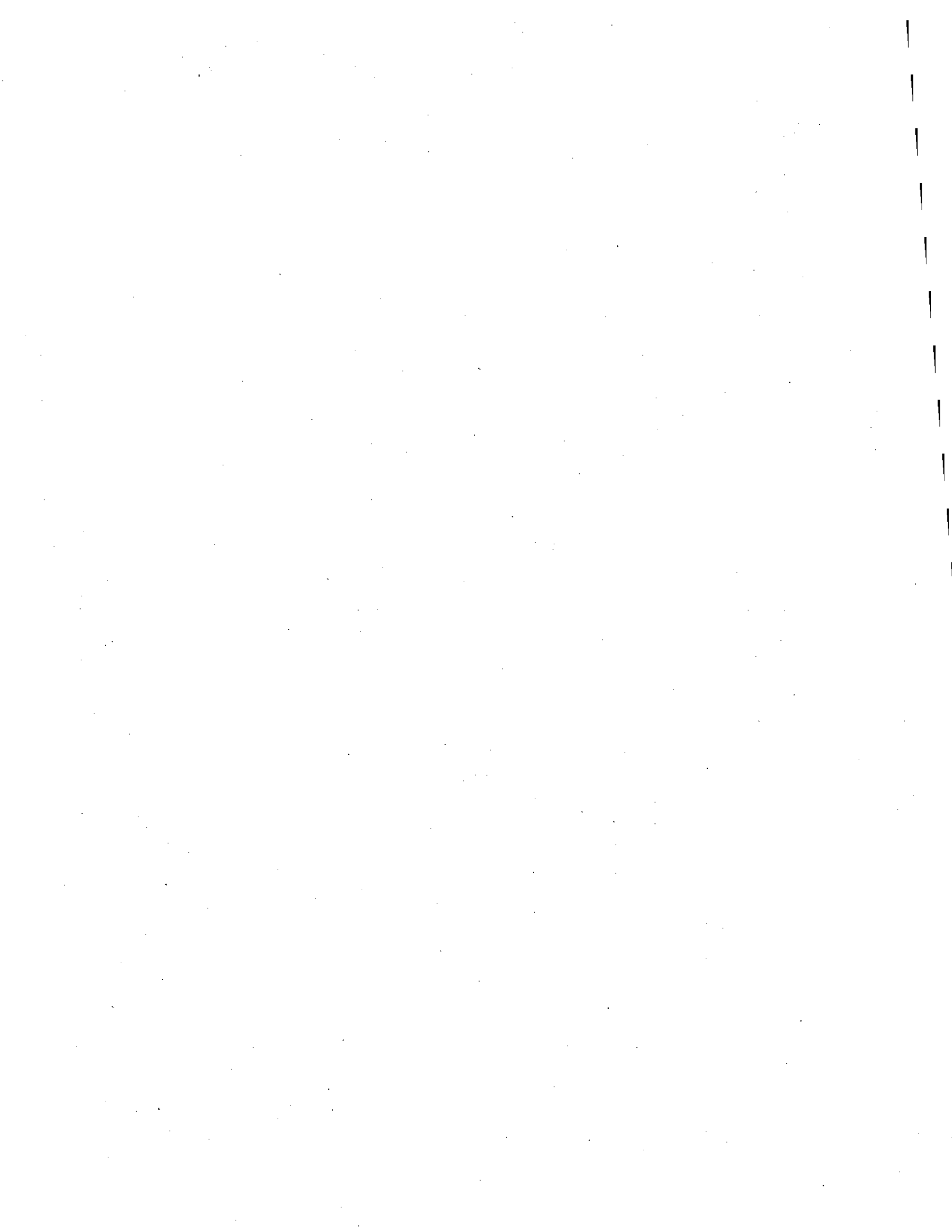
I hereby certify that the foregoing Resolution was ADOPTED on 5/21/2019 by the Board of Supervisors of the City and County of San Francisco.

for Angela Calvillo
Clerk of the Board

London N. Breed
Mayor

5/31/19

Date Approved



1 [Real Property Lease Amendment - Ruth Mellinger - 70 Oak Grove Street - \$479,050.80
2 Annual Base Rent]

