

THIS PRINT COVERS CALENDAR ITEM NO.: 10.6

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Authorizing the Director of Transportation to execute a new Industrial Lease (Lease) between Bancroft Property LLC (Landlord), as landlord, and the San Francisco Municipal Transportation Agency (SFMTA), as tenant, for a five-year term with two additional two-year extension options for improved real property designated as 1440 Bancroft Avenue in San Francisco, on Block 4850, Lot 019 (Property), at an initial annual rent of \$302,400 with three percent annual increases and initial annual operating expenses estimated at \$75,600, and to exercise each extension option at the Director of Transportation's discretion if the rent for the extension term is no more than fair market value at that time.


SUMMARY:

- The SFMTA Meter and Sign Shops require additional workshop space and parking for their expanding fleet of non-revenue vehicles.
- The Lease has an initial five-year term with two additional two-year extension options.
- The initial annual rent for the Lease will be \$302,400 with three percent annual increases, for a total of \$3,072,113 over nine years if the extension options are exercised. The SFMTA will also pay its share of annual building operating expenses, consisting of property taxes and insurance, estimated to cost the SFMTA \$75,600 for the first lease year and \$833,608 over nine years.
- The Lease rent is within the fair market value rental rate range for comparable nearby properties.
- The Lease will secure long term, safe, and secure indoor space for the SFMTA Meter and Sign Shops' operations, and Sustainable Streets vehicles, equipment, materials, and staff.

ENCLOSURES:

1. SFMTAB Resolution
2. Industrial Lease Agreement

APPROVALS:

		DATE
DIRECTOR	 _____	<u>June 15, 2022</u>
SECRETARY	 _____	<u>June 15, 2022</u>

ASSIGNED SFMTAB CALENDAR DATE: June 21, 2022

PURPOSE

Authorizing the Director of Transportation to execute a new Industrial Lease (Lease) between Bancroft Property LLC (Landlord), as landlord, and the San Francisco Municipal Transportation Agency (SFMTA), as tenant, for a five-year term with two additional two-year extension options for improved real property designated as 1440 Bancroft Avenue in San Francisco, on Block 4850, Lot 019 (Property), at an initial annual rent of \$302,400 with three percent annual increases and initial annual operating expenses estimated at \$75,600, and to exercise each extension option at the Director of Transportation's discretion if the rent for the extension term is no more than fair market value at that time.

STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES

This action supports the following SFMTA Strategic Plan Goals:

- Goal 5: Deliver reliable and equitable transportation services.
- Goal 9: Fix things before they break, and modernize systems and infrastructure.

This action supports the following Transit First Policy principle:

1. To ensure quality of life and economic health in San Francisco, the primary objective of the transportation system must be the safe and efficient movement of people and goods.

DESCRIPTION

The SFMTA has four industrial shops under the Sustainable Streets Division: Paint, Sign, Meter and Signal (Shops). The Shops annually maintain, repair and/or replace more than 270,000 street signs, 24,000 metered parking spaces, including Pay by License Plate Technology and associated collection of parking meter revenue. The expanses of these industrial shops also include 1,150 traffic signals, 900 miles of street striping, and the painting of more than ten miles of colored curbs and bicycle paths annually, while responding to over 2,200 requests for curb and other paint related wishes per year. These vital functions are critical to keep San Francisco transit and traffic moving efficiently and safely, while protecting and encouraging positive pedestrians and bicyclists behavior to enhance the overall quality of life in San Francisco. The Shops' operational headquarters are located at 1508 Bancroft Avenue, 1528-1538 Yosemite Avenue, and 2650 Bayshore Blvd. The Bancroft and Yosemite locations are within close proximity to the proposed lease location at 1440 Bancroft Avenue.

The amount of space at the current facilities are not able to keep up with the capacity needs of the Shops, and as a result staff has been canvassing the area to find suitable and adequate space nearby to keep up with the growing demand for industrial shop space. The subject Property has approximately 11,200 rentable square feet. It has office and workshop spaces and provides the greatest viable option to adequately serve the Shops in a safe and secure setting.

If the SFMTA Board of Directors authorizes the Director of Transportation to execute the Lease, the Lease would commence the following month and continue for five years with two additional

two-year extension options. The proposed Property allows secured parking of Shop trucks and vehicles, storage of equipment, materials, supplies, and operational staff office space. SFMTA Sustainable Streets shop staff will benefit from the optimal location by not only have additional shop space but also by having the ability to walk and work between this Property and the existing locations resulting in anticipated operational synergistic benefits. This Lease's rental rate is considered reasonable, as it falls within an acceptable fair market value rental rate range for comparable properties within a one-mile radius of the subject Property.

STAKEHOLDER ENGAGEMENT

The SFMTA conducted in-house discussions and onsite meetings with Meter and Sign Shops supervisors and staff; staff and Landlord representatives discussed various tenant and building improvements. All parties have agreed to terms of the Lease and will continue discussions on needed initial tenant improvements. The SFMTA will continue to engage all applicable parties and relevant stakeholders during the term of this Lease.

ALTERNATIVES CONSIDERED

The SFMTA has evaluated other locations owned or leased by the SFMTA and elsewhere for the Meter and Sign Shops and Sustainable Streets Shops' vehicles. In each instance, none were adequate to efficiently and effectively accommodate operation and administration of the Shop vehicles, equipment, processes, supplies and staff. The Property and Lease are the best fit for the Sustainable Street industrial shops and support its on-going effort to enhance performance and productivity.

FUNDING IMPACT

The initial annual rent for the Lease will be \$302,400 with three percent annual increases, for a total of \$3,072,113 over nine years if the extension options are exercised. The SFMTA will also pay operating expenses, consisting of property taxes and insurance, estimated to cost the SFMTA \$75,600 for the first lease year and \$833,608 over nine years. The estimated total for rent and operating expenses over nine years is \$3,905,721. The operating funds required for this Lease are budgeted in the Sustainable Street Division's budget.

ENVIRONMENTAL REVIEW

On May 25, 2022, the SFMTA, under authority delegated by the Planning Department, determined that the 1440 Bancroft Avenue Lease is not a "project" under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b).

A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

PAGE 4.

None required. The City Attorney has reviewed this report.

RECOMMENDATION

The recommendation is to authorize the Director of Transportation to execute a new Industrial Lease (Lease) between Bancroft Property LLC (Landlord), as landlord, and the San Francisco Municipal Transportation Agency (SFMTA), as tenant, for a five-year term with two additional two-year extension options for improved real property designated as 1440 Bancroft Avenue in San Francisco, on Block 4850, Lot 019, at an initial annual rent of \$302,400 with three percent annual increases and initial annual operating expenses estimated at \$75,600, and to exercise each extension option at the Director of Transportation's discretion if the rent for the extension term is no more than fair market value at that time.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) Sustainable Streets Division (SSD) has four shops (Paint, Sign, Meter and Signal) responsible for maintaining, repairing and replacing the street signs, parking meters, traffic signals, and 900 miles of striping, painting ten miles of colored curbs and responding to 2,200 requests for curb painting per year. These vital functions are critical to keep transit and traffic moving efficiently and safely, protect and encourage pedestrians and bicyclists, collect parking revenues, and enhance the quality of life in San Francisco; and,

WHEREAS, A new lease (Lease) for 1440 Bancroft Avenue has been negotiated with the Landlord to accommodate additional work and parking spaces for Meter and Sign Shops at an initial annual base rent of \$302,400, with annual operating expenses estimated to cost the SFMTA \$75,600 for the initial year, with an initial five-year term with two additional two-year extension options; and,

WHEREAS, The Lease base rent would increase annually by three percent and is considered fair market value based on current market conditions and comparable properties; and,

WHEREAS, The Lease will secure a long term, safe, and secure space for the SFMTA Meter and Sign Shop operations, and parking Sustainable Streets vehicles, storing equipment, and adequately housing staff; and,

WHEREAS, On May 25, 2022, the SFMTA, under authority delegated by the Planning Department, determined that the 1440 Bancroft Avenue Lease is not a “project” under the California Environmental Quality Act (CEQA) pursuant Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and,

WHEREAS, A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors, and is incorporated herein by reference; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation to execute a new Industrial Lease (Lease) between Bancroft Property LLC (Landlord), as landlord, and the San Francisco Municipal Transportation Agency (SFMTA), as tenant, for a five-year term with two additional two-year extension options for improved real property designated as 1440 Bancroft Avenue in San Francisco, on Block 4850, Lot 019, at an initial annual rent of \$302,400 with three percent annual increases and initial annual operating expenses estimated at \$75,600; and, be it

FURTHER RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation to exercise each extension option at the Director of Transportation’s discretion if

the rent for the extension term is no more than fair market value at that time.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of June 21, 2022.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

INDUSTRIAL LEASE

between

BANCROFT PROPERTY LLC,
as Landlord

and

CITY AND COUNTY OF SAN FRANCISCO,
as Tenant

For the lease of the Premises at 1440 Bancroft Avenue in
San Francisco, California

July ____, 2022

INDUSTRIAL LEASE

THIS INDUSTRIAL LEASE (this "**Lease**"), dated for reference purposes only as of July ____, 2022, is by and between Bancroft Property, LLC , a California limited liability company ("**Landlord**"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**" or "**Tenant**"), acting by and through the San Francisco Municipal Transportation Agency ("**SFMTA**").

