

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Finance and Information Technology

**BRIEF DESCRIPTION:**

Authorizing the Director of Transportation to execute a new lease agreement for the SFMTA Parking Enforcement Section with Thomas F. Murphy and Martina Murphy, as Trustees of the Murphy Trust Under Declaration of Trust dated October 3, 2003, and Christopher J. Harney, as landlord, for the two buildings, commonly known as 505 7<sup>th</sup> Street and 899 Bryant Street, including the adjacent paved parking area in San Francisco, in the amount of \$6,826,919.32, for a five-year term with four one-year extension option.



**SUMMARY:**

- The original lease for 505 7<sup>th</sup> Street expired on January 31, 2018 and is currently on a month-to-month holdover term. The space is used for the SFMTA's Parking Enforcement Section's general office and Parking Control Officers' vehicle parking.
- The new lease is for a five-year term with four one-year extension options. Initial annual rent will be at \$672,000 with 3% annual increase.
- The SFMTA has the right to terminate the lease with 180 days written notice to the landlord during the extension term periods.
- Landlord will make various tenant improvements to the building at its own cost and expense.
- The rate for the new lease at \$69.42 per square foot a year is considered reasonable for it falls within an acceptable fair market value rental rate range of \$62 to \$80 per square foot a year.
- The Planning Department has determined that the proposed lease is categorically exempt from the California Environmental Quality Act (CEQA).
- The proposed action is an Approval Action as defined by the S. F. Administrative Code Chapter 31.

**ENCLOSURES:**

1. SFMTAB Resolution
2. 505 7<sup>th</sup> Street Lease Agreement

**APPROVALS:**

	<b>DATE</b>
DIRECTOR 	2/27/2018
SECRETARY 	2/27/2018

**ASSIGNED SFMTAB CALENDAR DATE:** March 6, 2018

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### **PURPOSE**

Authorizing the Director of Transportation to execute a new lease agreement for the SFMTA Parking Enforcement Section with Thomas F. Murphy and Martina Murphy, as Trustees of the Murphy Trust Under Declaration of Trust dated October 3, 2003, and Christopher J. Harney, as landlord, for the two buildings, commonly known as 505 7<sup>th</sup> Street and 899 Bryant Street, including the adjacent paved parking area in San Francisco, in the amount of \$6,826,919.32, for a five-year term with extension options for four additional one-year terms.

### **STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES**

This action supports the following SFMTA Strategic Plan Goals and Objectives:

Goal 1: Create a safer transportation experience for everyone  
Objective 1.2: Improve workplace safety and security

Goal 4: Create a workplace that delivers outstanding service  
Objective 4.2: Create a collaborative and innovative work environment  
Objective 4.4: Improve relationships and partnerships with our stakeholders

### **TRANSIT FIRST POLICY PRINCIPLES**

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 original lease for 505 7<sup>th</sup> Street was for 9,680 square feet of building and 3,200 square feet of parking space for a term that ran from March 1, 2008, and expired on January 31, 2018. The lease is currently under a month-to-month holdover status.

This new lease will continue to allow the space to be used to accommodate general office needs and Parking Control Officers' vehicle parking for the SFMTA's Parking Enforcement Section.

After numerous meetings with various stakeholders over several months including the SFMTA Parking Enforcement Section, and landlord representatives, negotiations have culminated with all parties agreeing to a new lease for a five-year term with four one-year extension options. The initial annual rent will be \$672,000 (\$5.785 per square foot per month, or \$69.42 per square foot per year) and will increase 3% annually. The lease also requires SFMTA to pay excess operating expenses and real estate taxes above the 2016 base year amount.

Following the expiration of the initial five-year term, SFMTA has the right to terminate this lease upon 180 days advance written notice to the landlord. The ability to terminate this lease during an extension term period gives SFMTA more flexibility if suitable and more permanent accommodations have been acquired and/or developed by the SFMTA.

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Under the new lease, the landlord, at its sole cost and expense, will make various improvements to the buildings. These improvements include, but are not limit to, roofing repair, replacement of end-of-life fixtures such as HVAC units, entrance doors, windows, upgrading all lighting to energy efficient LED lighting and also replacing the existing emergency backup generator to provide additional needed electricity to support SFMTA Parking Enforcement's operational and administrative needs.

The new lease rate will start with \$69.42 per square foot a year. Staff has researched comparable commercial office leases in the neighborhood which ranges between \$62.00 per square foot a year at 333 Bryant Street to \$80.00 per square foot a year at 501 2<sup>nd</sup> Street. Based on that research analysis and with landlord's improvements to the building, this new lease rental rate is considered reasonable for it falls within an acceptable fair market value rental rate range for comparable properties within a one mile radius of 505 7<sup>th</sup> Street.

The SFMTA will continue to pay rent at the month-to-month holdover rate until the tenant improvements are substantially completed according to terms specified under the new lease.

### **STAKEHOLDER ENGAGEMENT**

The SFMTA conducted in-house outreach and on site meetings with the Parking Enforcement Section supervisors, staff and landlord representatives to discuss various tenant and building improvements. All parties have agreed to the new lease terms and tenant improvements. The SFMTA will continue to engage all applicable parties during the lease term.

### **ALTERNATIVES CONSIDERED**

The SFMTA has evaluated other locations to relocate the Parking Enforcement Section within the existing SFMTA real property portfolio and elsewhere. In each instance, none were adequate enough to accommodate efficiently, the operation and administration of the Parking Enforcement Section. Until a permanent site can be obtained and or built, the existing location is the best fit for this function.

### **FUNDING IMPACT**

Operating funds required for this lease are budgeted in the Sustainable Street Division's budget.

### **ENVIRONMENTAL REVIEW**

The proposed lease is subject to the California Environmental Quality Act (CEQA). CEQA provides a categorical exemption from environmental review for operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination as defined in Title 14 of the California Code of Regulations Section 15301.

On February 9, 2018 the Planning Department determined (Case Number 2018-002128ENV) that the

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proposed lease is categorically exempt from CEQA as defined in Title 14 of the California Code of Regulations Section 15301.

The proposed action is the Approval Action as defined by the S. F. Administrative Code Chapter 31.

A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors, and may be found in the records of the Planning Department at 1650 Mission Street in San Francisco, and is incorporated herein by reference.

**OTHER APPROVALS RECEIVED OR STILL REQUIRED**

None required.

A City Attorney has reviewed this report.

**RECOMMENDATION**

The recommendation is to authorize the Director of Transportation to execute this new lease agreement with Thomas F. Murphy and Martina Murphy, as Trustees of the Murphy Trust Under Declaration of Trust dated October 3, 2003, and Christopher J. Harney, as landlord, for the two buildings, commonly known as 505 7<sup>th</sup> Street and 899 Bryant Street, including the adjacent paved parking area in San Francisco, for a five-year term with extension options for four additional one-year terms.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

RESOLUTION No. \_\_\_\_\_

WHEREAS, The original lease with Thomas F. Murphy and Martina Murphy, as Trustees of the Murphy Trust Under Declaration of Trust dated October 3, 2003, and Christopher J. Harney (Landlord) for 505 7<sup>th</sup> and 899 Bryant Street commenced March 1, 2008 and expired on January 31, 2018 and is currently on a month-to-month holdover status. The site provides the necessary buildings and parking to accommodate the SFMTA Parking Enforcement Section's general offices and Parking Control Officers' vehicle parking; and,

WHEREAS, A new lease for 505 7<sup>th</sup> Street has been negotiated with the Landlord for an initial annual rent of \$672,000 with 3% annual increases. The lease is for a five-year term and will commence upon the Landlord's substantial completion of certain building improvements and includes four one-year options to extend the term; and,

WHEREAS, During the optional extension terms, SFMTA may terminate the lease for any reason by providing Landlord with 180 days advance written notice; and,

WHEREAS, The Landlord will make tenant improvements, including window replacement and upgrades to energy efficient LED lighting, roof repairs, and replace many end-of-life fixtures such as HVAC units, entrance doors, and the existing emergency backup generator; and,

WHEREAS, The proposed lease is subject to the California Environmental Quality Act (CEQA); CEQA provides an exemption from environmental review for operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination as defined in Title 14 of the California Code of Regulations Section 15301; and,

WHEREAS, On February 9, 2018, the Planning Department determined that the proposed lease is categorically exempt from CEQA, pursuant to Title 14 of the California Code of Regulations Section 15301; and

WHEREAS, The proposed action is an Approval Action as defined by Chapter 31 of the San Francisco Administrative Code; and,

WHEREAS, A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors, and may be found in the records of the Planning Department at 1650 Mission Street in San Francisco, and is incorporated herein by reference; and now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation to execute a lease agreement with Thomas F. Murphy and Martina Murphy, as Trustees of the Murphy Trust Under Declaration of Trust dated October 3, 2003, and Christopher J. Harney, as landlord, for the two buildings, commonly known as 505 7<sup>th</sup> Street and 899 Bryant Street, including the adjacent paved parking area in San Francisco, in the amount of \$6,826,919.32, for a five-year term with four additional one-year options to extend.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of March 6, 2018.

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Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency

OFFICE LEASE

between

THOMAS F. MURPHY and MARTINA MURPHY, as Trustees of the Murphy Trust UDT  
dated October 3, 2003, and CHRISTOPHER J. HARNEY,  
as Landlord

and

CITY AND COUNTY OF SAN FRANCISCO,  
as Tenant

For the lease of

505 Seventh Street (aka 899 Bryant Street)

San Francisco, California

January 17, 2018

## OFFICE LEASE

THIS OFFICE LEASE (this "Lease"), date for reference purposes only as of January 17, 2018, is by and between THOMAS F. MURPHY and MARTINA MURPHY, as Trustees of the Murphy Trust UDT dated October 3, 2003, and CHRISTOPHER J. HARNEY, a married man as his sole and separate property (collectively, "Landlord"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("Tenant"), acting by and through its Municipal Transportation Agency ("SFMTA").

Landlord and Tenant 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.

<u>Basic Lease Information</u>	<u>Basic Summary</u>
Lease Reference Date:	January 17, 2018
Landlord:	THOMAS F. MURPHY and MARTINA MURPHY, as Trustees of the Murphy Trust UDT dated October 3, 2003, and CHRISTOPHER J. HARNEY, a married man as his sole and separate property
Tenant:	CITY AND COUNTY OF SAN FRANCISCO, acting by and through its MUNICIPAL TRANSPORTATION AGENCY
Building ( <u>Section 2.1</u> ):	Two (2) buildings commonly known as 505 Seventh Street (aka 899 Bryant Street) constructed on the land described as Assessor's Block 3779, Lots 40 and 168.
Premises ( <u>Section 2.1</u> ):	The Building and the paved parking area as shown in <u>Exhibit A</u> , attached hereto.
Rentable Area of Premises ( <u>Section 2.1</u> ):	Approximately 9,680 square feet in the Building and approximately 3,200 square feet of paved parking area
Initial Term ( <u>Section 3</u> ):	60 Months, as the term "Month" is defined below



Basic Lease Information

Basic Summary

Commencement Date:	The date of Substantial Completion of the Leasehold Improvements, as defined in <u>Exhibit F</u>
Expiration Date:	The last day of Month 60
Base Rent (Section 4.1):	\$56,000.00 per month
Rent Schedule:	
Months 01 through 12	\$56,000.00 per month
Months 13 through 24	\$57,680.00 per month
Months 25 through 36	\$59,410.40 per month
Months 37 through 48	\$61,192.71 per month
Months 49 through 60	\$63,028.49 per month

As used in the foregoing rent schedule, the term “**Month**” means a calendar month, with Months numbered sequentially commencing with the month in which the Commencement Date occurs, and including as the first Month any partial calendar month in which the Commencement Date occurs (if the Commencement Date is not the first day of a calendar month). If the first Month is a partial calendar month, then the Base Rent for such Month shall be prorated based on the number days in such Month.