3 **Resolution authorizing the Director of Real Estate to exercise a Second Amendment**
4 **to a Lease between Ruth Mellinger, as landlord, and the City and County of San**
5 **Francisco, as tenant, for the real property located at 70 Oak Grove Street for use by**
6 **the Sheriff's Department, amending the first extended term from May 30, 2019, to**
7 **May 31, 2019, and exercise a second five-year extension term to commence on June**
8 **1, 2019, through May 31, 2024, with an additional third five-year option to extend at**
9 **the monthly base rent of \$39,920.90 for a total annual base rent of \$479,050.80.**

10
11 WHEREAS, The City and County of San Francisco, ("Tenant"), and Ruth Mellinger,
12 ("Landlord"), executed a lease dated March 25, 2004 (the "Lease"), authorized by Board of
13 Supervisors Resolution No. 109-04 for the entire property (the "Premises") commonly known
14 and numbered as 70 Oak Grove Street and consisting of approximately 10,000 sq. ft. for use
15 by the Sheriff's Department (SFSD); and

16 WHEREAS, The Lease contains two (2) options to extend the Lease for five (5) years
17 each on the same terms and conditions except that during the Extended Term the Base
18 Monthly Rental is to be adjusted to 95% of the market rental value and subject to enactment
19 of a resolution by the Board of Supervisors and Mayor; and

20 WHEREAS, Tenant exercised its first option to extend the Lease on May 30, 2014,
21 authorized by Board of Supervisors Resolution No. 156-14 which expires on May 30, 2019;
22 and

23 WHEREAS, The Real Estate Division ("RED") desires to amend the term of the first
24 extended term from May 30, 2019, to May 31, 2019; and
25

1 WHEREAS, RED on behalf of SFSD, negotiated the monthly base rent of \$39,920.90
2 or \$3.99 per square foot which is less than 95% of fair market value, fixed for the entire five
3 (5) year lease extension term net of utilities and custodial services for the Premises, for the
4 five (5) year extension term; and

5 WHEREAS, RED negotiated an additional five (5) year extension option to be included
6 under the same terms and conditions of the Lease, except that Section 6.5 (Landlord's
7 Obligation to Repaint and Re-carpet during each Option Period) of the Original Lease shall
8 not apply to the third extended term; and

9 WHEREAS, The Lease contains a First Right of Refusal to Purchase; now, therefore,
10 be it

11 RESOLVED, That in accordance with the recommendation of the Sherriff's
12 Department and the Director of Real Estate, the Director of Real Estate is hereby
13 authorized to take all actions on behalf of the City and County of San Francisco, as Tenant,
14 to extend the term of the first extended term to May 31, 2019, and exercise the five (5) year
15 extension term commencing on June 1, 2019; and, be it

16 FURTHER RESOLVED, That commencing upon the lease extension period, the
17 monthly rent will be fixed at \$39,920.90 (\$3.99 per square foot) for the entire five (5) year
18 extension term; and, be it

19 FURTHER RESOLVED, That any action taken by any City employee or official with
20 respect to the exercise of the extension provision contained in the lease is hereby ratified
21 and affirmed; and, be it

22 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of Real
23 Estate to enter into any amendments or modifications to the lease (including without limitation,
24 the exhibits) that the Director of Real Estate determines, in consultation with the City Attorney,
25 are in the best interest of the City, do not increase the rent or otherwise materially increase

1 the obligations or liabilities of the City, are necessary or advisable to effectuate the purposes
2 of the lease or this Resolution, and are in compliance with all applicable laws, including City's
3 Charter; and, be it

4 FURTHER RESOLVED, That the City shall occupy the entire Premises for the full term
5 of the lease unless funds for rental payments are not appropriated in any subsequent fiscal
6 year at which time City may terminate the lease with ninety (90) days advance written notice
7 to Landlord; said Lease shall be subject to certification as to funds by the Controller, pursuant
8 to Section 3.105 of the Charter; and, be it

9 FURTHER RESOLVED, That within 30 days of the Lease Extension being fully
10 executed by all parties, the Director of Real Estate shall provide a copy to the Clerk of the
11 Board for inclusion into the official file.