Landlord and City hereby agree as follows:

1. BASIC LEASE INFORMATION

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

Lease Reference Date:	July ____, 2022
Landlord:	BANCROFT PROPERTY LLC
Tenant:	CITY AND COUNTY OF SAN FRANCISCO
Building; Property (<u>Section 2.1</u>):	The building (" Building ") located on the real property commonly referred to as 1440 Bancroft Avenue in San Francisco, CA and APN 4850-019 and fully described in the attached <u>Exhibit A</u> (" Real Property ")
Premises (<u>Section 2</u>):	The entire Real Property, including the Building
Rentable Area of Premises (<u>Section 2</u>):	Approximately 11,200 rentable square feet in the Building
Initial Term (<u>Section 3</u>):	Commencement Date: _____, 2022 Expiration Date: The fifth (5 th) anniversary of the Commencement Date, subject to the Extension Options (as defined in <u>Section 3.2</u>)
Extension Option (<u>Section 3.2</u>):	Two additional terms of two years each (each, the " Extension Option ")
Lease Year (<u>Section 4.4</u>):	The twelve (12) consecutive month period following the Commencement Date or any anniversary of the Commencement Date
Base Rent (<u>Section 4.1</u>):	Initial annual Base Rent: \$302,400.00 (comprised of \$2.25 per square foot for approximately 11,200 square feet of space within the Building)

Lease Year 1 \$25,200.00 per month (\$2.25 per SF)
Lease Year 2 \$25,956.00 per month
Lease Year 3 \$26,734.00 per month
Lease Year 4 \$27,536.00 per month
Lease Year 5 \$28,362.00 per month

Adjustment Dates (Section 4.2): Each annual anniversary of the Commencement Date

Additional Charges (Section 4.3): City to pay City's Percentage Share of Insurance Costs and Real Estate Taxes except any increase in the Real Estate Taxes after Lease Year 1 shall be borne exclusively by Landlord.

Security Deposit (Section 22): \$30,000.00 payable within 15 days of the Effective Date (as defined in Section 25.30)

City's Percentage Share (Section 4.4): 100%

Use (Section 5.1): Office and general warehouse uses, vehicle parking (including within the Building), and light industrial uses such as a sign shop and similar uses.

Utilities (Section 9.1): City to arrange for provision of utilities it desires for the Premises at its sole cost, including gas, electricity, water, garbage, sewer, telephone, cable and internet service, provided that Landlord shall provide the utility connections described in Section 9.1 at Landlord's sole cost

Services (Section 9.2): City to arrange for any janitorial services it requires for the Premises at its sole cost.

Notice Address of Landlord (Section 24.1): Bancroft Property LLC
220 South Linden Ave.
South San Francisco CA 94080

Key Contact for Landlord: David Lai

Landlord Contact Telephone No.: (650) 588-8800 or (650) 333-1288

Notice Address for Tenant (Section 24.1): San Francisco Municipal Transportation Agency
1 South Van Ness Avenue, 8th Floor
San Francisco, CA 94103
Attn: Strategic Real Estate
Facilities and Real Property Management
Fax No.: (415) 701-4341

with a copy to: Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Attn: Real Estate/Finance Team
Fax No.: (415) 554-4757

Key Contact for Tenant: Manager of Strategic Real Estate
Facilities and Real Property Management
1 South Van Ness, 8th Floor
San Francisco, CA 94103

Tenant Contact Telephone No.: (415) 646-2449

Alternate Contact for Tenant: William Zhao

Alternate Contact Telephone No.: (415) 646-2622

Brokers (Section 24.8): Landlord: None
Tenant: None

Tenant Improvements (Section 6): As may be mutually agreed to by Landlord and City in writing

2. PREMISES; DISABILITY ACCESS

Landlord leases to City and City leases from Landlord, subject to the provisions of this Lease, the premises identified in the Basic Lease Information (the "**Premises**"). The Building, Real Property and all other improvements on or appurtenances to the Real Property are referred to collectively as the "**Property**."

On the Commencement Date, Landlord will deliver the Premises to City in good, broom clean condition, fully demised, water tight, with all Building Systems (as defined in Section 8.1 in good working order, condition, and repair, and all other systems in and serving the Premises in good working order, condition, and repair, and the Building in compliance with all applicable Laws (as defined in Section 10.1).

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

3. TERM

3.1 Term of Lease

The Premises are leased for an initial term (the "**Initial Term**") commencing on the date specified in the Basic Lease Information as the commencement date (the "**Commencement Date**"). The Initial Term shall end on the expiration date specified in the Basic Lease Information or such earlier date on which this Lease terminates pursuant to the provisions of this Lease; provided that City shall have the right to extend the Initial Term pursuant to Section 3.2. The word "**Term**" as used herein shall refer to the Initial Term and the Extended Term if City exercises the Extension Option as provided below.

3.2 Extension Option

City shall have the right to extend the Initial Term (the "**Extension Option**") for the additional terms specified in the Basic Lease Information (each, an "**Extended Term**"). The Extended

Terms shall be on all of the terms and conditions contained in this Lease. City may exercise an Extension Option, if at all, by giving written notice to Landlord no later than ninety (90) days prior to expiration of the Term to be extended; provided, however, if City is in material default under this Lease on the date of giving such notice and fails to cure such default as provided in this Lease, Landlord may reject such exercise by delivering written notice thereof to City promptly after such failure to cure.

4. RENT

4.1 Base Rent

Beginning on the Commencement Date, City shall pay to Landlord during the Term the annual Base Rent specified in the Basic Lease Information (the "Base Rent"). The Base Rent shall be payable in equal consecutive monthly payments on or before the first day of each month, in advance, at the address specified for Landlord in the Basic Lease Information, or such other place as Landlord may designate in writing upon not less than thirty (30) days' advance notice; provided, however, that City shall deliver the monthly payment of Base Rent of \$25,200 for the first month of the Term to Landlord within 15 days of the Effective Date, subject to Section 4.11. City shall pay the Base Rent without any prior demand and without any deductions or setoff except as otherwise provided in this Lease. If the Commencement Date occurs on a day other than the first day of a calendar month or the Expiration Date occurs on a day other than the last day of a calendar month, then the monthly payment of the Base Rent for such fractional month shall be prorated based on a thirty (30)-day month.

4.2 Adjustments in Base Rent

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

4.3 Additional Charges

City shall pay to Landlord any charges or other amounts required under this Lease as additional rent ("**Additional Charges**"), including City's Percentage Share of Insurance Costs and Real Estate Taxes except any increase in the Real Estate Taxes after Lease Year 1 shall be borne exclusively by Landlord. All Additional Charges shall be payable to Landlord at the place where the Base Rent is payable. Landlord shall have the same remedies for a default in the payment of any Additional Charges as for a default in the payment of Base Rent. The Base Rent and Additional Charges are sometimes collectively referred to below as "**Rent**."

4.4 Definitions

(a) "**City's Percentage Share**" means the percentage specified in the Basic Lease Information.

(b) "**Expense Year**" means each calendar year commencing January 1st of each year during the Term, including any partial year in which this Lease commences; provided that Landlord, upon advance written notice to City, may change the Expense Year to any other twelve (12) consecutive month period and, in the event of any such change, City's Percentage Share of Insurance Costs shall be equitably adjusted for the Expense Years involved in any such change.

(c) "**Lease Year**" means the twelve (12) consecutive month period following the Commencement Date or any anniversary of the Commencement Date.

(d) "**Insurance Costs**" means the cost incurred by Landlord for all insurance required

to be carried on the Building under this Lease. If the Building is less than ninety-five percent (95%) occupied in any Expense Year, the Insurance Costs shall be appropriately adjusted to reflect a ninety-five percent (95%) occupancy level. In no event shall Landlord recapture more than one hundred percent (100%) of the Insurance Costs in any Expense Year.

(e) **"Real Estate Taxes"** means all taxes, assessments and charges levied upon or with respect to the portion of the Building owned by Landlord, or Landlord's interest in the Building. Real Estate Taxes shall include, without limitation, all general real property taxes and general and special assessments, charges, fees, or assessments for transit, housing, police, fire, or other governmental services thereof, service payments in lieu of taxes that are now or hereafter levied or assessed against Landlord by the United States of America, the State of California or any political subdivision thereof, public corporation, district, or any other political or public entity, and shall also include any other tax, fee or other excise, however described, that may be levied or assessed as a substitute for, or as an addition to, in whole or in part, any other Real Estate Taxes.

Notwithstanding the foregoing, Real Estate Taxes shall exclude (1) franchise, transfer, inheritance, gross receipts, or capital stock taxes or income taxes of Landlord from all sources unless, due to a change in the method of taxation, any of such taxes is levied or assessed against Landlord as a substitute for, or as an addition to, in whole or in part, any other tax that would otherwise constitute a Real Estate Tax, (2) any penalties, fines, interest or charges attributable to the late payment of any taxes, except to the extent attributable to City's failure to pay its portion of Real Estate Taxes hereunder, (3) any personal property taxes payable by City hereunder or by any other tenant or occupant of the Building, (4) any increase in Real Estate Taxes due to any reassessment upon a transfer of any of Landlord's interest in the Building or the Real Property, or (5) any Early Care and Education Commercial Rents Tax imposed under Article 21 of the Business and Tax Regulations Code (gross receipts received from leases to government entities are exempt from this tax).

(f) **"Tax Year"** means each calendar year during the Term, including any partial year during which this Lease may commence; provided that Landlord, upon notice to City, may change the Tax Year from time to time to any other twelve (12) consecutive month period and, in the event of any such change, City's Percentage Share of Real Estate Taxes shall be equitably adjusted for the Tax Year involved in any such change.

4.5 Payment of Percentage Share of Insurance Costs

During each Expense Year, City shall pay to Landlord each month, as Additional Charges, one twelfth (1/12) of City's Percentage Share of the Insurance Costs for that Expense Year. City shall make such payments, in advance, in an amount estimated by Landlord in reasonable detail in a writing delivered to City. Landlord may revise such estimates of Insurance Costs from time to time and City shall thereafter make payments on the basis of such revised estimates, provided that no such revisions shall be retroactive and Landlord may not make any such revisions more than twice in any given Expense Year and no such revision may be made any earlier than four (4) months subsequent to the prior estimate for such Expense Year. With reasonable promptness not to exceed sixty (60) days after the expiration of each Expense Year, Landlord shall furnish City with a statement ("**Landlord's Expense Statement**") setting forth in reasonable detail the Insurance Costs for such Expense Year and City's Percentage Share thereof. If City's Percentage Share of the actual Insurance Costs for such Expense Year exceeds the estimated Insurance Costs paid by City for such Expense Year, City shall pay to Landlord (whether or not this Lease has terminated) the difference between the amount of estimated Insurance Costs paid by City and City's Percentage Share of the actual Insurance Costs within thirty (30) days after the receipt of Landlord's Expense Statement. If the total amount paid by City for any such Percentage Share of Insurance Costs exceeds City's Insurance Costs Share of the actual Insurance Costs for such Expense Year (an "**Excess Insurance Payment**"), such Excess Insurance Payment shall be credited against the next installments of Insurance Costs due

from City to Landlord hereunder; provided that any Excess Insurance Payment for the Expense Year in which this Lease expires or terminates shall be refunded to City.