Additional Charges (Section 4):	Tenant to pay Tenant’s Percentage Share of all excess Operating Costs and Real Estate Taxes over the Base Year.
Extension Options ( <u>Section 3.4</u> ):	Four (4) additional terms of one (1) year each, exercisable by Tenant by notice to Landlord not later than six (6) months prior to the expiration of the initial Term, but no sooner than nine (9) months prior to the expiration of the initial Term. Each extension Term increased by three percent (3%) from the previous Term.
Base Year (Section 4.4)	Calendar Year 2016
Tenant’s Percentage Share	100%
Early Termination ( <u>Section 3.1</u> )	After Month 60 and during any Extension Term, Tenant shall have the right to terminate this Lease for any reason by providing

Basic Lease Information

Basic Summary

Use (Section 5.1):

Landlord with one hundred and eighty (180) days advanced written notice.

General office and associated program use, locker rooms, radio dispatch, parking and other uses consistent with this Lease and with the functions of the Municipal Transportation Agency (MTA) and/or other City departments.

Leasehold Improvements (Section 6) and Work Letter

Landlord shall, at its sole cost and expense, perform certain leasehold improvements as set forth more specifically in Section 6 and the Work Letter attached hereto as Exhibit F.

Notice Address of Landlord (Section 23.1):

Attn: Director of Property Management  
Aralon Properties  
482 Bryant Street  
San Francisco, CA 94107  
Phone: 415-330-3500  
Fax: 415-467-0991

Key Contact for Landlord:

Attn: Michael Ware  
Aralon Properties  
482 Bryant Street  
San Francisco, CA 94107  
415-330-3500 x1125  
[michael@aralonproperties.com](mailto:michael@aralonproperties.com)

Notice Address for Tenant (Section 23.1):

San Francisco Municipal Transportation Agency  
1 South Van Ness Avenue, 7th floor  
San Francisco, California 94103  
Attn: Strategic Real Estate  
Re: 899 Bryant  
Fax No.: (415) 552-9216

and to:

Office of the City Attorney  
1390 Market Street, 7th floor  
San Francisco, CA 94102  
Attn: Transportation Team  
Re: 899 Bryant  
Fax No.: (415) 554-4757

Key Contact for Tenant:

Real Estate Development Manager  
San Francisco Municipal Transportation Agency

Basic Lease Information

Basic Summary

Tenant Contact Telephone No.:

One South Van Ness Avenue, 8th Floor  
San Francisco, California 94103  
415-701-4622

Alternate Contact for Tenant:

William Zhao  
Strategic Real Estate  
San Francisco Municipal Transportation  
Agency  
One South Van Ness Avenue, 8th Floor  
San Francisco, California 94103

Alternate Contact Telephone No.:

415-701-4514

Brokers (Section 23.8):

None

Other Noteworthy Provisions (Section 22):

None

**2. PREMISES**

**2.1. Lease Premises**

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

**2.2. Condition Upon Delivery.** Tenant acknowledges that it has had an opportunity to thoroughly inspect the Premises and, subject to Landlord's obligations to perform the improvements in the Work Letter, attached as Exhibit F, Tenant accepts the Premises in their existing "as is" condition, with all faults and defects and without any representation or warranty of any kind, express or implied.

**2.3. Reserve Rights.** Landlord reserves the right to do the following from time to time, provided, however, that Landlord shall not disturb Tenant's access or ability to operate within the Premises.

(a) **Changes.** To install, use, maintain, repair, replace and relocate pipes, ducts, shafts, conduits, wires, appurtenant meters and mechanical, electrical and plumbing equipment and appurtenant facilities for service to other parts of the Building or the Property, including without limitation, above the ceiling surfaces and below the floor surfaces and within the walls of the Premises and in the central core areas of the Building and in the Building Common Areas, and to install, use, maintain, repair, replace and relocate any pipes, ducts, shafts, conduits, wires, appurtenant meters and mechanical, electrical and plumbing equipment and appurtenant facilities servicing the Premises, which are located either in the Premises or elsewhere outside of the Premises;

(b) **Services.** To install, use, maintain, repair, replace, restore or relocate public or private facilities for communications and utilities on or under the Building and/or the Property.

### 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. The Initial Term of this Lease shall commence on the Commencement Date and shall expire 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 Tenant shall have the right to extend the Initial Term pursuant to Section 3.4 Extension Options, below. The word "Term" as used herein shall refer to the Initial Term and any Extended Terms if Tenant exercises the Extension Options as provided below.

Notwithstanding anything to the contrary herein, Tenant shall have the right at any time after the Initial Term to terminate this Lease without any penalty, fee or other liability, by giving Landlord not less than one hundred eighty (180) days prior written notice. The Lease shall not terminate until Tenant completely vacates the Premises in the condition required hereunder.

#### 3.2. Commencement Date Certificate

Upon Substantial Completion of the Leasehold Improvements outlined in Exhibit F, Landlord shall deliver to Tenant the Commencement Date Certificate substantially in the form outlined in Exhibit B. The Commencement Date Certificate shall state the actual Commencement Date, Expiration Date, and Rent Schedule. No later than ten (10) days thereafter, Tenant shall execute and deliver to Landlord the Commencement Date Certificate.

#### 3.3. Intentionally Left Blank

#### 3.4. Extension Options

Tenant shall have four (4) options to extend the Term (the "**Extension Options**") for an additional period of one (1) year each (the "**Extension Terms**"). Tenant shall exercise the Extension Options, if at all, by written notice ("**Tenant's Extension Notice**") to Landlord not later than six (6) months prior to the expiration of the initial Term, but no sooner than nine (9) months prior to the expiration of the initial Term for each Extension Option. Tenant's Extension Notices must be a definitive election to exercise the Extension Options, and not merely an expression of interest or intent. If Tenant fails to deliver Tenant's Extension Notices to Landlord strictly as and when required by this Section 3.4, then Tenant shall be deemed to have waived all of the Extension Options and the Extension Options shall lapse and be of no force or effect. In addition, if there exists an Event of Default under this Lease at the time of Tenant's Extension Notices or at the time the Extension Terms would otherwise commence, then, at Landlord's option, Tenant shall be deemed to have waived all of the Extension Options and the Extension Options shall lapse and be of no force or effect.

(a) **Exercise of Options.** If Tenant exercises any of the Extension Options, then the Term shall be extended for an additional period of one (1) year each on all of the terms and conditions of this Lease, except that (i) Tenant's remaining Extension Options shall be decreased by one (1), and (ii) the Base Rent for each Extension Term shall be increased by three percent (3%) from the preceding year's Base Rent.

(b) **Options Personal to Original Tenant.** The Extension Options granted to Tenant in this Lease are personal to the original Tenant named in this Lease, and only while the original Tenant is in full possession of the entire Premises, and cannot be assigned to or exercised by anyone other than the original Tenant.

## **4. RENT**

### **4.1. Base Rent**

Commencing on Commencement Date, Tenant shall pay to Landlord the 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 fifth 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. Tenant shall pay the Base Rent without any prior demand and without any deductions or setoff except as otherwise provided in this Lease. If the Leasehold Improvements are deemed substantially complete on a day other than the first day of a calendar month, then the commencement of the monthly Base Rent due under this Lease for such fractional month shall be prorated based on a thirty (30) day month. The monthly Base Rent shall adjust according to the Rent Schedule listed in the Basic Lease Information.

**4.2. Late Charge.** Tenant acknowledges that late payment of Base Rent and Additional Charges to Landlord will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which is extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges and late charges that may be imposed on Landlord by the terms of any trust deed covering the Premises. Accordingly, if any installment of Base Rent or Additional Charges or any other sums due from Tenant shall not be received by Landlord when due, Tenant shall pay to Landlord a late charge in an amount equal to ten percent (10%) of such overdue amount. The parties agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant. Acceptance of such late charge by Landlord shall not constitute a waiver of Tenant's default with respect to such overdue amount, or prevent Landlord from exercising any of the other rights and remedies.

### **4.3. Intentionally Deleted.**

### **4.4. Definitions**

For purposes hereof, the following terms shall have the meanings hereinafter set forth:

(a) "Base Year" means the year specified in the Basic Lease Information.

(b) "Tenant's Percentage Share" means the percentage specified in the Basic Lease Information.

(c) "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 Tenant, may change the Expense Year to any other twelve (12) consecutive month period and, in the event of any such change, Tenant's Percentage Share of Operating Costs shall be equitably adjusted for the Expense Years involved in any such change. Expense Year shall not include the Base Year.

(d) "Operating Costs" means the total reasonable and prudent costs and expenses actually paid or incurred by Landlord in connection with the management, operation, maintenance and repair of the Building, including, but not limited to: (1) the cost of air conditioning, electricity, steam, water, heating, mechanical, telephone, ventilating, escalator and elevator systems and all other utilities, (2) the cost of repairs and all labor and material costs related thereto, and the cost of general maintenance, cleaning and service contracts and the cost of all supplies, tools and equipment required in connection therewith, (3) the cost incurred by Landlord for all insurance required to be carried on the Building or the use or occupancy thereof, (4) wages, salaries, payroll taxes and other labor costs

and employee benefits relating to employees of Landlord or its agents engaged in the operation, repair, or maintenance of the Building, allocated in proportion to the percentage of such person's working time actually spent working in connection with the Building, (5) reasonable management fees, (6) fees, charges and other costs of all independent contractors engaged by Landlord, allocated in proportion to the percentage of such person's working time actually spent working in connection with the Building, (7) accounting and legal expenses, (8) depreciation on personal property, including, without limitation, carpeting in public corridors and Common Areas and window coverings provided by Landlord, (9) the fair market rental value of offices in the Building for the property manager, (10) the cost of capital improvements made to the Building after completion of its construction as a labor-saving or energy saving device or to effect other economies in the operation or maintenance of the Building and which benefit the Premises, or made to the Building after the date of this Lease that are required under any governmental law or regulation that was not applicable to the Building at the time that permits for the construction thereof were obtained, unless caused by Landlord's deliberate or negligent violation of such law, rule or regulation, and except to the extent such improvements are attributable to or are made for the primary benefit of a tenant or occupant other than Tenant, and (11) any other expenses reasonably incurred in connection with the management, operation, maintenance or repair of the Building (other than Real Estate Taxes and any services for which Landlord is separately and directly reimbursed by Tenant or other tenants in the Building) which would, under generally accepted accounting principles, be considered an operating expense. The computation of Operating Costs shall be made in accordance with generally accepted accounting principles. With respect to the costs of items included in Operating Costs under (10), such costs shall be amortized over the useful life thereof, together with interest on the unamortized balance at a rate per annum equal to three (3) percentage points over the Treasury Rate charged at the time such item is constructed, but not more than the maximum rate permitted by law at the time such item is constructed.

In the event that in the Base Year for Operating Costs or in any Expense Year the Building is less than ninety-five percent (95%) occupied, the Operating 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 Operating Costs in any Expense Year.

Notwithstanding the foregoing, "Operating Costs" shall exclude the items described on the attached Exhibit C.

(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 Tenant's failure to pay its portion of Real Estate Taxes hereunder, or (3) any personal property taxes payable by Tenant hereunder or by any other tenant or occupant of the Building.

(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 Tenant, 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, Tenant's Percentage Share of Real Estate Taxes shall be equitably adjusted for the Tax Year involved in any such change. Tax Year shall not include the Base Year.

#### **4.5. Payment of Percentage Share of Excess Operating Costs and Excess Taxes**

During the Term, commencing after the end of the Base Year, Tenant shall pay to Landlord each month, as Additional Charges, one twelfth (1/12) of Tenant's Percentage Share of the amount, if any, by which Operating Costs for each Expense Year exceed the Operating Costs for the Base Year. ("Excess Operating Costs") Tenant shall make such payments, in advance, in an amount estimated by Landlord in reasonable detail in a writing delivered to Tenant. Landlord may revise such estimates of Operating Costs from time to time and Tenant 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 ninety (90) days after the expiration of each Expense Year, Landlord shall furnish Tenant with a statement (herein called "Landlord's Expense Statement"), setting forth in reasonable detail the Operating Costs for such Expense Year and Tenant's Percentage Share thereof. If Tenant's Percentage Share of the actual Operating Costs for such Expense Year exceeds the estimated Operating Costs paid by Tenant for such Expense Year, Tenant shall pay to Landlord (whether or not this Lease has terminated) the difference between the amount of estimated Operating Costs paid by Tenant and Tenant's Percentage Share of the actual Operating Costs within thirty (30) days after the receipt of Landlord's Expense Statement. If the total amount paid by Tenant for any such Percentage Share of Operating Costs exceeds Tenant's Operating Costs Share of the actual Operating Costs for such Expense Year, such excess shall be credited against the next installments of Operating Costs due from Tenant to Landlord hereunder, or refunded to Tenant, at Tenant's option.