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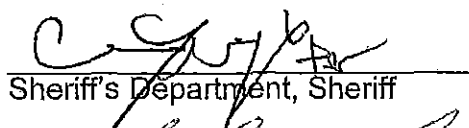
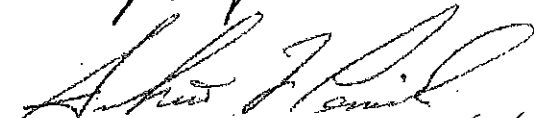
Available Funds: \$39,920.90
(Rent for June 1, 2019 – June 30, 2019)

Fund ID: 10000
Department ID: 232331
PS Project ID: 10001936
Authority ID: 10000
Account ID: 530110
Activity ID: 0001
Appropriation No. 062400 03011



Controller
Subject to the enactment of the 2019/2020
Annual Appropriation Ordinance

RECOMMENDED:


Sheriff's Department, Sheriff
Real Estate Division, Director 4/12/19

SECOND AMENDMENT TO LEASE

THIS SECOND AMENDMENT TO LEASE (this "**Second Amendment**"), dated for reference purposes only as of April 11, 2019, is by and among Ruth Mellinger, an unmarried woman ("**Landlord**"), and the City and County of San Francisco, a municipal corporation ("**City**").

RECITALS

A. Landlord and City are parties to that certain Lease dated as of March 25, 2004 (the "**Original Lease**") and amended by a First Amendment to Lease dated for reference purposes only as of June 11, 2014 (the "**First Amendment**"). The Original Lease as amended by the First Amendment shall be the "**Amended Lease**".

B. City timely exercised its second option to extend the term of the Amended Lease through May 30, 2024, and Landlord and City wish to amend the Amended Lease to set forth their agreement with respect to the extension term as more fully described in this Second Amendment.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, including the mutual covenants and agreements contained in this Second Amendment, and the receipt and sufficiency of which are mutually acknowledged, Landlord and City agree as follows as of the date this Second Amendment is fully executed (the "**Effective Date**"):

1. Definitions. (a) The Amended Lease, as amended by this Second Amendment, shall be referred to herein as the "**Lease**". (b) All initially-capitalized, undefined terms used herein shall have the same meanings given to them in the Original Lease.
2. Expiration of First Extended Term; Second Extended Term. The termination date of the first Extended Term shall be extended from May 30, 2019, to May 31, 2019. The second Extended Term shall commence on June 1, 2019 and shall terminate on May 31, 2024. The Term shall include the second Extended Term and is subject to additional extension if City exercises its third Extension Option pursuant to Section 3 below.
3. Grant of an Additional Extension Option. City is hereby granted a third option to extend the Term for an additional five (5) years from June 1, 2024 to May 31, 2029 (the "**Third Extended Term**") on the same terms and conditions as contained in the Lease, except Section 6.5 of the Original Lease shall not apply to the Third Extended Term.
4. Base Rent. The annual Base Rent during the period between June 1, 2019, and May 31, 2024, shall be fixed at \$479,050.80 (\$39,920.90 per month and approximately \$47.91 per square foot annually) and Section 4.2 of the Original Lease is deleted in its entirety as of June 1, 2019.
5. Energy Benchmarking. City pays for all utility costs for the Premises under the Lease. Accordingly, if Landlord receives a notice requiring energy benchmarking or similar utility usage reporting for the Premises during the Term and delivers such notice to City, City will promptly deliver the applicable information to the requesting party to the extent City has such information.

6. Obligations of Landlord Due to City Occupancy. As a material consideration to Landlord's agreement to the determination of Base Rent for the second Extended Term and to this Second Amendment, City and Landlord agree that if any Landlord obligation arises under law with respect to the Property solely because City is the tenant and such obligation would not otherwise apply to Landlord for any other tenant, City agrees to reimburse Landlord for its reasonable, good faith cost of complying with such obligation provided that Landlord delivers at least 30 days prior written notice to City before commencing such compliance efforts. By way of example, if all landlords are required to replace lighting at premises leased to City but not required to replace lighting for any other tenant, such cost shall be reimbursed by City. Such payments shall be paid as Additional Rent within sixty (60) days of Landlord's delivery of an invoice of Landlord's costs for such compliance to City, together with commercially reasonable documentation of such costs.

7. Prevailing Wages and Working Conditions. Section 23.24 of the Original Lease and Section 8 of the First Amendment are deleted in their entirety and replaced with the following language:

"Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.61. Landlord agrees to require its Contractors and Subcontractors performing (i) labor in the construction of a "public work" as defined in California Labor Code Section 1720 et seq. (which includes certain construction, alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling if paid for in whole or part out of public funds), or (ii) Covered Construction at the Premises to (1) pay workers performing such work not less than the Prevailing Rate of Wages, (2) provide the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, and (3) employ Apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, "**Prevailing Wage Requirements**"). Landlord agrees to cooperate with the City in any action or proceeding against a Contractor or Subcontractor that fails to comply with the Prevailing Wage Requirements."