4.6 Payment of Percentage Share of Real Estate Taxes

City shall pay to Landlord each month, as Additional Charges, one twelfth (1/12) of City's Percentage Share of the Real Estate Taxes for that Tax Year; provided however, notwithstanding anything to the contrary herein, Landlord shall exclusively bear and pay the annual increase in Real Estate Taxes from the first Lease Year. For the sake of clarity only, if the Real Estate Taxes for the first Lease Year are \$50,000.00, and the Real Estate Taxes for all following Lease Years are more than \$50,000.00, City shall pay Landlord no more than \$50,000.00 in Real Estate Taxes each Lease Year and all excess Real Estate Taxes shall be exclusively paid by the Landlord. City shall make such payments, in advance, in an amount estimated by Landlord in reasonable detail in a writing delivered to City. With reasonable promptness not to exceed thirty (30) days after Landlord has received the tax bills for any Tax Year, Landlord shall furnish City with a statement ("**Landlord's Tax Statement**") setting forth the amount of Real Estate Taxes for such Tax Year and City's Percentage Share thereof. If City's Percentage Share of the actual Real Estate Taxes for such Tax Year exceeds the estimated Real Estate Taxes paid by City for such Tax Year, City shall pay to Landlord (whether or not this Lease has terminated) City's Percentage Share of the actual Real Estate Taxes within thirty (30) days after the receipt of Landlord's Tax Statement. If the total amount of estimated Real Estate Taxes paid by City for such Tax Year exceeds City's Percentage Share of the actual Real Estate Taxes for such Tax Year (an "**Excess Tax Payment**"), such Excess Tax Payment shall be credited against the next installments of Real Estate Taxes due from City hereunder; provided that any Excess Tax Payment for the Expense Year in which this Lease expires or terminates shall be refunded to City.

4.7 Proration

If the Commencement Date or Expiration Date do not occur on the first or last day of a Tax Year or Expense Year, City's Percentage Share of Real Estate Taxes or Insurance Costs for the Tax Year or Expense Year in which the Commencement Date or Expiration Date occurs shall be prorated based on a three hundred sixty-five (365)-day year.

4.8 Audits

City shall have the right, upon not less than five (5) business days' notice to Landlord, to audit the books and records of the Building related to Insurance Costs and Real Estate Taxes. If such audit discloses any discrepancies that would result in a reduction of the City's Percentage Share of Insurance Costs or Real Estate Taxes for any Expense Year, Landlord shall immediately refund to City the amount of any overpayment by City. City shall pay the cost of such audit, provided that if such audit discloses any discrepancies which result in a reduction of City's Percentage Share of Insurance Costs or Real Estate Taxes of three percent (3%) or more for any Expense Year, then Landlord shall pay the costs of such audit.

4.9 Records

Landlord shall maintain at its offices in South San Francisco in a safe, complete and organized manner all of its records pertaining to this Lease and the Real Estate Taxes, Insurance Costs and any other charges paid by City pursuant hereto, for a period of not less than three (3) years following expiration of the Term. Landlord shall maintain such records on a current basis and in sufficient detail to facilitate adequate audit and review thereof. All such books and records shall be available for inspection, copying and audit by City and its representatives, at City's expense, subject to the provisions of Section 4.9.

4.10 Compliance with San Francisco Business and Tax Regulations Code

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 this Lease is withheld, then City will not be in breach or default under this 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 returns to compliance with its San Francisco Business and Tax Regulations Code obligations.

4.11 Payments by City

Landlord acknowledges that City cannot make any payments to Landlord unless Landlord is qualified as an approved vendor in City's financial and payment system. Therefore, City will not be in default of any monetary obligation under this Lease and no interest or late charge will apply, if Landlord is not an approved vendor with City. More information about being an approved vendor with City is available at <https://sfcitypartner.sfgov.org/Vendor/BecomeSupplier>. All Rent that accrues, and any payment of the Security Deposit withheld, while Landlord was not an approved vendor will be payable within twenty (20) after City receives Landlord's written notice that it is an approved vendor and the Contract Monitoring Division confirms that Landlord has been approved as a City vendor.

5. USE

5.1 Permitted Use

City may use the Premises for office and general warehouse uses, vehicle parking (including within the Building), and light industrial uses such as a sign shop, and similar uses and for no other use without the prior written consent of Landlord, which shall not be unreasonably withheld or delayed.

5.2 Interference with Access or Use

Landlord shall not restrict access to the Premises; provided, however, that Landlord may, after consultation with the Manager of SFMTA's Strategic Real Estate Facilities and Real Property Management, interrupt City's access to the Premises in the event of an immediate threat of the Premises or any portion of the Building being rendered unsafe for human occupancy. If City's use of any of the Premises or access thereto is interrupted as a result of the Premises being rendered unsafe for human occupancy due to Landlord's failure to comply with its obligations under this Lease or for any reason other than damage caused by fire or other casualty event (which shall be governed by Section 12) or City's default hereunder, then Landlord shall immediately undertake all necessary steps to correct such condition. If such condition continues for two (2) business days and impairs City's ability to carry on its business in the Premises, the Rent payable hereunder shall be abated based on the extent to which such default interferes with City's ability to carry on its business at the Premises. If any such default by Landlord shall continue for thirty (30) days or more after City's use is interrupted and impairs City's ability to carry on its business in the Premises, then City shall have the right, without limiting any of its other rights under this Lease to terminate this Lease, unless Landlord supplies City with evidence reasonably satisfactory to City that City's normal and safe use will be restored within sixty (60) days of the date City's use was interrupted, and such use is actually restored within such 60-day period. Nothing in this Section shall limit City's rights with respect to any disruption due to casualty pursuant to Section 12 (Damage and Destruction) hereof.

6. TENANT IMPROVEMENTS

City may request that Landlord provide or arrange for tenant improvements at the Premises after the Commencement Date at City's sole cost and expense. If Landlord and City agree to the scope, plans, specifications, cost, and payment of those requested tenant improvements, the parties will memorialize such matters and all other relevant terms by a written agreement, which will be considered a part of this Lease once executed by Landlord and City. Landlord may not contract for or provide any tenant improvements at the Premises (and City will not be obligated to pay for such tenant improvements) except to the extent set forth in such written agreement. Landlord acknowledges that any tenant improvements performed by Landlord or its contractors at the Premises must comply with all Laws and the requirements of this Lease, including but not limited to Section 23.24, Section 23.26, and Section 23.35.

7. ALTERATIONS

7.1 Alterations by City

City shall not make or permit any alterations, installations, additions or improvements (each, an "**Alteration**") to the Premises without first obtaining Landlord's written consent, which Landlord shall not unreasonably withhold or delay. However, the installation of furnishings, fixtures, equipment or decorative improvements, none of which affect the Building Systems (as defined in Section 8.1) or structural integrity of the Building, and the repainting and recarpeting of the Premises, shall not constitute Alterations requiring Landlord's consent. Any Alterations permitted hereunder shall be made at City's cost in compliance with applicable Laws (as defined in Section 10.1). Landlord shall, without cost to itself, cooperate with City in securing building and other permits and authorizations needed in connection with any permitted Alterations. Landlord shall not be entitled to any construction or other administrative fee in connection with any Alteration. Any written consent granted by Landlord for a proposed Alteration shall state whether such proposed Alteration can remain at the Premises after the expiration or sooner termination of this Lease (each, a "**Remaining Alteration**"). Landlord may require City to remove any Alteration that is not a Remaining Alteration before the expiration or sooner termination of this Lease by delivering written notice of such removal requirement to City no earlier than 90 days and no later than 30 days prior to such expiration or termination.

7.2 Title to Improvements

Except for City's Personal Property (as defined in Section 7.3), all appurtenances, fixtures, improvements, equipment, additions and other property permanently installed in the Premises as of the Commencement Date shall be and remain Landlord's property, and all appurtenances, fixtures, improvements, equipment, additions and other property permanently installed in the Premises during the Term shall be City's property until the end of the Term or such earlier date designated by Landlord in written notice to Tenant. City may not remove such property unless Landlord consents thereto.

7.3 City's Personal Property

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

of City's Personal Property, pursuant to which Landlord waives any rights it may have or acquire with respect to City's Personal Property, so long as the supplier, equipment lessor or lender agrees that it **(i)** will remove the City's Personal Property from the Premises within thirty (30) days after the Expiration Date (but if it does not remove City's Personal Property within such time it shall have waived any rights it may have had to City's Personal Property), and **(ii)** will repair any damage caused by the removal of City's Personal Property. Landlord shall recognize the rights of any supplier, lessor or lender who has an interest in any items of City's Personal Property to enter the Premises and remove such property at any time during the Term or within thirty (30) days after the Expiration Date.