#### **4.6. Payment of Percentage Share of Real Estate Taxes**

During the Term, commencing after the end of the Base Year, Tenant shall pay to Landlord each month, as Additional Charges, one twelfth (1/12) of Tenant's Percentage Share of the amount, if any, by which Real Estate Taxes for each Tax Year exceed Real Estate Taxes for the Base Year. ("Excess Taxes") Tenant shall make such payments, in advance, in an amount estimated by Landlord in reasonable detail in a writing delivered to Tenant. With reasonable promptness not to exceed ninety (90) days after Landlord has received the tax bills for any Tax Year, Landlord shall furnish Tenant with a statement ("Landlord's Tax Statement") setting forth the amount of Real Property Taxes for such Tax Year and Tenant's Percentage Share thereof. If Tenant's Percentage Share of the actual Real Estate Taxes for such Tax Year exceeds the estimated Real Estate Taxes paid by Tenant for such Tax Year, Tenant shall pay to Landlord (whether or not this Lease has terminated) Tenant'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 Tenant for such Tax Year exceeds Tenant's Percentage Share of the actual Real Estate Taxes for such Tax Year,

such excess shall be credited against the next installments of Real Estate Taxes due from Tenant hereunder, or at Tenant's option, such excess shall be refunded to Tenant.

#### **4.7. Proration**

If the Commencement Date or Expiration Date shall occur on a date other than the first or last day of a Tax Year or Expense Year, Tenant's Percentage Share of Real Estate Taxes or Operating 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**

Tenant shall have the right, upon not less than fifteen (15) business days' notice to Landlord, to audit the books and records of the Building related to Operating Costs and Real Estate Taxes. If such audit discloses any discrepancies which would result in a reduction of Tenant's Percentage Share of Operating Costs for any Expense Year, Landlord shall refund to Tenant the amount of any overpayment by Tenant within fifteen (15) business days. Tenant shall pay the cost of such audit.

#### **4.9. Records**

Landlord shall maintain at the Building or at its offices in San Francisco in a safe, complete and organized manner all of its records pertaining to this Lease and Real Estate Taxes, Operating Costs and any other charges paid by Tenant 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 Tenant and its representatives, at Tenant's expense, subject to the provisions of Section 4.8 (Audits).

### **5. USE**

#### **5.1. Permitted Use**

Tenant may use the Premises for general office uses and such other uses as may be specified in the Basic Lease Information, and for no other use without the prior written consent of Landlord, which shall not be unreasonably withheld or delayed.

#### **5.2. Observance of Rules and Regulations.**

Tenant shall observe Landlord's reasonable rules and regulations for the Building subject to the provisions of this Lease. Tenant acknowledges and agrees to the current Building rules and regulations attached hereto as Exhibit D (the "Rules and Regulations"). Landlord may make reasonable additions or modifications thereto, which shall be binding upon Tenant within a reasonable implementation period upon Landlord's delivery to Tenant of a copy thereof, provided that such additions or modifications shall not reduce Landlord's obligations hereunder nor interfere with Tenant's business in the Premises, and such additions or modifications must be applicable to the other Building tenants, are not in conflict with the provisions of this Lease, do not materially increase the burdens or obligations upon Tenant, do not impose a charge upon Tenant for services which this Lease expressly states are to be provided to Tenant at no charge, and do not materially adversely affect the conduct of any business in the Premises which Tenant is permitted to conduct pursuant to Section 5.1 (Permitted Use) hereof. Landlord shall administer the Rules and Regulations in a fair and nondiscriminatory manner and use reasonable efforts to cause other Building tenants to comply with them. Tenant shall be entitled upon request to any waiver or special dispensation granted by Landlord to any other tenant in the Building with respect to the Rules and Regulations, and Landlord shall notify Tenant of any such waiver or special dispensation.



### 5.3. Interference with Access

Landlord shall provide to Tenant access to the Building and the Premises twenty-four (24) hours per day, seven (7) days per week, together with uninterrupted access thereto to the maximum extent possible, including, without limitation, during any power outages affecting the Premises or any portion of the Building; provided, however, that Landlord may, after consultation with the Tenant's Administrator, interrupt Tenant's access to the Premises or the Building in the event of an immediate threat of the Premises, the Common Areas or any other portion of the Building being rendered unsafe for human occupancy. If Tenant's use of any of the Premises or access thereto is interrupted as a result of the Premises, the Common Areas or any other portion of the Building being rendered unsafe for human occupancy due to Landlord's failure to comply with its obligations under this Lease or for any other reason other than Tenant's default hereunder, then Landlord shall immediately undertake all necessary steps to correct such condition. In the event such condition continues for twenty-four (24) hours and impairs Tenant's ability to carry on its business in the Premises, the Base Rent payable hereunder shall be abated based on the extent to which such default interferes with Tenant'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 Tenant's use is interrupted and impairs Tenant's ability to carry on its business in the Premises, then Tenant shall have the right, without limiting any of its other rights under this Lease to terminate this Lease, unless Landlord supplies Tenant with evidence reasonably satisfactory to Tenant that Tenant's normal and safe use will be restored within sixty (60) days of the date Tenant's use was interrupted, and such use is actually restored within such 60-day period. Nothing in this Section shall limit Tenant's rights with respect to any disruption due to casualty pursuant to Section 12 (Damage and Destruction) hereof. Notwithstanding anything contained in this Section 5.3 to the contrary, this provision does not apply to Landlord or Landlord's agent or Landlord's contractor performing the improvements in the Work Letter, attached as Exhibit F.

## 6. LEASEHOLD IMPROVEMENTS

### 6.1. Landlord's Obligation to Construct Improvements

Landlord, through its general contractor, shall perform the work and make the installations in the Premises pursuant to the Leasehold Improvements outlined in Exhibit F. Such work and installations are referred to as the "Leasehold Improvement Work" or "Leasehold Improvements."

#### (a) Work to be Performed

Landlord shall perform the work and make the installations at the Premises described in, and pursuant to, the Work Letter attached hereto as Exhibit F (the "Work Letter"). All work and installations performed pursuant to the Work Letter are referred to as the "Leasehold Improvements."

#### (b) Permits

Landlord shall secure and pay for any building and other permits and approvals, government fees, licenses and inspections necessary for the proper performance and completion of the Leasehold Improvement Work shown on Exhibit F. Promptly following executing of this Lease, Landlord shall apply for any permits, approvals or licenses necessary to complete such construction. Landlord shall be responsible for arranging for all inspections required by Tenant's Bureau of Building Inspection.

#### (c) Improvement Notice

Landlord shall give Tenant reasonable notice of the time and date on which Leasehold Improvements Work will commence. Tenant staff shall cooperate with Landlord's contractor during

the Leasehold Improvement Work; provided, however, Landlord shall cause the Leasehold Improvement Work to be conducted in a manner that minimizes the interruption with Tenant's operations in the Premises.

## **6.2. Construction of Improvements that Disturb or Remove Exterior Paint**

Landlord, on behalf of itself and its successors, assigns and agents, shall comply with all requirements of the San Francisco Building Code Chapter 34 and all other applicable local, state, and Federal laws, including but not limited to the California and United States Occupational and Health Safety Acts and their implementing regulations, when the work of improvement or alteration disturbs or removes exterior or interior lead-based or "presumed" lead-based paint (as defined below). Landlord and its Agents shall give to Tenant three (3) business days' prior written notice of any disturbance or removal of exterior or interior lead-based or presumed lead-based paint. Landlord acknowledges that the required notification to the Department of Building Inspection regarding the disturbance or removal of exterior lead-based paint pursuant to Chapter 34 of the San Francisco Building Code does not constitute notification to Tenant as Tenant under this Lease and similarly that notice under this Lease does not constitute notice under Chapter 34 of the San Francisco Building Code. Further, Landlord and its Agents, when disturbing or removing exterior or interior lead-based or presumed lead-based paint, shall not use or cause to be used any of the following methods: (a) acetylene or propane burning and torching; (b) scraping, sanding or grinding without containment barriers or a High Efficiency Particulate Air filter ("HEPA") local vacuum exhaust tool; (c) hydroblasting or high-pressure wash without containment barriers; (d) abrasive blasting or sandblasting without containment barriers or a HEPA vacuum exhaust tool; and (e) heat guns operating above 1,100 degrees Fahrenheit. Landlord covenants and agrees to comply with the requirements of Title 17 of the California Code of Regulations when taking measures that are designed to reduce or eliminate lead hazards. Under this Section, paint on the exterior or interior of buildings built before January 1, 1979 is presumed to be lead-based paint unless a lead-based paint test, as defined by Chapter 34 of the San Francisco Building Code, demonstrates an absence of lead-based paint on the interior or exterior surfaces of such buildings. Under this Section, lead-based paint is "disturbed or removed" if the work of improvement or alteration involves any action that creates friction, pressure, heat or a chemical reaction upon any lead-based or presumed lead-based paint on a surface so as to abrade, loosen, penetrate, cut through or eliminate paint from that surface.

## **7. ALTERATIONS**

### **7.1. Alterations by Tenant**

Tenant shall not make or permit any alterations, installations, additions or improvements (collectively, "Alterations") to the Premises without first obtaining Landlord's written consent, which Landlord shall not unreasonably withhold or delay. However, the installation of furnishings, fixtures, equipment or decorative improvements, none of which affect the Building Systems or structural integrity of the Building, and the repainting and re-carpeting of the Premises shall not constitute Alterations requiring Landlord's consent. Any Alterations permitted hereunder shall be made at Tenant's cost in compliance with Applicable Laws (as defined below in Section 10.1). Landlord shall, without cost to itself, cooperate with Tenant 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. Tenant shall not be required to remove any Alterations upon the expiration or sooner termination of this Lease unless Landlord notifies Tenant in writing at the time Landlord approves such Alterations that they must be removed at the Expiration Date.

## **7.2. Title to Improvements**

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

## **7.3. Tenant'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 Tenant and that can be removed without structural damage to the Premises (collectively, "Tenant's Personal Property") shall be and remain Tenant's property. At any time during the Term or at the expiration thereof, Tenant may remove any of Tenant's Personal Property, provided Tenant shall repair any damage to the Premises resulting therefrom. Upon the expiration or earlier termination of this Lease, Tenant shall remove Tenant's Personal Property from the Premises in accordance with Section 20 (Surrender of Premises), below. Landlord acknowledges that some of Tenant'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 Tenant. Landlord, upon Tenant's reasonable request, shall execute and deliver any commercially reasonable document required by any supplier, lessor, or lender in connection with the installation in the Premises of any items of Tenant's Personal Property, pursuant to which Landlord waives any rights it may have or acquire with respect to Tenant's Personal Property, so long as the supplier, equipment lessor or lender agrees that it (i) will remove the Property from the Premises within thirty (30) days after the Expiration Date (but if it does not remove Tenant's Personal Property within such time it shall have waived any rights it may have had to Tenant's Personal Property), and (ii) will repair any damage caused by the removal of Tenant's Personal Property. Landlord shall recognize the rights of any supplier, lessor or lender who has an interest in any items of Tenant'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 Tenant's use and occupancy of the Premises during any alterations, installations, additions or improvements to the Building, including without limitation any leasehold improvement work for other tenants in the Building. Landlord shall promptly remedy any such interference or disruption upon receiving Tenant's notice thereof.