8. Accessibility Inspection. City is hereby advised that the Premises have not been inspected by a Certified Access Specialist ("CASp"). The law does not require landlords to have the inspections performed, but the Landlord may not prohibit City from obtaining a CASp inspection of the Premises for its occupancy or potential occupancy if requested by City. If City elects to obtain such inspection, City and Landlord shall mutually agree on the arrangements for the time and manner of such CASp inspection, the payment of the CASp inspection fee, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises.

9. Business and Tax Regulations Code Obligations. Landlord acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the withholding of payments to any vendor that is delinquent in the payment of any amounts that the vendor is required to pay the City under the San Francisco Business and Tax Regulations Code. If, under that authority, any payment City is required to make to Landlord under the Lease is withheld, then City will not be in breach or default under the Lease, and the Treasurer and Tax Collector will authorize release of any payments withheld under this Section to Landlord, without interest, late fees, penalties, or other charges, once Landlord is in compliance with its San Francisco Business and Tax Regulations Code obligations.

10. Prohibition on Campaign Contributions. Section 16 of the First Amendment is deleted in its entirety and replaced with the following language:

"For the purposes of this Section, a "City Contractor" is a party that contracts with, or seeks to contract with, the City for the sale or leasing of any land or building to or from the City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves. Through its execution of this Second Amendment, Landlord acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits a City Contractor from making any campaign contribution to (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for that contract or twelve (12) months after the date that contract is approved. Landlord acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$100,000 or more. Landlord further acknowledges that within thirty (30) days of the submission of a proposal for the contract, the City's Real Estate Division must notify the Ethics Commission of the parties and any subcontractor to the contract. Additionally, Landlord acknowledges the City's Real Estate Division was required to notify the Ethics Commission of those persons."

11. No Broker. Neither party has had any contact or dealings regarding this Second Amendment, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with this Second Amendment. If any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes its claim shall be responsible for such commission or fee and shall indemnify the other party from any and all claims or losses incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination or nullification of this Second Amendment.

12. Attorneys Fees. If 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 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.

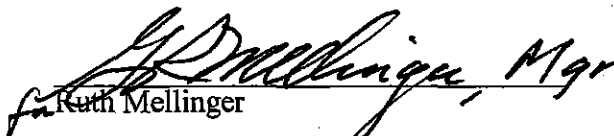
13. Miscellaneous. (a) Except as expressly modified by this Second Amendment, the terms, covenants and conditions of the Amended Lease shall remain unmodified and in full force and effect and in accordance with all of its terms. (b) The Lease constitutes the entire agreement of the parties concerning the subject matter hereof, and supersedes and conceals any and all previous negotiations, agreements, or understandings, if any, regarding the matters contained herein. (c) The execution of this Second Amendment shall not constitute a waiver of relinquishment of any rights which City or Landlord may have relating to the Amended Lease. (d) City and Landlord hereby ratify and confirm all of the provisions of the Amended Lease. (e) If there is any conflict between this Second Amendment and the Amended Lease, this Second Amendment shall control. If any one or more of the provisions in this Second Amendment is invalid, illegal or unenforceable in any respect, the remaining provisions contained herein shall not be affected in any way thereby. (f) This Second Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together

shall constitute one and the same instrument. **(g)** This Second Amendment shall be governed by, construed and enforced in accordance with the laws of the State of California and the City's Charter. **(h)** Time is of the essence with respect to all provisions of this Second Amendment in which a definite time for performance is specified. **(i)** This Second Amendment shall be effective as of the Effective Date. **(j)** Each party represents and certifies that the individual signing on behalf of such party is duly authorized to do so.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, Landlord and City hereby execute this Second Amendment as of the date first written above.


LANDLORD:


Ruth Mellinger

Date: 4/11/19

CITY:

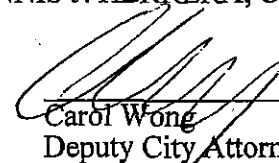
CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: 
Andrico Penick, Director of Property

Date: 4/4/19

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: 
Carol Wong
Deputy City Attorney