7.4 Alteration by Landlord

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

8. REPAIRS AND MAINTENANCE

8.1 Landlord's Repairs

Landlord shall repair and maintain, at its sole cost and in the same condition as of the Commencement Date, ordinary wear and tear excepted, the exterior and structural portions of the Building, including, without limitation, the roof, foundation, bearing and exterior walls and subflooring, and the heating, ventilating, air conditioning, plumbing, electrical, fire protection, life safety, security and other mechanical, electrical and communications systems of the Building (collectively, the "**Building Systems**") and the Property's paved areas, except to the extent that any such item is damaged solely by City's negligence or intentional wrongful misconduct, and provided that Landlord shall repair the roof leak existing as of the Commencement Date and repair and maintain the roof in its condition as of the Commencement Date as modified by such repair. Without limiting the foregoing, Landlord shall maintain the Building in a clean, safe and attractive manner, shall comply with all applicable Laws regarding the removal of exterior graffiti, and shall not permit any other tenants of the Building to disturb or interfere with City's use of the Premises pursuant to this Lease or permit to be done in or about the Building anything that is illegal, is dangerous to persons or property or constitutes a nuisance. City acknowledges the security provided by Landlord for the Premises is limited to security cameras.

Notwithstanding anything to the contrary in the foregoing paragraph, Landlord shall have no obligation to repair or maintain any fiber optic cable installed at the Premises by City except to the extent damaged by the actions of Landlord or any of its contractors or subcontractors.

8.2 City's Repairs

Subject to Landlord's warranty under Section 10.1, any construction warranties or guaranties received in connection with Landlord's completion of leasehold improvements at the Premises under the 2011 Lease, and Landlord's repair and maintenance obligations hereunder, City shall repair and maintain the interior portions of the Building and shall keep the Premises in good working order and in a safe and sanitary condition, except for ordinary wear and tear and damage by casualty. City shall perform any such required repairs, maintenance and replacements that are City's responsibility hereunder **(i)** at City's cost, **(ii)** by contractors or mechanics selected by City and reasonably approved by Landlord, **(iii)** so that same shall be at least substantially equal in quality, value and utility to the original work or installation prior to damage thereof, **(iv)** in a manner and using equipment and materials that will not materially interfere with or impair the operations, use or occupation of the Building or the Building Systems, and **(v)** in compliance with all applicable Laws, including, without limitation, any applicable contracting requirements under City's Charter and Administrative Code. At all times during the Term of this Lease, Landlord shall, upon reasonable notice by City, afford City and its Agents with access to those

portions of the Building which are necessary to maintain or repair the telecommunications and data and computer cabling facilities and equipment installed by City.

8.3 Standards for Landlord's Performance; City's Remedies

In performing its obligations hereunder, Landlord shall undertake commercially reasonable measures in accordance with good construction practices to minimize damage, disruption or inconvenience caused by such work and make adequate provision for the safety and convenience of all persons affected by such work. Dust, noise, fumes, odors and other effects of such work shall be controlled using commercially reasonable methods customarily used to control deleterious effects associated with similar projects in occupied buildings (i.e., after-hours core drilling). On written or telephonic notice from City that any repair or replacement is required which is Landlord's obligation hereunder, or otherwise becoming aware of the necessity of such repair, Landlord shall proceed with reasonable diligence to perform such repair or replacement as promptly as possible and shall keep City apprised of its efforts. Without limiting the foregoing, Landlord shall in all events provide City with a written acknowledgement to a written repair or replacement request within five (5) business days of receipt thereof. During any period when City's use of the Premises is impaired by the necessity for or performance of repairs or replacements which are Landlord's obligation hereunder, Rent shall abate in proportion to the extent to which the unrepaired condition or work disrupts City's conduct of its business at the Premises. The prior sentence is inapplicable to repairs to the Premises that are necessitated due to damage caused by fire or other casualty, which shall be governed by Section 12.

8.4 Liens

City shall keep the Premises free from liens arising out of any work performed, material furnished or obligations incurred by City during the Term. Landlord shall have the right to post on the Premises any notices permitted or required by law or that are needed for the protection of Landlord, the Premises, or the Building, from mechanics' and material suppliers' liens. City shall give Landlord at least thirty (30) days' prior written notice of commencement of any repair or construction by City on the Premises.

9. UTILITIES AND SERVICES

9.1 Utilities

Landlord shall, at its sole cost, provide the connections needed for the following utilities and services to the Premises: **(a)** heating, air conditioning and ventilation in amounts required for City's comfortable use and occupancy of the Premises, during the period from 8:00 a.m. to 6:00 p.m., Monday through Friday, except holidays generally recognized in San Francisco; **(b)** electric current and natural gas pressure in amounts required for normal lighting and for the operation of personal computers and other machines and equipment used as part of the uses specified in Section 5.1 on a twenty-four (24) hours-a-day, three hundred sixty-five (365) days-a-year basis ("**Daily Basis**"); and **(c)** water for lavatory and drinking purposes on a Daily Basis. Notwithstanding anything to the contrary to the foregoing, Tenant shall, at its sole expense, separately arrange for the provision of electricity, gas, water, sewer, garbage, telephone, cable and internet services that Tenant requires for the Premises and directly pay the provider of such services.

9.2 Services

City, at its sole cost, shall arrange for any janitorial services it requires for the Premises.

9.3 Disruption in Essential Utilities or Services

Landlord shall not be liable for any failure or interruption of any utilities or services furnished to the Premises, and no such failure or interruption shall entitle City to any abatement in Rent or to terminate this Lease, unless such interruption is due to the negligence or willful misconduct of Landlord. Notwithstanding the foregoing, if any interruption in services or utilities is (i) within Landlord's reasonable control and continues for three (3) or more consecutive business days, or

(ii) outside Landlord's reasonable control and continues for sixty (60) or more consecutive days, and Tenant use of the Premises is materially and negatively impacted, then Tenant shall be entitled to an abatement of rent hereunder, which abatement shall be based on the extent of Tenant's inability to use the Premises.

10. COMPLIANCE WITH LAWS; PREMISES CONDITION

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

To the best of Landlord's actual knowledge and without any independent investigation, Landlord represents and warrants to City, and covenants with City, that it has not received any notice that would make any of the following statements incorrect: (a) the physical structure, fixtures and permanent improvements of the Premises and all portions of the Property and the Building along the path of travel to the Premises (including, but not limited to, the Building entrances, restrooms, and lobbies) are now, and as of the Commencement Date will be, in compliance with the requirements of the Americans With Disabilities Act of 1990 and Title 24 of the California Code of Regulations and all other applicable federal, state, local and administrative laws, rules, regulations, orders and requirements intended to provide equal accessibility for persons with disabilities (collectively, "**Disabilities Laws**"); (b) the Building is not an unreinforced masonry building, and is now, and as of the Commencement Date will be, in compliance with all applicable federal, state, local and administrative laws, rules, regulations, orders and requirements relating to seismic safety (collectively, "**Seismic Safety Laws**"); (c) the Building and Building Systems serving the Premises are now, and as of the Commencement Date will be, in full compliance with all applicable federal, state, local and administrative laws, rules, regulations, orders and requirements relating to fire and life safety (including, without limitation, the San Francisco High-Rise Sprinkler Ordinance) (collectively, "**Life Safety Laws**"); (d) the Building and Building Systems serving the Premises are now, and as of the Commencement Date will be, in compliance with all other applicable federal, state, local and administrative laws, rules, regulations, orders and requirements; and (e) there are not now, and as of the Commencement Date will not be, any material physical or mechanical defects in the Premises, Building or the Building Systems that would materially adversely affect City's intended use of the Premises. Landlord shall at all times during the Term maintain, at its cost, the Property, Building, and the Building Systems serving the Premises in compliance with applicable present or future federal, state, local and administrative laws, rules, regulations, orders and requirements (collectively, "**Laws**"), including, without limitation, Disabilities Laws, Seismic Safety Laws, and Life Safety Laws. If any Law is enacted after the Commencement Date and requires the construction of an addition to or an alteration of the Building, the remediation of any Hazardous Substance, or the reinforcement or any other physical modification of the Building (a "**Capital Expenditure**"), and such Capital Expenditure is not required due to City's specific and unique use of the Premises pursuant to this Lease as compared with uses by other Building tenants or any Alterations made by City to the Premises, Landlord shall be obligated for making such Capital Expenditure at its sole cost. Without limiting Section 16.2, Landlord shall Indemnify (as defined in Section 16.1) City against any and all Claims (as defined in Section 16.1) arising out of any misrepresentation by Landlord under this Section.

10.2 City's Compliance with Laws; Indemnity

City shall use the Premises during the Term in compliance with applicable Laws, except that City shall not be required to make any structural alterations, additions or other modifications in order to comply therewith unless such modifications are necessary solely because of any Alterations to the Premises made by City pursuant to Section 7 and such modifications are not otherwise Landlord's responsibility under this Lease. City shall be responsible for complying with any requirement of the Disabilities Laws relating to the placement of City's furniture or other City Personal Property and the operation of any programs in the Premises, other than any requirement relating to the physical structure, fixtures and permanent improvements of the Premises or portions of the Property or Building along the path of travel to the Premises, which

are Landlord's obligation as provided in Section 10.1. If any Capital Expenditure is required due to City's specific and unique use of the Premises pursuant to this Lease as compared with uses by other Building tenants or any Alterations made by City to the Premises, City shall be obligated for making such Capital Expenditure at its sole cost; provided, however, that if the cost of such Capital Expenditure would exceed six (6) months of Base Rent (at the rate then payable under this Lease), City shall have the right to terminate this Lease by delivering no less than thirty (30) days written notice of such termination unless Landlord notifies City in writing, within ten (10) days of receiving such termination notice, that Landlord has elected to pay the amount by which the cost of such Capital Expenditure exceeds six (6) months of Base Rent. Without limiting Section 16.1, City shall Indemnify Landlord against any and all Claims arising out of City's failure to comply with all applicable Laws as provided in this Section.

10.3 City's Compliance with Insurance Requirements

City shall not conduct any use in or about the Premises that would: **(a)** invalidate or be in conflict with any fire or other casualty insurance policies covering the Building or any property located therein, **(b)** result in a refusal by fire insurance companies of good standing to insure the Building or any such property in amounts reasonably satisfactory to Landlord or the holder of any mortgage or deed of trust encumbering the Building, **(c)** cause an increase in the fire insurance premium for the Building unless City agrees to pay such increase, or **(d)** subject Landlord to any liability or responsibility for injury to any person or property by reason solely of any business operation being conducted by City in the Premises; provided, however, Landlord shall provide City with reasonable prior written notice of any applicable insurance requirements and no such insurance requirements shall materially and adversely interfere with City's normal business in the Premises.