# **8. REPAIRS AND MAINTENANCE**

## **8.1. Landlord's Repairs**

Landlord shall repair and maintain, at its cost and in first class condition, the exterior and structural portions of the Building, including, without limitation, the roof, foundation, bearing and exterior walls and subflooring, and the heating, ventilating, air conditioning, plumbing, electrical, fire protection, and life safety (collectively, the "Building Systems") and the Common Areas. Without limiting the foregoing, Landlord shall maintain the Building in a clean, safe and attractive manner, shall provide exterior graffiti removal with reasonable frequency. In performing any work in, on or around the Building or the Property, Landlord, in its sole discretion, shall determine the manner in which such work is to be performed and, in connection with such work, shall have the right to erect scaffolding and take all other measures as Landlord, in its sole discretion, deems necessary or appropriate. Landlord shall have no liability to Tenant for any inconvenience or interference with the

use of the Premises by Tenant as the result of Landlord performing any maintenance, repair or other work in, on or around the Building or the Property.

### **8.2. Tenant's Repairs**

Tenant shall repair and maintain at its cost the interior portions of the Premises and shall keep the Premises in good working order and in a safe and sanitary condition, except for ordinary wear and tear and damage by casualty. Tenant shall make any such required repairs and replacements **(i)** at Tenant's cost, **(ii)** by contractors or mechanics selected by Tenant 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 Tenant's Charter and Administrative Code. At all times during the Term of this Lease, Landlord shall, upon reasonable notice by Tenant, afford Tenant 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 Tenant.

### **8.3. Liens**

Tenant shall keep the Premises free from liens arising out of any work performed, material furnished or obligations incurred by Tenant 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. Tenant shall give Landlord at least ten (10) days' prior written notice of commencement of any repair or construction by Tenant on the Premises.

## **9. UTILITIES AND SERVICES**

### **9.1. Landlord's Provision of Utilities**

Landlord shall furnish the following utilities and services to the Premises: **(a)** heating, air conditioning and ventilation in amounts required for Tenant's comfortable use and occupancy of the Premises on a twenty-four (24) hours per day three hundred sixty-five (365) days-a-year basis ("Daily Basis"); **(b)** subject to Section 9.2(a) below, electric current in amounts required for normal lighting and for the operation of personal computers and other normal office machines and equipment, on a Daily Basis; **(c)** elevator service on a Daily Basis; and **(d)** water for lavatory, kitchen and drinking purposes on a Daily Basis. Without limiting Landlord's obligations hereunder, Landlord shall furnish all utilities and services required under this Lease in a manner consistent with such utilities and services normally provided in other first class buildings similar to the Building in the San Francisco metropolitan area.

### **9.2. Services**

#### **(a) Utility Services**

Commencing on the Commencement Date, and without regard to increases over a base year, Tenant shall pay for all water, sewer, gas, electricity, heat, cooling, telephone, refuse collection, pest control, monitoring services and all other utilities and services furnished to Tenant or the Premises, together with all related installation or connection charges or deposits. In accordance with San Francisco Environment Code Chapter 20, Tenant shall complete a data release authorization form upon request, providing Landlord with access to PG&E accounts for benchmarking purposes. If

the Premises are not separately metered, Landlord will have the right to bill Tenant for Tenant's use of utilities and services and Tenant shall pay the amount in full within fifteen (15) days after receipt of an invoice. Landlord shall have the right to install separate metering for electricity, water or gas to the Premises or to separately charge Tenant for any quantity of such utilities consumed by Tenant beyond the amounts customarily consumed by tenants in the Property as reasonably determined by Landlord. To the extent any of the foregoing services are provided by Landlord, Tenant shall reimburse Landlord for all costs incurred by Landlord in connection with the provision of such services based on Landlord's reasonable estimate of the level of Tenant's use or consumption of such services. Landlord shall bill Tenant on a monthly or other periodic basis for such services and Tenant shall pay such amounts within ten (10) days after Landlord's submittal of its statement.

**(b) Janitorial Service**

Landlord shall provide at its cost janitorial service in accordance with the specifications contained in Exhibit E attached hereto.

**9.3. Conservation**

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

**9.4. Disruption of Essential Utilities or Services**

In the event of any failure, stoppage or interruption of any utilities or services to be furnished by Landlord hereunder, Landlord shall immediately notify Tenant of such failure, stoppage or interruption, diligently attempt to restore service as promptly as possible and shall keep Tenant apprised of its efforts. In the event Landlord is unable to supply any of the Building's sanitary, electrical, heating, air conditioning, water, elevator, fire protection and security, audio, video or electronic communications, hazard detection and alarm, or other essential services serving the Premises (collectively, "Essential Services") and such inability of Landlord impairs Tenant's ability to carry on its business in the Premises for a period of one (1) or more business days if such failure is in the reasonable control of Landlord or a period of five (5) or more consecutive business days if such failure is not within the reasonable control of Landlord, then the Rent shall be abated based on the extent such inability of Landlord impairs Tenant's ability to carry on its business in the Premises, or, alternatively at Tenant's election, Tenant shall have the option to provide such services and offset the reasonable cost thereof against the Rent next due under this Lease. Such abatement, or right to provide the services and offset against Rent, shall continue until the Essential Services have been restored so that the lack of any remaining services no longer materially impairs Tenant's ability to carry on its business in the Premises. Landlord shall use its best efforts to restore disrupted Essential Services as soon as possible. However, if such failure to provide any Essential Services continues for any reason for thirty (30) days and such failure interferes with Tenant's ability to carry on its business in the Premises, then Tenant may, without limiting any of its other rights or remedies hereunder or at law or in equity, terminate this Lease upon written notice to Landlord, unless Landlord supplies Tenant with evidence reasonably satisfactory to Tenant that the Essential Services will be restored within sixty (60) days of the date Tenant's use was interrupted, and the Essential Services are actually restored within such 60-day period. Tenant shall not be entitled to any abatement of Rent or right to terminate if Landlord's inability to supply Essential Services to Tenant is due solely to the acts, omissions or negligence of Tenant and its Agents. Notwithstanding anything contained in this

Section 9.4 to the contrary, this provision does not apply to Landlord or Landlord's agent or Landlord's contractor performing the improvements in the Work Letter, attached as Exhibit F.

## **10. COMPLIANCE WITH LAWS; PREMISES CONDITION**

### **10.1. Applicable Laws.**

The term "**Applicable Laws**" means all laws, codes, rules, regulations, ordinances and directives of all governmental and quasi-governmental authorities with jurisdiction now in effect or which may hereafter come into effect, and whether or not reflecting a change in policy from any previously existing policy, including, without limitation, laws, codes, rules, regulations and ordinances pertaining to industrial hygiene, medical and biological waste, Hazardous Materials, and the Americans With Disabilities Act and local ordinances pursuant thereto, including handicap access requirements.

### **10.2. Tenant's Compliance with Laws; Indemnity**

Tenant shall use the Premises during the Term in compliance with Applicable Laws, except that Tenant 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 Tenant pursuant to Section 7 (Alterations) hereof and such modifications are not otherwise Landlord's responsibility under this Lease. Tenant shall be responsible for complying with any requirement of the Disabilities Laws relating to the placement of Tenant's furniture or other Tenant 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 (Premises Condition) above. Without limiting Section 16.1 (Tenant's Indemnity), Tenant shall Indemnify Landlord against any and all Claims arising out of Tenant's failure to comply with all Applicable Laws as provided in this Section.

### **10.3. Tenant's Compliance with Insurance Requirements**

Tenant 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 Tenant 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 Tenant in the Premises; provided, however, Landlord shall provide Tenant with reasonable prior written notice of any applicable insurance requirements and no such insurance requirements shall materially and adversely interfere with Tenant's normal business in the Premises.

## **11. SUBORDINATION**

**(a)** Without the necessity of any additional document being executed by Tenant for the purpose of effecting a subordination, and subject to subsection (b) below, this Lease shall be subject and subordinate at all times to the following (each an "Encumbrance"): (a) any reciprocal easement agreements, ground leases or other underlying leases that may hereafter be executed affecting Landlord's interest in the Property, or any portion thereof, and (b) the lien of any mortgages

or deeds of trust and renewals, modifications, consolidations, replacements and extensions of any of the foregoing that may hereafter be executed by Landlord in any amount for which any part of the Property, any ground lease or underlying lease, or Landlord's interest or estate therein is subject. Notwithstanding the foregoing, if the ground lessor, mortgagee, trustee, or holder of any such mortgage or deed of trust elects to have Tenant's interest in this Lease be superior to any such instrument, then upon notice thereof to Tenant, this Lease shall be deemed superior, whether this Lease was executed before or after the date of said instrument or the recording thereof. At Tenant's request, the holder of the Encumbrance shall enter into a subordination and nondisturbance agreement with Tenant in a form reasonably acceptable to Tenant evidencing such subordination or superiority of this Lease.

(b) In the event any mortgage or deed of trust to which this Lease is subordinate is foreclosed or a deed in lieu of foreclosure is given to the mortgagee or beneficiary, or in the event any ground lease or underlying lease to which this Lease is subordinate is terminated, this Lease shall not be barred, terminated, cut off, or foreclosed nor shall the rights and possession of Tenant hereunder be disturbed if Tenant 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. Tenant shall attorn to and become the tenant of the successor-in-interest to Landlord, provided that Tenant has received proper written notice of such succession and the name and address of the successor landlord. Tenant's covenant under subsection (a) above to subordinate this Lease to any Encumbrance or other hypothecation hereafter executed is conditioned upon each such senior instrument containing the commitments specified in this subsection (b). The provisions of this Section shall be self-operative and no further instrument shall be required other than as provided in this Section. Tenant agrees, however, to execute upon request by Landlord and in a form reasonably acceptable to Tenant, 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 (and if Landlord is then carrying insurance on the Leasehold Improvements or if Tenant at its sole option makes funds available to Landlord, Landlord shall also repair the Leasehold Improvements), provided that such repairs can be made under Applicable Laws within sixty (60) days after Landlord obtains all necessary permits for such repairs but not later than two hundred ten (210) days after the date of such damage (the "Repair Period"). In such event, this Lease shall remain in full force and effect, except that Tenant 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 Tenant'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 Tenant's Personal Property or any damage caused by the negligence or willful misconduct of Tenant or its Agents.

Within twenty (20) days after the date of such damage, Landlord shall notify Tenant 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 Tenant's business in the Premises, and Tenant shall pay such reduced Rent up to the date of termination. Landlord shall refund to Tenant 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 such damage or destruction is not fully covered by insurance proceeds payable under the insurance policies Landlord is required to carry hereunder (excluding any deductible, for which Landlord shall be responsible), Landlord may terminate this Lease by written notice to Tenant within thirty (30) days of the date Landlord receives written notice that such damage is not covered by insurance. Such notice from Landlord shall include adequate written evidence of the denial of insurance coverage. If Landlord does not elect to terminate this Lease as provided above, this Lease shall remain in full force and effect, and Landlord shall repair and restore the Premises as provided above.

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 Tenant may, at the respective option of each, terminate this Lease as of the date such damage occurred by giving written notice to the other party of its election to do so within thirty (30) days after the date of such damage; provided, however, Landlord may terminate this Lease only if it would take more than thirty (30) days to repair such damage.

The parties intend that the provisions of this Section govern fully their rights and obligations in the event of damage or destruction, and Landlord and Tenant each hereby waives and releases any right to terminate this Lease in whole or in part under Section 1932, subdivision 2, Section 1933, subdivision 4, and Sections 1941 and 1942 of the Civil Code of California or under any similar law, statute or ordinance now or hereafter in effect, to the extent such rights are inconsistent with the provisions hereof.

### **13. EMINENT DOMAIN**

#### **13.1. Definitions**

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

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

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

#### **13.2. General**

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



### **13.3. Total Taking; Automatic Termination**

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

### **13.4. Partial Taking; Election to Terminate**

(a) If there is a Taking of any portion (but less than all) of the Premises, then this Lease shall terminate in its entirety if all of the following exist: (i) the partial Taking, in Tenant's reasonable judgment, renders the remaining portion of the Premises untenable or unsuitable for continued use by Tenant for its intended purposes or otherwise materially adversely affects Tenant'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) Tenant elects to terminate.

