

# City and County of San Francisco

## Request for Proposals: Lease of Real Property (RED – RFP24 – 001)

### ALEMANY FARMERS' MARKET PROPERTY (100 Alemany Blvd., San Francisco)



Date issued:	March 8, 2024
Pre-proposal conference:	10:00 a.m., March 22, 2024
Tour:	11:00 a.m., March 22, 2024
Proposal due:	5:00 p.m., April 12, 2024

**Address Questions to:**

**MATT GAGIN  
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SAN FRANCISCO, CA 94102  
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### **EXHIBITS:**

- A – Site Map**
- B – Lease Template**
- C – Proposer Certificate**
- D – Enterprise Experience and Qualifications Questionnaire**

**Request for Proposals for**

**LEASE OF REAL PROPERTY – ALEMANY FARMERS' MARKET**

**I. INTRODUCTION AND SCHEDULE**

**A. General**

The Real Estate Division (“**RED**”) of the City and County of San Francisco (the “**City**” or “**Landlord**”), is soliciting proposals regarding the potential lease of the “Alemany Farmers’ Market” (“**Property**” or “**AFM**”) located at 100 Alemany Blvd. in San Francisco. The proposed lease will have an original term of five (5) years with one five-year option to extend the lease.

**B. Schedule**

The anticipated schedule for selecting a Tenant is:

<b><u>Proposal Phase</u></b>	<b><u>Date</u></b>
RFP Issued by City	March 8, 2024
Pre-proposal Conference	March 22, 2024, 10:00 a.m., AFM
Pre-proposal Site tour	March 22, 2024, 11:00 a.m., AFM
Deadline for submission of written questions or requests for clarification	March 29, 2024, 5:00 p.m.
Proposals Due	April 12, 2024, 5:00 p.m.

**C. City Goals**

Through the potential lease for the AFM, the City seeks to populate and activate this historical property with a range of public and private, free and ticketed, events and activities, including opportunities for the community-at-large to access and experience the resource while continuing the Alemany Farmers’ Market each and every Saturday of the year.

The primary objectives for the Market property are to:

1. Create a festive community event and social gathering place;
2. Offer community members an opportunity to purchase locally grown produce and artisan goods;
3. Provide farmers an opportunity to sell their products locally at least every Saturday;
4. Provide local businesses, artisans, and musicians an opportunity to participate;
5. Highlight the character of the surrounding neighborhood; and
6. Provide locally sourced products and events that will appeal to a broad range of residents and visitors.

## **II. SUMMARY OF LEASE TERMS AND CONDITIONS**

### **A. Building**

The "Alemany Farmers' Market" (the "AFM") is located at 100 Alemany Boulevard and bounded by Alemany Blvd. to the southeast, Putnam Street to the west, and Tompkins Avenue to the north, in San Francisco, California. (See **Exhibit A** including aerial and site map.)

### **B. Site Environs and Premises**

The Alemany Farmers' Market is the longest operating farmers' market in California and was established in 1943. Since 1947, the Market has been located at its current location, 100 Alemany Boulevard, San Francisco, CA 94110. The Market currently operates every Saturday, rain or shine, year-round. The Market is the only City-run farmers market in San Francisco and is currently operated by the Real Estate Division.

Through this Request for Proposals, the City seeks to lease the entire AFM property to a proposer who will continue to provide culturally appropriate services and a dignified experience to customers patronizing the Alemany Farmers' Market each Saturday who utilize food assistance programs that increase their purchasing power at qualified vendors at the Market and to program the remaining days of the week with public and private events, and community activities and resources.

The AFM consists of several parcels (Block 5734, Lot 003, Block 5734, Block 5731, Lots 003 and 004) and is approximately 202,000 square feet. A small office building (11,230 sf) with storage and bathrooms is located near the south side. There are approximately 100 covered vendor parking stalls.

After 2018, there are no longer any paper streets within the AFM and the property is gated shut when not in use.