11. SUBORDINATION

(a) Without the necessity of any additional document being executed by City for the purpose of effecting a subordination, and subject in all events to the immediately following subsection (b), this Lease shall be subject and subordinate at all times to the following (each an "Encumbrance"): (i) any reciprocal easement agreements, ground leases or other underlying leases that may hereafter be executed affecting Landlord's interest in the Property, or any portion thereof, and (ii) the lien of any mortgages or deeds of trust and renewals, modifications, consolidations, replacements and extensions of any of the foregoing that may hereafter be executed by Landlord in any amount for which any part of the Property, any ground lease or underlying lease, or Landlord's interest or estate therein is subject. Notwithstanding the foregoing, if the ground lessor, mortgagee, trustee, or holder of any such mortgage or deed of trust elects to have City's interest in this Lease be superior to any such instrument, then upon notice thereof to City, this Lease shall be deemed superior, whether this Lease was executed before or after the date of said instrument or the recording thereof. At City's request, the holder of the Encumbrance shall enter into a subordination and nondisturbance agreement with City in a form reasonably acceptable to City evidencing such subordination or superiority of this Lease. Landlord warrants that as of the date of this Lease the only existing Encumbrance is held by Cathay Bank ("Lender"). Concurrently with the execution of this Lease, Landlord shall provide City with a written subordination and nondisturbance agreement in the form attached hereto as Exhibit B, duly executed and acknowledged by Landlord and Lender.

(b) If any mortgage or deed of trust to which this Lease is subordinate is foreclosed or a deed in lieu of foreclosure is given to the mortgagee or beneficiary, or in the event any ground lease or underlying lease to which this Lease is subordinate is terminated, this Lease shall not be barred, terminated, cut off, or foreclosed nor shall the rights and possession of City hereunder be disturbed if City shall not then be in default in the payment of rental or other sums due hereunder or otherwise be in default under the terms of this Lease beyond any applicable notice and cure period. City shall attorn to and become the tenant of the successor-in-interest to Landlord, provided that City has received proper written notice of such succession and the name and

address of the successor landlord. City's covenant under the immediately preceding subsection (a) to subordinate this Lease to any Encumbrance or other hypothecation hereafter executed is conditioned upon each such senior instrument containing the commitments specified in this subsection (b). The provisions of this Section shall be self-operative and no further instrument shall be required other than as provided in this Section. City agrees, however, to execute upon request by Landlord and in a form reasonably acceptable to City, any additional documents evidencing the priority or subordination of this Lease with respect to any such Encumbrance as provided herein.

12. DAMAGE AND DESTRUCTION

If the Premises, the Building or any Building Systems are damaged by fire or other casualty, Landlord shall repair the same without delay, provided that such repairs can be made under applicable laws before the date (the "**Repair Date**") that is ninety (90) days after (i) the date of such damage or (ii) the date of receiving any approvals needed from the City's Planning Department to make such repairs. If such repairs require the prior approval of City's Planning Department, Landlord shall apply for such approval within thirty (30) days after the date of such damage. In such event, Landlord shall diligently pursue any City Planning Department approvals for such repairs and shall diligently commence and pursue such repairs to completion. In such event, this Lease shall remain in full force and effect, except that City shall be entitled to an abatement of Rent while such repairs are being made. Such abatement in Rent shall be based upon the extent to which such damage and the making of such repairs interfere with City's business in the Premises. Landlord's repairs shall not include, and the Rent shall not be abated as a result of, any damage by fire or other cause to City's property or any damage caused by the negligence or willful misconduct of City or its Agents.

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

Notwithstanding the foregoing, in the event the Premises are damaged or destroyed by reason of flood or earthquake, and the cost of repairing the damage or destruction which is not covered by insurance proceeds payable under the insurance policies Landlord is required to carry hereunder (excluding any deductible, for which Landlord shall be responsible), as reasonably estimated by Landlord's contractor, exceeds the insurance proceeds available for the repair by ten percent (10%) of the cost of replacing the Building in its entirety, Landlord may terminate this Lease by written notice to City within thirty (30) days of the date Landlord receives written notice that such damage is not fully covered by insurance. Such notice from Landlord shall include adequate written evidence of the denial of insurance coverage. If Landlord does not elect to terminate this Lease as provided above, this Lease shall remain in full force and effect, and Landlord shall repair and restore the Premises as provided above.

If at any time during the last six (6) months of the Term of this Lease there is substantial damage that Landlord would be required to repair hereunder, Landlord or City may, at the respective option of each, terminate this Lease as of the date such damage occurred by giving written notice to the other party of its election to do so within thirty (30) days after the date of such damage; provided, however, Landlord may terminate this Lease only if it would take more than thirty (30) days to repair such damage and City has not timely delivered a notice exercising its Extension Option during such six (6) month period.

Landlord and City intend that the provisions of this Section govern fully their rights and

obligations in the event of damage or destruction, and they each hereby waive and release any right to terminate this Lease in whole or in part under Section 1932, subdivision 2, Section 1933, subdivision 4, and Sections 1941 and 1942 of the Civil Code of California or under any similar law, statute or ordinance now or hereafter in effect, to the extent such rights are inconsistent with the provisions hereof.

13. EMINENT DOMAIN

13.1 Definitions

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

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

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

13.2 General

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

13.3 Total Taking; Automatic Termination

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

13.4 Partial Taking; Election to Terminate

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

(b) In the case of a partial taking of a substantial portion of the Building, and if Section 13.4(a) does not apply, City and Landlord shall each have the right to terminate this Lease by written notice to the other within thirty (30) days after the Date of Taking, provided that, as a condition to City's right to terminate, the portion of the Building taken shall, in City's reasonable judgment, render the Premises unsuitable for continued use by City for its intended purposes or otherwise materially adversely affect City's normal operations in the Premises.

(c) Either party electing to terminate under the provisions of this Section 13.4 shall do so by giving written notice to the other party before or within thirty (30) days after the

Date of Taking, and thereafter this Lease shall terminate upon the later of the thirtieth (30th) day after such written notice is given or the Date of Taking.

13.5 Rent; Award

On termination of this Lease pursuant to an election under Section 13.4, then: (a) City's obligation to pay Rent shall continue up until the date of termination, and thereafter shall cease, except that Rent shall be reduced as provided in Section 13.6 for any period during which this Lease continues in effect after the Date of Taking, and (b) Landlord shall be entitled to the entire Award in connection therewith, except that City shall receive any Award made specifically for City's relocation expenses or the interruption of or damage to City's business or damage to City's Personal Property.

13.6 Partial Taking; Continuation of Lease

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

13.7 Temporary Taking

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

14. ASSIGNMENT AND SUBLETTING

City shall not directly or indirectly sell, assign, encumber, pledge or otherwise transfer or hypothecate all or any part of its interest in or rights with respect to the Premises or its leasehold estate hereunder or permit all or any portion of the Premises to be occupied by anyone other than itself or sublet all or any portion of the Premises without Landlord's prior written consent in each instance, which shall not be unreasonably withheld or delayed, but may be withheld if City is then in default of this Lease beyond any applicable notice and cure periods. If Landlord consents to City's sublease of any portion of the Premises or City's assignment of this Lease to another party, Landlord shall be entitled to fifty percent (50%) of any rent or other consideration received by City under such sublease or assignment in excess of the Base Rent and Additional Charges (or the amount proportionate to the portion of the Premises subject to such a sublease) will be paid to Landlord, after City has recovered any reasonable brokers' commissions and the reasonable cost of any leasehold improvements that City incurs in connection with the sublease or assignment. No assignment or sublease shall relieve City from any liability under the Lease.

City shall have the right from time to time, upon notice to but without the consent of Landlord, to transfer this Lease or use and occupancy of all or any of the Premises to any department, commission or agency of the City and County of San Francisco for uses permitted under this Lease.

15. DEFAULT; REMEDIES

15.1 Events of Default by City

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

(a) City's failure to make any timely payment of Rent and to cure such nonpayment within five (5) business days after receipt of written notice thereof from Landlord, provided that for the first two (2) monthly payments of Rent at the beginning of the Term, City shall have twenty (20) days to cure any such nonpayment after written notice thereof from Landlord;

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

(c) City's failure to perform any other covenant or obligation of City hereunder (not involving the payment of money) and to cure such non-performance within twenty (20) days of the date of receipt of notice thereof from Landlord, provided that if more than twenty (20) days are reasonably required for such cure, no event of default shall occur if City commences such cure within such period and diligently prosecutes such cure to completion.

15.2 Landlord's Remedies

Upon the occurrence of any event of default by City that is not cured within the applicable grace period as provided above, Landlord shall have all rights and remedies available pursuant to law or granted hereunder, including the following:

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

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

15.3 Landlord's Default

If Landlord fails to perform any of its obligations under this Lease, then (without limiting any of City's other cure rights under this Lease) City may, at its sole option, cure such default at Landlord's expense if such default continues after twenty (20) days from the date City gives notice to Landlord of City's intention to perform such cure. However, in the case of a default which for causes beyond Landlord's control (excluding any financial inability to perform) cannot with due diligence be cured within such twenty (20)-day period, such twenty (20)-day period shall be extended if Landlord, promptly upon receipt of City's notice, advises City of Landlord's intention to take all steps required to cure such default, and Landlord promptly commences such cure and diligently prosecutes the same to completion. Subject to the other provisions of this Lease relating to abatement of Rent, if Landlord fails to cure any default within the cure period provided above, then, whether or not City elects to cure Landlord's default as provided herein, the Base Rent and any other charges hereunder shall be abated based on the extent to which such default interferes with City's ability to carry on its business at the Premises. Notwithstanding the foregoing, if any such default by Landlord continues for sixty (60) days and impairs City's ability to carry on its business in the Premises, then City shall have the right to terminate this Lease upon written notice to Landlord within thirty (30) days after the expiration of such sixty (60)-day period. City's rights under this Section, Section 5.3, and Section 9.4 shall not limit in

any way any of its other rights and remedies hereunder or at law or in equity.