(b) In the case of a partial taking of a substantial portion of the Building, and if subsection (a) above does not apply, Tenant 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 Tenant's right to terminate, the portion of the Building taken shall, in Tenant's reasonable judgment, render the Premises unsuitable for continued use by Tenant for its intended purposes or otherwise materially adversely affect Tenant'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 (30<sup>th</sup>) day after such written notice is given or the Date of Taking.

### **13.5. Termination of Lease; Rent and Award**

Upon termination of this Lease in its entirety pursuant to Section 13.3 (Total Taking; Automatic Termination), or pursuant to an election under Section 13.4 (Partial Taking; Continuation of Lease) above, then: (a) Tenant's obligation to pay Rent shall continue up until the date of termination and thereafter shall cease, and (b) Landlord shall be entitled to the entire Award in connection therewith, except that Tenant shall receive any Award made specifically for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant'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 (Partial Taking; Continuation of Lease) above, then this Lease shall terminate as to the portion of the Premises so taken, but shall remain in full force and effect as to the portion not taken, and the rights and obligations of the parties shall be as follows: (a) Rent shall be reduced by an amount that is in the same ratio to the Rent as the area of the Premises taken bears to the area of the Premises prior to the Date of Taking, and (b) Landlord shall be entitled to the entire Award in connection therewith, provided that Tenant shall receive any Award made specifically for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant'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 Tenant 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, Tenant 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 Tenant for the period of the Taking.

#### **14. ASSIGNMENT AND SUBLETTING**

Except as provided in this Section below, Tenant 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. Tenant shall have the right from time to time, with Landlord's prior written consent in each instance, which shall not be unreasonably withheld or delayed, to transfer this Lease or use and occupancy of all or any of the Premises to any department, commission or agency of the Tenant and County of San Francisco for uses permitted under this Lease. No assignment or subletting shall release Tenant from its obligations under this Lease.

#### **15. DEFAULT; REMEDIES**

##### **15.1. Event of Default By Tenant**

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

- (a) Tenant's failure to make any timely payment of Rent and to cure such nonpayment within three (3) business days after receipt of written notice thereof from Landlord,
- (b) Tenant abandons the Premises (within the meaning of California Civil Code Section 1951.3; or
- (c) Tenant's failure to perform any other covenant or obligation of Tenant hereunder (not involving the payment of money) and to cure such non-performance within thirty (30) days of the date of receipt of notice thereof from Landlord, provided that if more than thirty (30) days are reasonably required for such cure, no event of default shall occur if Tenant commences such cure within such period and diligently prosecutes such cure to completion.
- (d) An Event of Default shall constitute a default by Tenant under this Lease. In addition, any notice required to be given by Landlord under this Lease shall be in lieu of, and not in addition to, any notice required under Section 1161 of the California Civil Code of Procedure. Tenant shall pay to Landlord the amount of One Thousand Dollars (\$1,000.00) for each notice of default given to Tenant under this Lease, which amount is the amount the parties reasonably estimate will compensate Landlord for the cost of giving such notice of default.

##### **15.2. Landlord's Remedies**

Upon the occurrence of any event of default by Tenant 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 Tenant'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 Tenant 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 Tenant's right to possession, if Tenant has the right to sublet or assign, subject only to reasonable limitations.

(c) Pay or perform such obligation due (but shall not be obligated to do so), if Tenant fails to pay or perform any obligations when due under this Lease within the time permitted for their payment or performance. In such case, the costs incurred by Landlord in connection with the performance of any such obligation will be additional rent due under this Lease and will become due and payable on demand by Landlord.

### **15.3. Landlord's Default**

If Landlord fails to perform any of its obligations under this Lease, then (without limiting any of Tenant's other cure rights under this Lease) Tenant may, at its sole option, cure such default at Landlord's expense if such default continues after thirty (30) days from the date Tenant gives notice to Landlord of Tenant'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 thirty (30) day period, such thirty (30)-day period shall be extended if Landlord, promptly upon receipt of Tenant's notice, advises Tenant 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 Tenant 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 Tenant'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 Tenant's ability to carry on its business in the Premises, then Tenant 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. Tenant's rights hereunder and under Section 5.3 (Interference with Access), and Section 9.4 (Disruption in Essential Utilities or Services), shall not limit in any way any of its other rights and remedies hereunder or at law or in equity.

## **16. INDEMNITIES**

### **16.1. Tenant's Indemnity**

Tenant 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) Tenant's use of the Premises, (b) any default by Tenant in the performance of any of its material obligations under this Lease, (c) any damage to any property or death, bodily or personal injury to any person occurring in or about the Premises, or (d) any negligent acts or omissions of Tenant or its Agents in, on or about the Premises or the Property; provided, however, Tenant 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 Tenant hereunder, Tenant may, at its sole option, elect to defend such Claim by attorneys in Tenant's Office of the City Attorney, by other attorneys selected by Tenant, or both. Tenant 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. Tenant's obligations under this Section shall survive the termination of the Lease.

#### **16.2. Landlord's Indemnity**

Landlord shall Indemnify Tenant 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 Tenant or its Agents to the extent any Claim arises out of the negligence or willful misconduct of Tenant or its Agents. In any action or proceeding brought against Tenant 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 Tenant 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. Tenant's Self Insurance**

Landlord acknowledges that Tenant maintains a program of self-insurance and agrees that Tenant shall not be required to carry any insurance with respect to this Lease. Tenant assumes the risk of damage to any of Tenant's Personal Property, except for damage caused by Landlord or its Agents.

#### **17.2. Landlord's Insurance**

At all times during the Term, Landlord shall keep the Building (excluding the land upon which it is located) insured against damage and destruction by fire, vandalism, malicious mischief, sprinkler damage and other perils customarily covered under a cause of loss-special form property insurance policy in an amount equal to one hundred percent (100%) of the full insurance replacement value (replacement cost new, including, debris removal and demolition) thereof. Landlord shall, upon request by Tenant, provide to Tenant 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 Tenant. Landlord hereby waives any rights against Tenant 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 Tenant, 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.

#### **17.3. Waiver of Subrogation**

Notwithstanding anything to the contrary in this Lease, Landlord hereby waives any right of recovery against Tenant for any loss or damage relating to the Building or the Premises or any operations or contents therein, whether or not such loss is caused by the fault or negligence of Tenant, 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 insurance held by Landlord or its agents. Landlord agrees to obtain a waiver of subrogation endorsement from applicable insurance carriers issuing policies relating to the Building or the Premises; provided, Landlord's failure to do so shall not affect the above waiver.

ACCESS BY 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 Tenant 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 Tenant's use shall not be interfered with.

## **18. 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.

## **19. SURRENDER OF PREMISES**

Upon the expiration or sooner termination of this Lease, Tenant shall surrender the Premises to Landlord in good order and condition, reasonable use and wear and damage by fire or other casualty excepted. Before the Expiration Date, Tenant shall remove from the Premises all of Tenant's Personal Property, Tenant's telecommunications, data and computer facilities and any Alterations Tenant desires or is required to remove from the Premises pursuant to the provisions of Section 7.1 (Alterations by Tenant), above. Tenant shall repair or pay the cost of repairing any damage to the Premises or the Building resulting from such removal. Notwithstanding anything to the contrary in this Lease, Tenant shall not be required to demolish or remove from the Premises any of the Leasehold Improvements. Tenant's obligations under this Section shall survive the expiration or earlier termination of this Lease.

## **20. HAZARDOUS MATERIALS**

### **20.1. 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.

**20.2. Landlord's Environmental Indemnity.**

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

Landlord's Representations and Warranties. Based on Landlord's actual knowledge as of the date of this Lease, without investigation and without any duty to investigate, and not any implied, imputed or constructive knowledge, Landlord represents and warrants to Tenant as follows: (a) Landlord has not received written notice that the Property is in violation of any Environmental Laws; (b) the Property is not now, nor has it been, used for the manufacture, use, storage, discharge, deposit, transportation or disposal of any Hazardous Materials, except for the use of such substances in such limited quantities as are customarily used in offices and retail businesses, 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 contain any asbestos-containing materials, lead-based paint or building materials that contain any other Hazardous Material in any form or amount that is required to be remediated under Environmental Laws; (e) there has been and is no Release of any Hazardous Material in the Building or in, on, under or about the Property that is required to be remediated under Environmental Laws; 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 Tenant'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 Tenant's employees or Tenant's use, occupancy or enjoyment of the Premises for their intended purposes

**20.4. Tenant's Covenants**

Neither Tenant nor its Agents shall cause any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or the Property, or transported to or from the Premises or the Property, in violation of any Environmental Laws, provided that Tenant may use such substances in such limited amounts as are customarily used in offices so long as such use is in compliance with all applicable Environmental Laws.

#### **20.5. Tenant's Environmental Indemnity**

If Tenant breaches its obligations contained in the preceding Section 21.4 (Tenant's Covenants), or if Tenant or its Agents cause the Release of Hazardous Material from, in, on or about the Premises or the Property, then Tenant 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 Tenant, its Agents or Invitees of physical conditions of the Premises, or other parts of the Property, existing prior to Tenant's occupancy.

### **21. SPECIAL PROVISIONS**

None

### **22. GENERAL PROVISIONS**

#### **22.1. 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)** Tenant 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 Tenant 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.

#### **22.2. 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 Tenant 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 Tenant 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.

#### **22.3. 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 Tenant of its consent or approval, the Director of Property, or his or her designee, shall be authorized to provide such approval, except as otherwise provided by applicable law, including the Charter of the Tenant 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 Tenant and Landlord, and Tenant's agreement may be made upon the sole approval of the Director of Property, or his or her designee; provided, however, material amendments or modifications to this Lease **(a)** changing the legal description of the Premises, **(b)** increasing the Term, **(c)** increasing the Rent, **(d)** changing the general use of the Premises from the use authorized under Section 5.1 (Permitted Use) of this Lease, and **(e)** any other amendment or modification which materially increases Tenant's liabilities or financial obligations under this Lease shall additionally require the approval of Tenant's Board of Supervisors.

#### **22.4. Authority**

Landlord represents and warrants to Tenant that it is the sole owner of the Property and the execution and delivery of this Lease by Landlord does not violate any provision of any agreement, law or regulation to which Landlord or the Property is subject. If Landlord is a corporation, limited liability company or a partnership, each of the persons executing this Lease on behalf of Landlord does hereby covenant and warrant that Landlord is a duly authorized and existing entity, 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 and all of the persons signing on behalf of Landlord are authorized to do so. On Tenant's request, Landlord shall provide Tenant with evidence reasonably satisfactory to Tenant confirming the foregoing representations and warranties.

#### **22.5. 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 Tenant shall include the clients, customers, invitees, guests, licensees, assignees or subtenants of Tenant. All approvals, consents or other determinations permitted or required by Tenant under this Lease, including but not limited to the exercise of any option granted to Tenant, shall be made by or through Tenant's Director of Property unless otherwise provided in this Lease, subject to any applicable limitations in the Tenant's Charter.

#### **22.6. Interpretation of Lease**

The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Lease. This Lease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intent and purposes of the parties, without any presumption against the party responsible for drafting any part of this Lease. Except as otherwise specifically provided herein, wherever in this Lease Landlord or Tenant 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 Tenant 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.

#### **22.7. Successors and Assigns**

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

#### **22.8. Brokers**

Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the lease contemplated herein, except for the broker, if any, identified in the Basic Lease Information, whose commission, if any is due, shall be the sole responsibility of Landlord pursuant to a separate written agreement between Landlord and such broker, and Tenant shall have no liability therefor. In the event that any other broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes his claim shall be responsible for such commission or fee and shall Indemnify the other party from any and all Claims incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Lease.

#### **22.9. Severability**

If any provision of this Lease or the application thereof to any person, entity or circumstance shall be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Lease shall be valid and be enforceable to the full extent permitted by law, except to the extent that enforcement of this Lease without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this Lease.

#### **22.10. Governing Law**

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

#### **22.11. Entire Agreement**

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

hereof and changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Lease.

#### **22.12. Attorney's Fees**

In the event that either Landlord or Tenant 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 Tenant's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney. The term "attorneys' fees" shall also include, without limitation, all such fees incurred with respect to appeals, mediations, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees were incurred. The term "costs" shall mean the costs and expenses of counsel to the parties, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, and others not admitted to the bar but performing services under the supervision of an attorney.

#### **22.13. Holding Over**

Should Tenant hold over in possession of the Premises after the expiration of the Term with Landlord's consent, such holding over shall not be deemed to extend the Term or renew this Lease, but such tenancy thereafter shall continue as a month-to-month tenancy. Such tenancy shall be on all the terms and conditions set forth in this Lease and at the monthly Base Rent in effect during the last month of the Term of this Lease or such other rental as Landlord and Tenant may mutually agree in writing as a condition to Landlord's consent to such holding over, and Tenant shall continue as a month-to-month tenant until the tenancy shall be terminated by Landlord giving Tenant or Tenant giving Landlord at least thirty (30) days' prior written notice of termination. Should Tenant hold over without Landlord's consent, the rent payable by Tenant during the period of such holding over shall be one hundred and fifty percent (150%) 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.

#### **22.14. 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.

#### **22.15. Time of the Essence**

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

#### **22.16. 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.

#### **22.17. Signs**

Tenant 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.

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

#### **22.19. Bankruptcy**

Landlord represents and warrants to Tenant 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 Tenant agree that Tenant'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, Tenant 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 Tenant in obtaining such services, facilities or amenities.

#### **22.20. 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 Tenant 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 Tenant an express assumption by the transferee of all of Landlord's obligations hereunder.

#### **22.21. Non-Liability of Tenant Officials, Employees and Agents**

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

## **22.22. MacBride Principles – Northern Ireland**

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

## **22.23. Controller’s Certification of Funds**

The terms of this Lease shall be governed by and subject to the budgetary and fiscal provisions of the Tenant's Charter. Notwithstanding anything to the contrary contained in this Lease, there shall be no obligation for the payment or expenditure of money by Tenant under this Lease unless the Controller of the City and County of San Francisco first certifies, pursuant to Section 3.105 of the Tenant'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 Tenant 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 Tenant may terminate this Lease, without penalty, liability or expense of any kind to Tenant, as of the last date on which sufficient funds are appropriated. Tenant shall use its reasonable efforts to give Landlord reasonable advance notice of such termination.

## **22.24. Prevailing Wages for Construction Work.**

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 Tenant 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 Tenant enforcement actions in any Construction Contract with specific reference to San Francisco Administrative Code Section 23.61. Each such Construction Contract shall name the Tenant 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 Tenant to seek the remedies specified in San Francisco Administrative Code Section 23.61 against the breaching party.

## **22.25. 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 Tenant employee working with Landlord, or applicant for employment with Landlord, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

**(b) Subcontracts**

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

**(c) Non-Discrimination in Benefits**

Landlord does not as of the date of this Lease and will not during the term of this Lease, in any of its operations in San Francisco, on real property owned by Tenant, or where the work is being performed for the Tenant 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 Tenant 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.

## **22.26. 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 Tenant in the construction of the 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) In the event Landlord fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Landlord shall be liable for liquidated damages for each violation in an amount equal to Landlord's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greatest. Landlord acknowledges and agrees that the liquidated damages assessed shall be payable to the City and County of San Francisco upon demand and may be set off against any monies due to Landlord from any contract with the City and County of San Francisco.

## **22.27. 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 Tenant-leased buildings at no cost to Landlord. During the Term, Tenant shall have the right to install and maintain, at its sole cost, Class 1 and Class 2 Bicycle Parking Spaces (as defined in the Planning Code) at a location in the Building reasonably determined by Tenant.

## **22.28. Resource-Efficient Tenant Buildings and Pilot Projects**

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 Tenant buildings. Landlord hereby agrees that it shall comply with all applicable provisions of such code sections.

## **22.29. 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.

## **22.30. Effective Date**

The date on which this Lease shall become effective (the "Effective Date") is the later date upon which (a) Tenant's Municipal Transportation Agency, 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 the parties hereto.

## **22.31. 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 Tenant of same and the reasons therefore together with any

relevant facts or information requested by Tenant. 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.

#### **22.32. 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 Tenant 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.

#### **22.33. Conflicts of Interest**

Through its execution of this Lease, Landlord acknowledges that it is familiar with the provisions of Article III, Chapter 2 of Tenant's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provisions, and agrees that if Landlord becomes aware of any such fact during the Term of this Lease, Landlord shall immediately notify Tenant.

#### **22.34. Notification of Limitations on Contributions**

Through its execution of this Lease, Landlord acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with Tenant for the selling or leasing of any land or building to or from the Tenant whenever such transaction would require approval by a Tenant elective officer, the board on which that Tenant elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to **(a)** the Tenant elective officer, **(b)** a candidate for the office held by such individual, or **(c)** a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Landlord acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Landlord further acknowledges that the prohibition on contributions applies to each Landlord; each member of Landlord's board of directors, and Landlord's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Landlord; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Landlord. Additionally, Landlord acknowledges that Landlord must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Landlord further agrees to provide to Tenant the name of each person, entity or committee described above.

#### **22.35. 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.

**22.36. Cooperative Drafting**

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

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, LANDLORD ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF TENANT HAS AUTHORITY TO COMMIT TENANT HERETO UNLESS AND UNTIL TENANT'S MUNICIPAL TRANSPORTATION AGENCY SHALL HAVE DULY ADOPTED A RESOLUTION APPROVING THIS LEASE AND AUTHORIZING CONSUMMATION OF THE TRANSACTION CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF TENANT HEREUNDER ARE CONTINGENT UPON ADOPTION OF SUCH A RESOLUTION, AND THIS LEASE SHALL BE NULL AND VOID UNLESS TENANT'S MUNICIPAL TRANSPORTATION AGENCY 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 TENANT SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ADOPTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON TENANT.

//////////////////SIGNATURE PAGE TO FOLLOW//////////////////

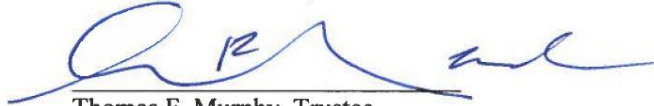


Landlord and Tenant have executed this Lease as of the date first written above.

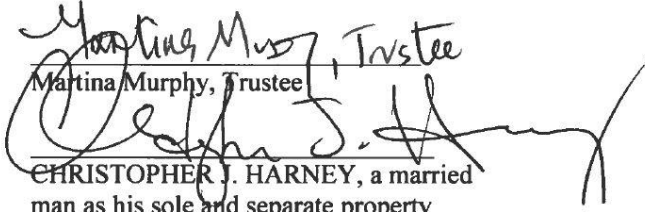
LANDLORD:



THOMAS F. MURPHY and MARTINA MURPHY, as Trustees of the Murphy Trust  
UDT dated October 3, 2003



Thomas F. Murphy, Trustee



Martina Murphy, Trustee

CHRISTOPHER J. HARNEY, a married man as his sole and separate property

TENANT:

SAN FRANCISCO MUNICIPAL  
TRANSPORTATION AGENCY

\_\_\_\_\_  
Edward D. Reiskin  
Director of Transportation

AUTHORIZED BY:

MUNICIPAL TRANSPORTATION  
AGENCY BOARD OF DIRECTORS

Resolution No.: \_\_\_\_\_

Adopted: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Roberta Boomer, Secretary

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
Stephanie Stuart  
Deputy City Attorney

**EXHIBIT A**

**DIAGRAM OF PREMISES**

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

**PARCEL ONE:**

LOT 168, as delineated upon that certain Map entitled "PARCEL MAP, Being a Merger of the Real Property Described as Parcels 1, 2 and 4 in That Certain Grant Deed Filed in the Office of the Recorder of the City and County of San Francisco in Book G827 at Page 144", filed for record in the Office of the Recorder of the City and County of San Francisco, State of California, on March 25<sup>th</sup>, 1998 in Reel 43 of Parcel Maps, at Image 153.

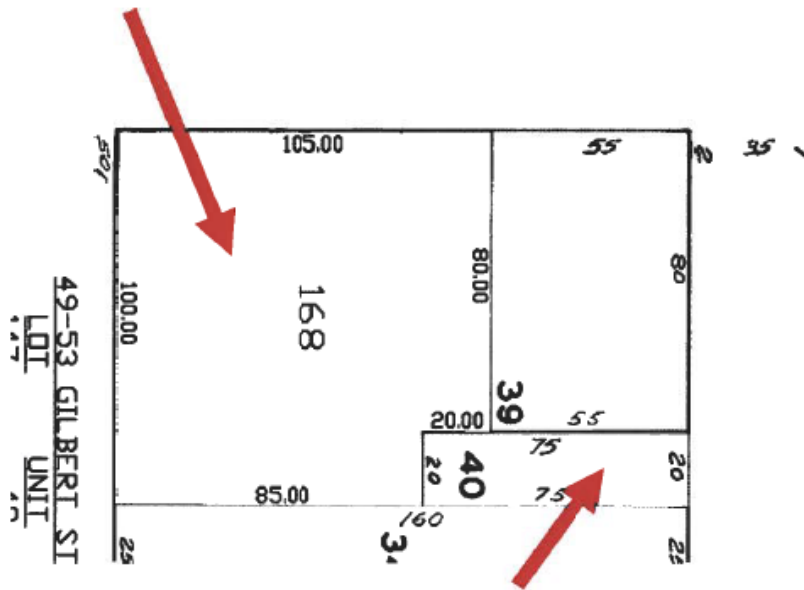
Assessor's Lot 168; Block 3779.

**PARCEL TWO:**

BEGINNING at a point on the southwesterly line of Gilbert Street, distant thereon 80 feet southeasterly from the southeasterly line of Bryant Street; running thence southeasterly and along said southwesterly line of Gilbert Street 20 feet; thence southwesterly and parallel with said line of Bryant Street 75 feet; thence northeasterly and parallel with said line of Bryant Street 75 feet to the point of beginning.

BEING a portion of 100 Vara Block No. 398.

Assessor's Lot 40; Block 3779.



**EXHIBIT B**

**COMMENCEMENT DATE CERTIFICATE**

Date: \_\_\_\_\_

Mr. Jason Gallegos  
Real Estate Development Manager, Strategic Real Estate  
San Francisco Municipal Transportation Agency  
One South Van Ness Avenue, 8th Floor  
San Francisco, California 94103

RE: Acknowledgement of Commencement Date, Lease Between THOMAS F. MURPHY and MARTINA MURPHY, as Trustees of the Murphy Trust UDT dated October 3, 2003, and CHRISTOPHER J. HARNEY (Landlord), and the CITY AND COUNTY OF SAN FRANCISCO (Tenant), for premises located at 899 Bryant, San Francisco, California.

Dear Mr. Gallegos:

This letter will confirm that for all purposes of the Lease

The Commencement Date of the Lease is \_\_\_\_\_, and the Expiration Date of the Lease is \_\_\_\_\_.

The schedule of Base Rent payable during the Initial Term is as follows:

___/___/___ through ___/___/___	\$56,000.00 per month
___/___/___ through ___/___/___	\$57,680.00 per month
___/___/___ through ___/___/___	\$59,410.40 per month
___/___/___ through ___/___/___	\$61,192.71 per month
___/___/___ through ___/___/___	\$63,027.49 per month

Please acknowledges your acceptance of this letter by signing and returning a copy of this letter.