16. INDEMNITIES

16.1 City's Indemnity

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

16.2 Landlord's Indemnity

Landlord shall Indemnify City and its Agents against any and all Claims incurred as a result of (a) any default by Landlord in the performance of any of its obligations under this Lease or any breach of any representations or warranties made by Landlord under this Lease, or (b) any negligent acts or omissions of Landlord or its Agents in, on or about the Premises or the Property; provided, however, Landlord shall not be obligated to Indemnify City or its Agents to the extent any Claim arises out of the negligence or willful misconduct of City or its Agents. In any action or proceeding brought against City or its Agents by reason of any Claim Indemnified by Landlord hereunder, Landlord may, at its sole option, elect to defend such Claim by attorneys selected by Landlord. Landlord shall have the right to control the defense and to determine the settlement or compromise of any action or proceeding, provided that City shall have the right, but not the obligation, to participate in the defense of any such Claim at its sole cost. Landlord's obligations under this Section shall survive the termination of this Lease.

17. INSURANCE

17.1 City's Self-Insurance

Landlord acknowledges that City maintains a program of self-insurance and agrees that City shall not be required to carry any insurance with respect to this Lease. City assumes the risk of damage to any of City's Personal Property and any Alterations constructed by City resulting from those causes for which Landlord is not required to indemnify City hereunder.

17.2 Landlord's Insurance

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

In addition, Landlord, at no cost to City, shall procure and keep in effect at all times during the Term insurance as follows: (a) Commercial general liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including contractual liability, independent contractors, broad-form property damage, fire damage legal liability (of not less than Fifty Thousand Dollars (\$50,000)), personal injury, products and completed operations, and explosion, collapse and underground (XCU), and (b) Worker's Compensation Insurance with Employer's Liability Limits not less than One Million Dollars (\$1,000,000) each accident. All insurance policies required to be maintained by Landlord hereunder shall be endorsed to provide for thirty (30) days' prior written notice of cancellation for any reason, intended non-renewal, or reduction in coverage to Landlord.

17.3 Waiver of Subrogation

Notwithstanding anything to the contrary in this Lease, Landlord hereby waives any right of recovery against City for any loss or damage sustained by Landlord with respect to the Building or the Premises or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of City, to the extent such loss or damage is covered by insurance that Landlord is required to purchase under this Lease or is otherwise actually recovered from valid and collectible insurance covering Landlord. Landlord agrees to obtain a waiver of subrogation endorsement from each insurance carrier issuing policies relative to the Building or the Premises; provided, Landlord's failure to do so shall not affect the above waiver.

Notwithstanding anything to the contrary contained herein, City hereby waives any right of recovery against Landlord for any loss or damage sustained by City with respect to City's Personal Property or Alterations, to the extent such loss or damage is covered by insurance purchased by City or would have been covered by insurance which would have been considered to be commercially available to City, had City not elected to self-insure.

18. ACCESS BY LANDLORD

Landlord reserves for itself and any designated Agent the right to enter the Premises at all reasonable times and, except in cases of emergency (in which event Landlord shall give any reasonable notice), after giving City at least twenty four (24) hours' advance written or oral notice, for the purpose of (a) inspecting the Premises, (b) supplying any service to be provided by Landlord hereunder, (c) showing the Premises to any prospective purchasers, mortgagees or, during the last six (6) months of the Term of this Lease, tenants, (d) posting notices of non-responsibility, and (e) altering, improving or repairing the Premises and any portion of the Building, and Landlord may for that purpose erect, use and maintain necessary structures in and through the Premises where reasonably required by the character of the work to be performed, provided that the entrance to the Premises shall not be blocked thereby, and further provided that City's use shall not be interfered with.

19. ESTOPPEL CERTIFICATES

Either party, from time to time during the Term upon not less than ten (10) days' prior written notice from the other party, may reasonably request the other party to execute, acknowledge and deliver to such persons or entities designated by such other party a certificate stating: (a) the Commencement Date and Expiration Date of this Lease, (b) that this Lease is unmodified and in full force and effect (or, if there have been modifications, this the Lease is in full force and effect as modified and stating the modifications), (c) that there are no defaults under this Lease (or if so, specifying the same), and (d) the date to which Rent has been paid.

20. SURRENDER OF PREMISES

Upon the expiration or sooner termination of this Lease, City shall surrender the Premises to Landlord in good order and condition, reasonable use and wear and damage by fire or other

casualty excepted, and remove all of City's Personal Property and any Alterations City is required to remove pursuant to Section 7.1. City shall repair or pay the cost of repairing any damage to the Premises or the Building resulting from such removal. City's obligations under this Section shall survive the expiration or earlier termination of this Lease.

21. HAZARDOUS MATERIALS

21.1 Definitions

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

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

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

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

21.2 Landlord's Representations and Covenants

Landlord represents and warrants to City that, to the best of Landlord's actual knowledge, without any independent investigation, the following statements are true and correct and will be true and correct as of the Commencement Date: (a) the Property is not in violation of any Environmental Laws except to the extent disclosed in the Phase I Environmental Assessment Report prepared by ACS Associates dated January 2, 2022 ("Phase I"), a copy of which was provided to City by Landlord; (b) the Property is not now, nor has it been, used for the manufacture, use, storage, discharge, deposit, transportation or disposal of any Hazardous Material, except for the use of such substances in such limited quantities as are customarily used in offices, which limited use has been and is in compliance with Environmental Laws; (c) the Property does not consist of any landfill or contain any underground storage tanks; (d) the Building does not consist of any asbestos-containing materials or building materials that contain any other Hazardous Material, nor do the Premises contain any lead-based paints; (e) there has been and is no Release of any Hazardous Material in the Building or in, on, under or about the Property; and (f) the Property is not subject to any claim by any governmental regulatory agency or third party related to the Release of any Hazardous Material, and there is no inquiry by any governmental agency (including, without limitation, the California Department of Toxic Substances Control or the Regional Water Quality Control Board) with respect to the presence of Hazardous Material in the Building or in, on, under or about the Property, or the migration of Hazardous Material from or to other real property. Subject to City's obligations under this Section below, Landlord shall maintain the Property throughout the Term in compliance with all Environmental Laws that could affect the health, safety and welfare of City's employees or City's use, occupancy or enjoyment of the Premises for their intended purposes.

21.3 Landlord's Environmental Indemnity

Without limiting Landlord's Indemnity in Section 16.2, Landlord shall Indemnify City and its Agents against any and all Claims arising during or after the Term of this Lease **(a)** as a result of any breach of any of Landlord's representations, warranties or covenants in Section 21.2, or **(b)** in connection with any presence or Release of Hazardous Material in the Building or on, under or about the Property, unless City or its Agents caused such Release.

21.4 City's Covenants

Neither City nor its Agents shall cause any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or the Property, or transported to or from the Premises or the Property, in violation of any Environmental Laws. Without limiting the uses which are permitted under the terms of this Lease, Landlord acknowledges that City may use the Premises for office purposes, to store vehicles and to operate a sign shop, and connection with such uses may use substances such as cleaning fluids, gasoline, diesel and other vehicle fluids, and solvents so long as such use is in compliance with all applicable Environmental Laws.

21.5 City's Environmental Indemnity

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

22. SECURITY DEPOSIT

Subject to Section 4.11, within 15 days of the Effective Date, City will deposit with Landlord the sum specified as the security deposit in the Basic Lease Information (the "Security Deposit") to secure City's faithful performance of all terms, covenants, and conditions of this Lease. Landlord may apply the Security Deposit in whole or in part to remedy any failure of City to perform any other terms, covenants, or conditions in this Lease (including the payment of Rent either before or after a default).

23. GENERAL PROVISIONS

23.1 Notices

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

23.2 No Implied Waiver

No failure by either party to insist upon the strict performance of any obligation of the other party under this Lease or to exercise any right, power or remedy consequent upon a breach

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

23.3 Amendments

Neither this Lease nor any terms or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the party against which the enforcement of the change, waiver, discharge or termination is sought. No waiver of any breach shall affect or alter this Lease, but each and every term, covenant and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent breach thereof. Whenever this Lease requires or permits the giving by City of its consent or approval, SFMTA's Director of Transportation, or his or her designee, shall be authorized to provide such approval, except as otherwise provided by applicable law, including the Charter of the City and County of San Francisco. Any amendments or modifications to this Lease, including, without limitation, amendments to or modifications to the exhibits to this Lease, shall be subject to the mutual written agreement of City and Landlord, and City's agreement may be made upon the sole approval of SFMTA's Director of Transportation, or his or her designee; provided, however, material amendments or modifications to this Lease (a) changing the legal description of the Premises, (b) increasing the Term, (c) increasing the Rent, (d) changing the general use of the Premises from the use authorized under Section 5.1, or (e) materially increasing City's liabilities or financial obligations or materially decreasing City's rights under this Lease shall additionally require the approval of the Board of Directors of SFMTA and may be subject to the approval of the City's Board of Supervisors and Mayor.

23.4 Authority

Landlord represents and warrants to City that it is the sole owner of the Property and the execution and delivery of this Lease by Landlord has been duly authorized and does not violate any provision of any agreement, law or regulation to which Landlord or the Property is subject. Each person executing this Lease on behalf of Landlord does hereby covenant and warrant that Landlord is comprised of one duly authorized and existing California limited liability company, that Landlord has and is qualified to do business in California, that Landlord has the full right and authority to enter into this Lease, and that each person signing on behalf of Landlord is authorized to do so. On City's request, Landlord shall provide City with evidence reasonably satisfactory to City confirming the foregoing representations and warranties.

23.5 Parties and Their Agents; Approvals

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

23.6 Interpretation of Lease

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

23.7 Successors and Assigns

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

23.8 Brokers

Neither party has had any contact, dealings, or communication regarding the leasing of the Premises through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the transactions contemplated herein. In the event that 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 his or her claim shall be responsible for such commission or fee and shall Indemnify the other party from any and all Claims incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Lease.