Very truly yours,

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

Accepted and Agreed:

By: \_\_\_\_\_  
Real Estate Development Manager, Strategic Real Estate

Dated: \_\_\_\_\_

## EXHIBIT C

### OPERATING COST EXCLUSION

1. Costs of capital repairs, capital improvements and equipment, except for those (i) required by laws enacted on or after the date of the Lease amortized over the useful life of the improvement and/or equipment, together with interest at the actual interest rate incurred by Landlord in connection with such capital improvements, or (ii) acquired to cause, in Landlord's good faith judgment, an immediate (i.e., commencing within the first year after completion of such repairs or improvements or installation of such equipment) reduction in other Operating Costs, amortized over the useful life of such improvements at an annual rate reasonably calculated to equal the amount of Operating Costs to be saved in each calendar year throughout the Term (as determined at the time Landlord elected to proceed with the capital improvement or acquisition of the capital equipment to reduce operating expenses), together with interest at the actual interest rate incurred by Landlord;
2. Rentals and other related expenses for items (except when needed in connection with normal repairs and maintenance of permanent systems) which if purchased rather than rented, would constitute a capital improvement which is specifically excluded in item 1 above (excluding, however, equipment not affixed to the Building which is used in providing janitorial or similar services);
3. Costs incurred by Landlord for the repair of damage to the Building, to the extent that Landlord is reimbursed by insurance proceeds (excluding any deductible) and costs occasioned by the exercise of the right of eminent domain;
4. Costs, including, without limitation, permit, license and inspection costs, incurred with respect to the installation of improvements made for other tenants or occupants of the Building or incurred in renovating or otherwise improving, decorating, painting or redecorating vacant space for other tenants or occupants in the Building;
5. Depreciation, amortization and interest payments, except to the extent provided herein pursuant to items 1(i) and 1(ii) above and except on materials, tools, supplies and vendor-type equipment purchased by Landlord to enable Landlord to supply services Landlord might otherwise contract for with a third party where such depreciation, amortization and interest payments would otherwise have been included in the charge for such third party's services, all as determined in accordance with generally accepted accounting principles, consistently applied (as applied to commercial real estate), and when depreciation or amortization is permitted or required, the item shall be amortized over its reasonably anticipated useful life (as reasonably determined by Landlord);
6. Leasing commissions, attorneys' and other professionals' fees, space planning costs and all other costs and expenses in connection with negotiations with present or prospective tenants or other occupants in the Building or any present or future ground lessors or holders of any mortgages or other encumbrances affecting any of the Building or the defense of Landlord's title to the Building or the real property on which it is located;
7. Expenses in connection with services or other benefits which are not offered to Tenant or for which Tenant is charged directly but which are provided to another tenant or occupant of the Building;

8. Costs incurred by Landlord due to violation by Landlord or any other tenant or occupant of the Building of Applicable Laws, rules or regulations, the terms and conditions of any lease, ground lease, mortgage or deed of trust, or other covenants, conditions or restrictions encumbering the Building or the real property on which it is located;
9. Overhead and profit increments paid to Landlord or to subsidiaries or affiliates of Landlord, or to any party as a result of a non-competitive selection process, for management, or other services, supplies or materials, to the extent the same exceed the costs of such goods and/or services rendered by unaffiliated third parties on a competitive, arms-length basis;
10. Any ground lease rental or rental under any other underlying leases;
11. Except as specifically permitted by items 1(i) and 1(ii) above, interest, principal, points and fees on debts or amortization on any mortgage, deed of trust or any other debt instrument encumbering any of the Building or the real property on which it is located;
12. Any compensation paid to clerks, attendants or other persons in commercial concessions operated by Landlord or in the parking garage in the Building;
13. All items and services for which Tenant or any other tenant or occupant of the Building separately reimburses Landlord (other than through such tenant's or occupant's proportionate share of operating expenses), or which Landlord provides selectively to one or more other tenants or occupants without reimbursement, or which are not provided in reasonable proportion to the space leased by Tenant but which Landlord provides to another tenant or other occupant of the Building;
14. Advertising or promotional expenditures, and the costs of acquiring and installing signs in or on any of the Building identifying the owner of the Building or any other tenant or occupant of the Building;
15. Electric power costs for which any tenant or occupant directly contracts with the local public service company (provided that the charge for such services shall be computed for purposes of the gross-up provision of the Lease (i.e., expenses to be grossed up to reflect full occupancy of the Building) to reflect an average charge for power costs);
16. Services provided, taxes attributable to, and costs incurred in connection with the operation of retail, restaurant and garage operations in the Building;
17. Costs incurred in connection with upgrading the Building to comply with disabled access, life, fire and safety codes in effect prior to the date of the Lease, and costs incurred in connection with upgrading the Building to comply with the Americans with Disabilities Act of 1990 and Title 24 of the California Code of Regulations (or its successor), the San Francisco Sprinkler Ordinance and the San Francisco Unreinforced Masonry Building Ordinance;
18. Tax penalties incurred as a result of Landlord's negligence, inability or unwillingness to make payments when due;
19. Costs arising from the presence of Hazardous Material in or about the Building including, without limitation, groundwater or soil conditions, except if such Hazardous Material is brought onto the Building by Tenant in violation of Applicable Laws;

20. Landlord's charitable or political contributions;
  21. To the extent the following costs arise during any applicable warranty periods, costs as a result of repairs of latent defects in the Building core and shell or improvements installed by Landlord or in the Building Systems, and any costs incurred by Landlord in the event any portion of the Building is made untenable by fire or other casualty required to be insured against pursuant to the terms of the Lease;
  22. Capital costs for sculpture, paintings or other objects of art;
  23. Costs (including, without limitation, all attorneys' fees and costs of settlement, judgments and payments in lieu thereof) arising from claims, disputes or potential disputes, including, without limitation, tax disputes where the tenants of the Building would receive benefits if Landlord prevails) in connection with potential or actual claims, litigation or arbitrations pertaining to Landlord or the Building;
  24. All direct cost of refinancing, selling, exchanging or otherwise transferring ownership of the Building or the real property on which it is located or any interest therein or portion thereof, including broker commissions, attorney's fees and closing costs;
  25. Reserves for bad debts, rent loss, capital items or further Operating Costs;
  26. Landlord's general corporate overhead and general and administrative expenses not related to the operation or management of the Building; and
- Any other expense that under generally accepted accounting principles would not be considered a maintenance or operating expense.

## EXHIBIT D

### RULES AND REGULATIONS

1. Except as set forth in the Lease, no advertisement, picture or sign of any sort shall be displayed on or outside the Premises without the prior written consent of Landlord. All advertisements, pictures and signs shall be subject to the terms, covenants and conditions of all Applicable Laws. No advertising medium or signage shall be displayed which can be experienced from the outside of any premises at the Property, including, without limitation, flashing lights, searchlights, blinking lights, loudspeakers, phonographs, radios or television. Landlord shall have the right to remove any such unapproved item without notice and at Tenant's expense.
2. Tenant shall not attach anything to, or alter or puncture in any way, the ceiling of the interior of the Premises.
3. Tenant shall not use any method of heating or air conditioning other than that supplied by Landlord without the prior written consent of Landlord.
4. Except for any awning currently installed at the Premises, if any, no awning, canopy or other projection of any kind over or around the windows or entrances of the Premises shall be installed by Tenant without the prior consent of Landlord, and only such window coverings as are reasonably approved by Landlord shall be used in the Premises.
5. Tenant shall not use, keep or permit to be used or kept any foul or noxious gas or substance or any flammable or combustible materials on or around the Premises.
6. Landlord shall furnish Tenant, free of charge, two keys to each door or lock in the Premises. Landlord may make a reasonable charge for any additional or replacement keys. Tenant shall not duplicate any keys, alter any locks or install any new or additional lock or bolt on any door of the Premises without the prior written consent of Landlord and, in any event, Tenant shall provide Landlord with a key for any such lock.
7. Intentionally Deleted
8. No person shall go on the roof of the Building without Landlord's permission.
9. Business machines and mechanical equipment belonging to Tenant which cause noise or vibration that may be transmitted to the structure of the Premises, to such a degree as to be objectionable to Landlord or other tenants or occupants of the Building, shall be placed and maintained by Tenant, at Tenant's expense, on vibration eliminators or other devices sufficient to eliminate noise or vibration.
10. All goods, including material used to store goods, delivered to the Premises of Tenant shall be immediately moved into the Premises and shall not be left in parking or receiving areas overnight. Loading and unloading of merchandise, supplies, materials and other deliverables shall be made only through such entryways and facilities, and shall be made only between the hours of 8:00 a.m. and 5:30 p.m. Tenant shall coordinate all such activities with the Landlord and/or the manager of the Property. Tenant shall be responsible for unlocking, monitoring while open, and locking

access doors. All access doors shall remain locked at all times during a delivery that the door is not monitored by an employee of Tenant. Tenant shall not obstruct or permit the obstruction of areas used for loading and unloading, and at no time shall Tenant park or allow its representatives or customers, visitors or invitees to park vehicles therein except for the purpose of loading and unloading in an expeditious manner.

**11.** Tenant is responsible for the storage and removal of all trash and refuse. All such trash and refuse shall be contained in suitable receptacles stored behind screened enclosures at locations designated by Landlord or within the Premises, as designated by Landlord.

**14.** Tenant shall not store or permit the storage or placement of goods, or merchandise or pallets or equipment of any sort outside of the Premises. No displays or sales of merchandise shall be allowed in the Common Area or the sidewalks in front of the Premises.

**15.** Tenant shall not permit any animals, including, but not limited to, any household pets, to be brought or kept in or about the Premises, except service animals.

**16.** Tenant shall not permit any motor vehicles to be washed on any portion of the Property, nor shall Tenant permit mechanical work or maintenance of motor vehicles to be performed on any portion of the Property.

**17.** Tenant shall not obstruct the sidewalks, halls, passages, exits, entrances, elevators or stairways of Common Area, and Tenant shall not use such areas for any purpose other than access to the Premises. All Common Areas are subject to any rules and regulations regarding their use as Landlord may from time to time establish. Loud noise is prohibited in these areas at all times.

**18.** Tenant will not park, or permit Tenant's representatives, visitors, customers or invitees to park, in a manner that unreasonably impedes access to and from the Property or that violates space restrictions, such as loading zones, white zones and handicapped parking zones. Construction vehicles and equipment shall not, at any time, be placed, stored or parked in any white zones in-front of the Building, and such zones shall not be used for parking. Landlord may use such reasonable means as may be necessary to enforce the foregoing regulations, including towing, and Landlord will not be liable for any damage to vehicles towed as a result of noncompliance with such regulations.

**19.** Intentionally Deleted

**20.** The toilet rooms, toilets, urinals, wash bowls and other plumbing fixtures and plumbing systems shall not be used for any purpose other than that for which they were constructed and no foreign substance of any kind whatsoever shall be disposed of therein.

**21.** Tenant shall be solely responsible for taking all actions necessary to protect the Premises from theft, robbery and pilferage, which includes keeping doors locked and other means of entry to the Premises closed.

**22.** Tenant shall ensure that all doors of the Premises are closed and locked, and that all water faucets, water apparatus and electrical equipment (other than security, life safety or refrigeration systems) are shut off before Tenant or its employees leave the Premises, so as to prevent waste or damage.



**23.** Tenant shall comply with all safety, security, fire protection and evacuation measures and procedures established by Landlord or any governmental agency. In the case of invasion, mob, riot, public excitement, or other circumstances rendering such action advisable in Landlord's opinion, Landlord shall be entitled (but not obligated) to prevent access to the Building and/or the Premises during the continuance of the same by such action as Landlord may deem appropriate, including closing entrances to the Building and/or the Premises.

**24.** All contractors and technicians rendering any installation service to Tenant at or about the Premises, including installation of telephone, telegraph equipment and Building systems, and all installations affecting floors, walls, woodwork, windows, ceilings and any other component of the Building and/or the Premises (or any portion thereof), shall be subject to Landlord's approval prior to performing services and subject to Landlord's supervision during the performance of such services.

**25.** These Rules are in addition to, and shall not be construed to in any way limit, Tenant's obligations under the Lease.

**26.** Landlord may waive any one or more of these Rules for the benefit of any particular tenant or occupant of the Property, but no such waiver by Landlord shall be construed as a waiver of such Rules in favor of any other tenant or occupant, nor prevent Landlord from thereafter enforcing any such Rules against any or all of the tenants or occupants of the Building.