23.9 Severability

If any provision of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Lease shall be valid and be enforceable to the full extent permitted by law.

23.10 Governing Law

This Lease shall be construed and enforced in accordance with the laws of the State of California and the City's Charter.

23.11 Entire Agreement

Landlord and City intend that this Lease (including all of the attached exhibits, which are made a part of this Lease by this reference) shall be the final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous written or oral agreements or understandings. Landlord and City further intend that this Lease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts hereof and changes therefrom) may be

introduced in any judicial, administrative or other legal proceeding involving this Lease.

23.12 Attorneys' Fees

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

23.13 Holding Over

Should City hold over in possession of the Premises after the expiration of the Term with Landlord's consent, such holding over shall not be deemed to extend the Term or renew this Lease, but such tenancy thereafter shall continue as a month-to-month tenancy. Such tenancy shall be on all the terms and conditions set forth in this Lease and at one hundred three percent (103%) of the monthly Base Rent in effect during the last month of the Term of this Lease or such other rental as Landlord and City may mutually agree in writing as a condition to Landlord's consent to such holding over, and City shall continue as a month-to-month tenant until the tenancy shall be terminated by Landlord giving City or City giving Landlord at least thirty (30) days' prior written notice of termination. Should City hold over without Landlord's consent, the rent payable by City during the period of such holding over shall be one hundred ten percent (110%) of the monthly Base Rent in effect during the last month of the Term of this Lease, and such tenancy shall otherwise be on the terms and conditions contained herein.

23.14 Cumulative Remedies

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

23.15 Time of Essence

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

23.16 Survival of Indemnities

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

times thereafter.

23.17 Signs

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

23.18 Quiet Enjoyment and Title

Landlord covenants and represents that it has full right, power and authority to grant the leasehold estate hereunder, and covenants that City, upon paying the Rent hereunder and performing the covenants hereof, shall peaceably and quietly have, hold and enjoy the Premises and all appurtenances during the full Term of this Lease as against all persons or entities claiming by and through Landlord or on account of any action, inaction or agreement of Landlord or its Agents. Without limiting the provisions of Section 16.2, Landlord agrees to Indemnify City and its Agents against Claims arising out of any assertion that would interfere with City's right to quiet enjoyment as provided in this Section.

23.19 Bankruptcy

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

23.20 Transfer of Landlord's Interest

Landlord shall have the right to transfer its interest in the Property, the Building or this Lease to any other financially responsible person or entity. In the event of any such transfer, Landlord shall be relieved, upon notice to City of the name and address of Landlord's successor, of any obligations accruing hereunder from and after the date of such transfer and upon delivering to City an express assumption by the transferee of all of Landlord's obligations hereunder.

23.21 Non-Liability of City Officials, Employees and Agents

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

23.22 MacBride Principles – Northern Ireland

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

business in Northern Ireland.

23.23 Controller's Certification of Funds

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

23.24 Prevailing Wages and Working Conditions

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.

Landlord shall include, and require its Contractors and Subcontractors (regardless of tier) to include, the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract with specific reference to San Francisco Administrative Code Section 23.61. Each such Construction Contract shall name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any Contractor or Subcontractor in accordance with San Francisco Administrative Code Section 23.61. Landlord's failure to comply with its obligations under this Section shall constitute a material breach of this Lease. A Contractor's or Subcontractor's failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.61 against the breaching party.

23.25 Non Discrimination in City Contracts and Benefits Ordinance

(a) Covenant Not to Discriminate

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

(b) Subcontracts

Landlord shall include in all subcontracts relating to the Premises a non-discrimination clause applicable to such subcontractor in substantially the form of Section 23.25(a). In addition, Landlord shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k) and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Landlord's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

(c) Non-Discrimination in Benefits

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

(d) CMD Form

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

(e) Incorporation of Administrative Code Provisions by Reference

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

23.26 Tropical Hardwood and Virgin Redwood Ban

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

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

(c) If Landlord fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Landlord shall be liable for liquidated

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

23.27 Bicycle Parking Facilities

Article 1.5, Section 155.3 of the San Francisco Planning Code (the "**Planning Code**") requires the provision of bicycle parking at City-leased buildings at no cost to Landlord. City shall have the right to install such bicycle parking in the Premises; provided, however, that if any such parking will be an Alteration, City shall obtain Landlord's prior written consent to such installation.

23.28 Resource-Efficient City Buildings

Landlord acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 713 relating to green building requirements for the design, construction and operation of City buildings. Landlord hereby agrees that it shall comply with all applicable provisions of such code sections.

23.29 Counterparts

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

23.30 Effective Date

The date on which this Lease shall become effective (the "**Effective Date**") is the date upon which (a) SFMTA's Board of Directors, in its sole and absolute discretion, adopts a resolution approving this Lease in accordance with all applicable laws, and (b) this Lease is duly executed by Landlord and City.

23.31 Certification by Landlord

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

23.32 Sunshine Ordinance

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

23.33 Conflicts of Interest

Through its execution of this Lease, Landlord acknowledges that it is familiar with the provisions of Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and

Section 87100 *et seq.* and Section 1090 *et seq.* of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provisions, and agrees that if Landlord becomes aware of any such fact during the Term, Landlord shall immediately notify City.

23.34 Notification of Limitations on Contributions

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 Lease, Landlord acknowledges 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 (a) the prohibition on contributions applies to (i) a City Contractor, each member of its board of directors, its chief executive officer, chief financial officer and chief operating officer, any person with an ownership interest of more than ten percent (10%) in the City Contractor, any subcontractor listed in the contract, and any committee that is sponsored or controlled by the City Contractor, and (b) within thirty (30) days of the submission of a proposal for the contract with a City Contractor, the City department seeking to enter into the contract must notify the Ethics Commission of the parties and any subcontractor to the contract. Additionally, Landlord certifies it has informed each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 by the time it submitted a proposal for the contract to the City, and has provided the names of the persons required to be informed to the City department seeking to enter into that contract within thirty (30) days of submitting its contract proposal to the City department receiving that submittal, and acknowledges the City department receiving that submittal was required to notify the Ethics Commission of those persons.

23.35 Preservative-Treated Wood Containing Arsenic

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

23.36 Cooperative Drafting

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

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, LANDLORD ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY HERETO UNLESS AND UNTIL THE BOARD OF DIRECTORS OF CITY'S SFMTA SHALL HAVE DULY ADOPTED A RESOLUTION APPROVING THIS LEASE AND AUTHORIZING CONSUMMATION OF THE TRANSACTION CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON ADOPTION OF SUCH A RESOLUTION, AND THIS LEASE SHALL BE NULL AND VOID UNLESS THE BOARD OF DIRECTORS OF CITY'S SFMTA APPROVES THIS LEASE, IN ITS SOLE AND ABSOLUTE DISCRETION, AND IN ACCORDANCE WITH ALL APPLICABLE LAWS. APPROVAL OF THIS LEASE BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ADOPTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

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

LANDLORD: BANCROFT PROPERTY LLC,
a California limited liability company

By: 
David Lai, its manager

CITY: CITY AND COUNTY OF SAN FRANCISCO, a
municipal corporation, acting by and through its Municipal
Transportation Agency

By: _____
Jeffrey Tumlin
Director of Transportation

San Francisco Municipal Transportation Agency
Board of Directors

Resolution No: _____
Adopted: _____
Attest:
Secretary, SFMTA Board of Directors

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: _____
Carol Wong, Deputy City Attorney

EXHIBIT A

LEGAL DESCRIPTION OF REAL PROPERTY

The land referred to in this Report is situated in the County of San Francisco, City of San Francisco, State of California, and is described as follows:

BEGINNING at a point on the northeasterly line of Bancroft Avenue, distant thereon 225 feet northwesterly from the northwesterly line of Ingalls Street; running thence northwesterly, along said line of Bancroft Avenue, 100 feet; thence at a right angle northeasterly 100 feet; thence at a right angle southeasterly 100 feet; thence at a right angle southwesterly 100 feet to the point of beginning.

BEING Lot 6 and a portion of Lot 5, in Block 486, Bay View Homestead Association.
Assessor's Lot 19; Block 4850

EXHIBIT B

**FORM OF SUBORDINATION, NONDISTURBANCE
AND ATTORNMENT AGREEMENT**

RECORDING REQUESTED BY, AND
WHEN RECORDED, MAIL TO:

SFMTA
Senior Manager
Strategic Real Estate
Facilities and Real Property Management
1 South Van Ness, 8th Floor
San Francisco, CA 94103

(Space above this line reserved for Recorder's use only)

**SUBORDINATION, NON-DISTURBANCE,
ATTORNMENT AND ESTOPPEL AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE, ATTORNMENT AND ESTOPPEL AGREEMENT (this "Agreement") is entered into as of _____, 2022, by and between CITY AND COUNTY OF SAN FRANCISCO ("City" or "Lessee"), _____ ("Bank"), and BANCROFT PROPERTY LLC, a California limited liability company (referred to together herein as "Borrower" and "Lessor"), as follows.

RECITALS

A. Bank extended credit to Borrower secured, in whole or in part, by a deed of trust, dated _____ and recorded in the Official Records of San Francisco County as Instrument No. _____ on _____ (the "Deed of Trust"), which encumbers that certain real property commonly known as 1440 Bancroft Avenue, San Francisco, California, and further described on the attached Exhibit A (the "Property").

B. Lessor and Lessee are entering into a lease dated on or about the date hereof for premises ("Premises") for an initial five (5) year term, with a two 2 year extension options(the "Lease").

C. Bank has approved the form of the Lease.

D. It is a condition precedent to Lessee's entering into the Lease that Bank agree not to disturb Lessee's possessory rights and rights to purchase the Premises pursuant to the Lease if Bank exercises its rights under the Deed of Trust.