## EXHIBIT E

### JANITORIAL SERVICE

- I. SPECIFICATION OF SERVICES TO BE PERFORMED - SCOPE OF WORK
  - A. Landlord or its contractor shall furnish all labor, materials and equipment required to perform exterior and interior janitorial service five days a week, Monday through Friday, excluding holidays, at the above location in accordance with these specifications:
  - B. All services must be performed after 5:00 p.m.
  - C. All employees of Landlord or its contractor shall be fully trained and experienced in the custodial service trade.
  - D. Janitorial Service Specifications for Offices and Common Areas.
    1. Nightly Services
      - a. Secure all lights as soon as possible each night.
      - b. Vacuum all carpets. Move electric cords to prevent damage to the corner bead.
      - c. Dust mop all resilient and composition floors with treated dust mops. Damp mop to remove spills and water stains as required.
      - d. Spot clean any stains on carpet.
      - e. Dust all desks and office furniture with treated dust cloths.
      - f. Papers and folders on desks are not to be moved.
      - g. Sanitize all telephone receivers.
      - h. Empty all waste paper baskets and other trash containers and remove all trash from floors to the designated trash areas. Sort and put ALL RECYCLABLE MATERIAL into bins provided by owner.
      - i. Remove fingerprints, dirt smudges, graffiti, etc., from all doors, frames, glass partitions, windows, light switches, and walls.
      - j. Return chairs and waste baskets to proper positions.
      - k. Clean, sanitize and polish drinking fountains.
      - l. Police any interior public planters.
      - m. Dust and remove debris from all metal door thresholds.
      - n. Wipe clean smudged brightwork.
      - o. Spot clean resilient and composition floors as required.
      - p. Service all walk-off mats as required.
      - q. Close all window coverings.
      - r. Check for burned out lights and replace from building stock (supplied by Owner).
    2. Weekly Services
      - a. Dust all low reach areas including, but not limited to, chair rungs, structural and furniture ledges, baseboards, window sills, door louvers, wood paneling, molding, etc.
      - b. Dust inside of all door jambs.
      - c. Clean and polish all metal door thresholds.

- d. Wipe clean and polish all brightwork
  - e. Sweep the service stairwell.
  - f. Damp mop all vinyl bases.
  - g. Edge all carpeted areas.
3. Monthly Services
- a. Dust all high reach areas including, but not limited to, tops of door, frames, structural and furniture ledges, air conditioning diffusers and return grilles, tops of partitions, picture frames, etc.
  - b. Vacuum upholstered furniture.
  - c. Move all plastic carpet protectors and thoroughly vacuum under and around all desks and office furniture.
  - d. Clean and buff all building standard resilient and/or composite flooring.
4. Quarterly Services
- a. Shower-scrub or otherwise recondition all resilient or composition flooring to provide a level of appearance equivalent to a completely refinished floor.
  - b. Clean chair pads if deemed necessary.
5. Semi-Annual Services
- a. Vacuum all window coverings.
  - b. Dust light diffusers.
6. Annual Services
- a. Shampoo carpets in offices (schedule to be approved in advance), using products and methods recommended by manufacturer and/or carpet installation Landlord or its contractor.

#### E. Rest Room Service Specifications

1. Daily Service
- a. Re-stock all rest rooms with supplies, including paper towels, toilet tissue, seat covers and hand soap, as required.
  - b. Re-stock all sanitary napkin and tampon dispensers from Landlord or its contractor's stock, as required.
  - c. Wash and polish all mirrors, dispensers, faucets, flushometers and brightwork with non-scratch disinfectant cleaner. Wipe dry all sinks.
  - d. Wash and sanitize all toilets, toilet seats, urinals and sinks with non-scratch disinfectant cleaner.
  - e. Remove stains, scale toilets, urinals and sinks, as required.
  - f. Mop all rest room floors with disinfectant, germicidal solution, include scrubbing of all base, inside corners and hard to reach areas.
  - g. Empty and sanitize all waste and sanitary napkin and tampon receptacles.
  - h. Remove all rest room trash.
  - i. Spot clean fingerprints, marks and graffiti from walls, partitions, glass, aluminum and light switches as required.
  - j. Check for burned out lights and replace from building stock (supplied by Owner).
  - k. Ventilate rest rooms.
2. Weekly Services
- a. Dust all low reach and high reach areas, including but not limited to, structural ledges, mirror tops, partition tops and edges, air conditioning diffusers and return air grilles.
3. Monthly Services
- a. Wipe down all walls and metal partitions. Partitions shall be left clean and not streaked after this work.

- b. Clean all ventilation grilles.
- c. Dust all doors and door jambs.
- 4. Quarterly Services
  - a. Thoroughly clean and reseal all ceramic tile floors, using approved sealers.

F. Elevator Lobbies and Public Corridors Specifications

- 1. Nightly Services
  - a. Spot clean all glass including low partitions and the corridor side of all windows and glass doors to owner premises.
  - b. Spot clean all chrome brightwork including swinging door hardware, kick plates, base partition tops, handrails, waste paper receptacles, planters, elevator call button plates, hose cabinets and visible hardware on the corridor side of owner entry doors.
  - c. Thoroughly clean all door saddles of dirt and debris.
  - d. Empty, clean and sanitize all waste paper baskets and refuse receptacles as required.
  - e. Vacuum and spot clean all carpets as necessary.
  - f. Spot clean all elevator doors and frames.

G. Exterior Structure and Grounds Services Specifications

- 1. Daily Service
  - a. Spot clean accumulations of dirt, papers and leaves in all corner areas where winds tend to cause collections of debris.
  - b. Spot clean all exterior glass at building entrances.
  - c. Lift nap on all entry walk-off mats as necessary with a heavy bristle brush and vacuum.
  - d. Empty all waste receptacles and remove trash to designated trash areas.
  - e. Clean sidewalk, steps and landscaped area, walks and benches; including gum removal.
- 2. Monthly Weekend Services
  - a. Steam clean exterior sidewalk and walk way areas.

H. Carpet Cleaning

- 1. Provide spot cleaning to owner space as necessary and shampoo carpets in owner office space and any common areas once each year (exact schedule to be approved in advance by Owner).

I. Window Cleaning

- 1. All work to be performed in accordance with generally accepted industry standards.
- 2. Proper safety standards are to be maintained at all times, including but not limited to, use of proper warning signs and clean-up of water in compliance with all Tenant, State and Federal laws (OSHA).
- 3. Window cleaning standards are to include clean-up of water, wipe down of adjacent window mullions and ledges to prevent streaking, spotting, and excessive runoff.
- 4. When necessary, drop cloths are to be used to prevent damage to floors and adjacent surfaces.

5. Interior and exterior window washing shall be scheduled immediately prior to Lease Commencement. Interior glass shall be cleaned not less than once per year. Exterior glass shall be cleaned as needed, but not less than once every six months, including May of each year.
6. Landlord or its contractor to notify the Owner for specific scheduling of window washing one week prior to scheduled cleaning.
7. Landlord or its contractor will be responsible for removing paint and putty etc. from both glass and plastic windows.
8. Exterior surfaces of windows are not to be washed when it is raining.
9. The words "window" and "light" as used herein are synonymous and are to be construed to mean any pane of glass, or glass substitute.

## II. UNIFORMS

- A. Janitors must wear their uniforms whenever on duty.
- B. All personnel, including the coordinator and supervisors, will be uniformed. All personnel shall have a visible company name, logo, badge, etc., on their uniform.

## III. EMPLOYEE SAFETY

Landlord or its contractor shall accept responsibility for determining that all necessary safeguards for protection of Landlord or its contractor's employees are available, or will be furnished. All work performed must conform to CAL-OSHA standards.

## IV. SUPPLIES

Landlord or its contractor shall supply floor wax, wax stripper, and other expendable supplies required for daily cleaning and maintenance, as well as janitorial supplies such as hand soap, paper hand towels, paper toilet tissue, paper seat covers and deodorants. Furthermore, Landlord or its contractor shall supply all equipment including, but not limited to, ladders, vacuum cleaners, extractors, floor machines, mops and buckets.

## V. HOLIDAY SCHEDULE FOR OWNER

New Year's Day  
Martin Luther King Day  
President's Day  
Memorial Day  
Independence Day  
Labor Day  
Columbus Day  
Veteran's Day  
Thanksgiving Day  
Friday after Thanksgiving Day  
Christmas Day

## EXHIBIT F

### WORK LETTER AGREEMENT

THIS WORK LETTER AGREEMENT (“**Work Letter**”) is made and entered into by and between THOMAS F. MURPHY and MARTINA MURPHY, as Trustees of the Murphy Trust UDT dated October 3, 2003, and CHRISTOPHER J. HARNEY, a married man as his sole and separate property (collectively, “**Landlord**”), and CITY AND COUNTY OF SAN FRANCISCO, acting by and through its MUNICIPAL TRANSPORTATION AGENCY (“**Tenant**”), and shall be deemed a part of the lease between Landlord and Tenant to which this Work Letter is attached (the “**Lease**”). This Work Letter sets forth the obligations of Landlord and Tenant with respect to the initial improvement of the Premises. Capitalized terms that are used herein and defined in the Lease shall have the meaning given therein. Landlord and Tenant agree as follows:

1. Landlord shall, at its sole cost and expense, complete the following work (collectively, the “Leasehold Improvements”) in compliance with all Applicable Laws, including all City and County of San Francisco Code:
  - a. Repair roof and add cool roof surface and replace skylights
  - b. Replace all HVAC units on the roof (but not internal duct work)
  - c. Install one additional exhaust fan and pipe in the men’s restroom
  - d. Replace all windows throughout the Premises with high efficiency windows with low E glass
  - e. Replace 2 entrance doors and locks, one on 7th street and one on Bryant street
  - f. Replace all lighting with LED throughout
  - g. Replace back alley stairs and hand rail to metal
  - h. Install light above back alley stairs
  - i. Install new light and ceiling cover in elevator
  - j. Replace emergency generator with Tier 3 or better replacement and connect it to all electrical on the ground level, excluding the elevator
  - k. Replace flood lights throughout
  - l. Relocate of one thermometer control

Landlord shall complete the Leasehold Improvements using “building standard” methods, materials and finishes. Landlord shall mitigate asbestos, lead and other hazardous materials found while performing any Leasehold Improvement work. Landlord shall design and construct all exterior improvements in keeping with the existing architectural character of the structure, and shall not construct any improvements that could result in a significant effect to the environment, pursuant to the California Environmental Quality Act (CEQA). Landlord shall enter into a direct contract for the Leasehold Improvements with a general contractor selected by Landlord. The general contractor, the subcontractors and all other parties performing Landlord’s Work shall be selected solely by Landlord.

2. Substantial Completion. The Leasehold Improvements shall be deemed to be “**Substantially Completed**” when they have been completed except for finishing details, minor mistakes and omissions, decorations, mechanical adjustments and/or other matters of the type normally

found on a “punch list.” The foregoing definition of Substantially Completed shall also define the terms “**Substantial Completion**” and “**Substantially Complete.**”

3. Punch List. Following Substantial Completion of Landlord’s Work, Landlord and Tenant shall inspect the Premises and prepare a mutually agreed “punch list” of items of the Leasehold Improvements remaining to be completed. Landlord’s contractor shall complete the items set forth in the punch list as soon as reasonably possible. Tenant shall cooperate with and accommodate Landlord and Landlord’s contractor in completing the items on the punch list. Upon completion of the items on the punch list, Tenant shall accept the Premises in their “AS-IS” condition.
4. Manner of Performance of Work. Landlord and Tenant agree to cooperate with each other in order to enable the Leasehold Improvements to be performed in a timely manner. Tenant acknowledges that Landlord will be performing the Leasehold Improvements while Tenant is occupying the Premises under the previous lease, and Tenant agrees to coordinate with its employees so that they do not interfere with the construction process. Tenant acknowledges that building the Leasehold Improvements will create dust and noise and Landlord agrees to use commercially reasonable efforts to limit dust and noise. Notwithstanding anything herein or in the Lease to the contrary, no delay in the completion of the Leasehold Improvements shall entitle Tenant to any credit, abatement or adjustment of Rent or other sums payable under the Lease.
5. Condition Upon Delivery. Tenant acknowledges that it has had an opportunity to thoroughly inspect the Premises, and subject to Landlord’s obligations in Section 8.1 and the Leasehold Improvements, Tenant accepts the Premises in their existing “as is” condition, with all faults and defects and without any representation or warranty of any kind, express or implied.