AGREEMENT

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **SUBORDINATION.**

(a) **Subordination of Lease.** Subject to the terms of this Agreement, the Deed of Trust and any and all extensions, renewals, modifications or replacements thereof shall be and at

all times remain a lien or charge on the Property prior and superior to the Lease. Subject to the terms of this Agreement, Lessee intentionally and unconditionally waives, relinquishes and subordinates the priority and superiority of the Lease and Lessee's right and interest to the Property thereunder to the lien or charge of the Deed of Trust, and any and all extensions, renewals, modifications or replacements thereof.

(b) Reliance. Bank acknowledges that Lessee is entering into the Lease in material reliance on this Agreement.

(c) Entire Subordination Agreement. This Agreement constitutes the whole and only agreement between the parties hereto with regard to the subordination of the Lease to the lien or charge of the Deed of Trust; there are no agreements (written or oral) outside or separate from this Agreement other than the Lease with respect to the subject matter hereof; and all prior negotiations with respect thereto, if any, are merged into this Agreement. This Agreement shall supersede and cancel, but only insofar as would affect the priority between the Deed of Trust and the Lease, any prior agreements as to such subordination, including without limitation those provisions, if any, contained in the Lease which provide for the subordination thereof to the lien of a deed of trust or mortgage affecting all or any portion of the Property.

2. INTENTIONALLY OMITTED.

3. ATTORNMENT. If Bank or any other transferee acquires Lessor's right, title and interest in and to the Property pursuant to a judicial or non-judicial foreclosure of the Deed of Trust or a deed in lieu thereof or in any other manner whereby Bank or such transferee succeeds to the interest of Lessor under the Lease, Lessee agrees as follows for the benefit of Bank or such transferee:

(a) Payment of Rent. Lessee shall pay to Bank or such transferee all rental payments required to be made by Lessee pursuant to the terms of the Lease for the remaining term thereof.

(b) Continuation of Performance. Lessee shall be bound to Bank or such transferee for the remaining term thereof in accordance with all of the terms of the Lease, and Lessee hereby attorns to Bank or such transferee as its landlord, such attornment to be effective and self-operative without the execution of any further instrument immediately upon Bank or such transferee succeeding to Lessor's interest in the Lease and giving written notice thereof to Lessee.

(c) Limit on Offset. Neither Bank nor such transferee shall be subject to any offsets or defenses which Lessee may have by reason of any act or omission of Lessor as the prior lessor under the Lease (except to the extent that (A) such offset or defense is expressly provided for in the Lease, (B) Bank has been notified in writing of the situation giving rise to such offset or defense, and (C) Bank has failed to remedy such default of conditions within the same period of time given Lessor under the Lease), nor for the return of any sums which Lessee may have paid to Lessor as the prior lessor under the Lease as security deposits, advance rentals paid more than one month in advance, or otherwise, except to the extent that such sums are actually delivered by Lessor to Bank or such transferee. Under no circumstance shall Bank or its transferee have liability to Lessee exceeding any offset to the payment of rent by reason of any act of omission of Lessor as the prior lessor under the Lease. The foregoing shall not relieve Bank or such transferee of the obligation to cure any conditions of the Property the existence of which constitute a lessor default under the Lease and which continue at the time of succession or acquisition by Bank or such transferee, or deprive Lessee of the right to terminate the Lease for a breach of a lessor covenant which is not cured as provided for herein or in the Lease and as a result of which there is a material interference with Lessee's permitted use and occupation of the Premises.

(d) Subsequent Transfer. If Bank or such transferee, by succeeding to Lessor's interest under the Lease, becomes obligated to perform the covenants of a lessor thereunder, then, upon any further transfer by Bank or such transferee of its interest as a lessor under the Lease, all of such obligations shall terminate as to Bank or such transferee, provided that further transferee assumes all such obligations.

4. NON-DISTURBANCE. In the event of a foreclosure of the Deed of Trust, or a transfer of the Property in lieu thereof or in any other manner whereby Bank or such transferee succeeds to the interest of Lessor under the Lease, so long as there shall then exist no breach, default or event of default by Lessee under the Lease beyond any applicable notice, grace and cure period, (a) the leasehold interest of Lessee shall not be extinguished or terminated by reason of such foreclosure, (b) the Lease shall continue in full force and effect, and (c) Bank and its successors-in-interest shall recognize and accept Lessee as the tenant under the Lease, subject to the terms and conditions of the Lease as modified by this Agreement.

5. ESTOPPEL. From time to time during the term of the lien of the Deed of Trust, within thirty (30) days after written request from Bank, City shall execute and deliver to Bank a certificate stating: (a) the commencement date and expiration date of the Lease, (b) that the Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), (c) that to its knowledge, there are no defaults under the Lease (or if so, specifying the same), (d) the date to which rent has been paid, and (e) any other information that may be reasonably required. From time to time during the term of the lien of the Deed of Trust, within thirty (30) days after written request from City, Bank shall execute and deliver to City a certificate stating that to its knowledge there are no defaults under the Deed of Trust or the loan documents secured thereby.

6. INSURANCE AND CONDEMNATION PROCEEDS. Anything in this Agreement or the Deed of Trust to the contrary notwithstanding, Bank agrees that it shall permit any insurance or condemnation proceeds to be used for the purpose of reconstructing the improvements located on the Property, unless Bank, under a standard of good faith and fair dealing, believes its security is impaired by the casualty or condemnation giving rise to such proceeds and, in the case of an insurance award, the insurance proceeds (together with a commercially reasonable deductible) are insufficient to reconstruct the improvements and building to at least the same condition prior to the casualty resulting in the claim for which the insurance proceeds are paid.

7. MISCELLANEOUS.

(a) Remedies Cumulative. All remedies provided herein are cumulative, not exclusive, and shall be in addition to any and all other rights and remedies provided by law and by other agreements between Bank and Borrower, Lessor or any other person or entity.

(b) Costs, Expenses and Attorneys' Fees. If any party hereto institutes any judicial or administrative action or proceeding to enforce any rights or obligations under this Agreement, or seeking damages or any other judicial or administrative remedy, the prevailing party shall be entitled to recover from the other party all costs and expenses, including reasonable attorneys' fees (to include outside counsel fees and all allocated costs of the prevailing party's in-house counsel), whether incurred at the trial or appellate level, in an arbitration proceeding or otherwise, and including any of the foregoing incurred in connection with any bankruptcy proceeding (including without limitation, any adversary proceeding, contested matter or motion brought by Bank or any other person) relating to Borrower, Lessee or any other person or entity. For purposes of this Agreement, fees allocated for attorneys of the City's Office of the City Attorney or in-house attorneys of the Bank 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 attorney's services were rendered who practice law in the City of San Francisco in law firms with approximately the same number of attorneys as employed by,

respectively, the Office of the City Attorney or the Bank's in-house legal department.

(c) Notices. All notices, requests and demands which any party is required or may desire to give to any other party under any provision of this Agreement must be in writing delivered to each party at the address set forth below its signature, or to such other address as any party may designate by written notice to all other parties. Each such notice, request and demand shall be deemed given or made as follows: (i) if sent by hand delivery, upon delivery; (ii) if sent by mail, upon the earlier of the date of receipt or three (3) days after deposit in the U.S. mail, first class and postage prepaid. For the convenience of the parties, copies of notices may also be given by telefacsimile to the telefacsimile number, if any, provided from time to time; however, no party may give official or binding notice by telefacsimile.

Notices to Lessee shall be delivered to:

San Francisco Municipal Transportation Agency
1 South Van Ness Avenue, 8th Floor
San Francisco, CA 94103
Attn: Strategic Real Estate
Facilities and Real Property Management
Re: 1440 Bancroft Avenue

with a copy to: City and County of San Francisco
Real Estate Department
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102
Attn: Director of Property

and a copy to: Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Pl.
San Francisco, CA 94102
Attn: Real Estate/Finance Team

Notices to the Bank shall be delivered to:

(d) Further Assurances. At the request of any party hereto, each other party shall execute, acknowledge and deliver such other documents and/or instruments as may be reasonably required by the requesting party in order to carry out the purpose of this Agreement, provided that no such document or instrument shall modify the rights and obligations of the parties set forth herein, and provided further that any document to be signed by the City must be approved as to form by the San Francisco City Attorney and must not violate the City's Charter or Administrative Code.

(e) Borrower; Lessor. If Borrower and Lessor are the same, each reference in this Agreement to Borrower or Lessor shall be deemed a reference to said person or entity in its respective capacity.

(f) Successors, Assigns; Governing Law. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, legal representatives, successors, assigns and other transferees of the parties hereto, and shall be governed by and construed in accordance with the laws of the State of California.

(g) Conflicts. In the event of any inconsistency between the terms of this Agreement and the Lease, the terms of this Agreement shall control.

(h) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute and be construed as one and the same instrument.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

BANK: _____

BORROWER/LESSOR: BANCROFT PROPERTY LLC, a California limited liability company

By: _____
David Lai, its manager

CITY/LESSEE: CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, acting by and through its
Municipal Transportation Agency

By: _____
Jeffrey Tumlin
Director of Transportation

San Francisco Municipal Transportation Agency
Board of Directors

Resolution No: _____
Adopted: _____
Attest:
Secretary, SFMTA Board of Directors

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss
County of San Francisco)

On _____, before me, _____, a notary public in and for said State, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

Exhibit A

Description of Property

The land referred to in this Report is situated in the County of San Francisco, City of San Francisco, State of California, and is described as follows:

BEGINNING at a point on the northeasterly line of Bancroft Avenue, distant thereon 225 feet northwesterly from the northwesterly line of Ingalls Street; running thence northwesterly, along said line of Bancroft Avenue, 100 feet; thence at a right angle northeasterly 100 feet; thence at a right angle southeasterly 100 feet; thence at a right angle southwesterly 100 feet to the point of beginning.

BEING Lot 6 and a portion of Lot 5, in Block 486, Bay View Homestead Association.
Assessor's Lot 19; Block 4850