### **C. "As Is" Condition**

The City will lease the Property to Tenant in its "As Is" condition. Tenant shall be solely responsible for investigating and determining the condition of the Property during both the RFP process and prior to final approval of the Lease. Such inspections shall include, but are not limited to: identifying existing and planned utility connections and determining the suitability of such conditions for any improvements to be constructed by Tenant, if any.

Any improvements placed within or upon the Property must be approved in advance by the City; must allow for the continued use as a Farmers' Market on Saturdays; and must be in compliance with the American with Disabilities Act and all other applicable government requirements.

### **D. Lease**

Through the RFP process, a Tenant will be selected and will then negotiate a Lease with the City based on the general form of lease attached as **Exhibit B**. The attached lease and the finally executed Lease may contain terms and conditions not specifically described or outlined in this RFP. It is the Proposers' (those entities, persons, and companies responding to this RFP) responsibility to thoroughly review and understand these terms and conditions and any questions should be directed to RED. The final Lease to be negotiated by and between City and Tenant will be subject to approval by the City Attorney's Office, the Director of Property and the Board of Supervisors, and the Mayor, in each party's sole and absolute discretion.

**E. Initial Term**

The Initial Term of the Lease will be five (5) years, commencing on the final execution of the Lease as described in Section II. D. Tenant may be granted a termination right which shall be determined during Lease negotiations.

**F. Extension Option**

Tenant may have the opportunity to have one (1) five-year option to extend the Initial Term (collectively, the Initial Term and both Extension Options are the "**Term**"), which shall be subject to exercise by Tenant and City in accordance with terms and conditions set forth in the Lease at rates to be negotiated by and between Tenant and City.

**G. Base Rent and Participation Rent**

Tenant will pay monthly Base Rent throughout the Term which shall be increased annually. Tenant may also negotiate Participation Rent. Base Rent in the Extension Terms will be adjusted in accordance with the terms and conditions specified in the Lease, including any negotiated participation rent from non-ticketed and ticketed events as the parties may agree.

**H. Rent Credit**

Tenant may receive credit against the Base Rent (a "**Rent Credit**") for actual third-party costs incurred by Tenant in performing capital repairs and improvements approved by the Director of Property under Section 5, in the amount totaling said costs (that are within the approved budget). Tenant shall be entitled to receive the Rent Credit and City shall provide the Rent Credit only if all of the following conditions are met: (i) Tenant is not in default under any term or condition of the Lease; (ii) the Director of Property has approved the work and the budget in advance, as set forth in Section 5, (iii) Tenant has satisfactorily completed the applicable work to date for which the Rent Credit is sought, and (iv) Tenant has delivered to City copies of receipts, cancelled checks, invoices marked "Paid," lien waivers, and other evidence reasonably acceptable to the Director of Property evidencing proof of expenditures for the applicable work. Upon satisfaction of the foregoing conditions, the Director of Property shall confirm the Rent Credit amount in writing to Tenant. Upon such confirmation, the Rent Credit will be applied against the Base Rent then due, and shall continue to be applied against all future installments of the Base Rent, without interest, until the Rent Credit is exhausted. The Director of Property shall maintain an accounting at all times of the balance of any Rent Credit, including all additions for the cost of new work performed at Tenant's cost and deductions for all Base Rent that becomes due under the Lease and for which a Rent Credit has been issued. In the event that the Lease is terminated and there remains a Rent Credit amount that has not yet been applied against the Base Rent ("**Unused Rent Credit**"), Tenant shall lose that unused Rent Credit and City shall have no liability and no responsibility to pay or reimburse Tenant for the Unused Fee Credit.

**I. Security Deposit**

Tenant shall be required to provide a Security Deposit with the City in the sum of FIVE THOUSAND DOLLARS (\$5,000.00) (the "**Security Deposit**") upon approval of the Lease.

**J. Permitted Uses**

Tenant shall, and is required to, use the Premises for the purpose of continuing the Alemany Farmers' Market each week, at least each Saturday, or more often as desired by Tenant, and also for: presenting community events, music concerts, theatrical events, cultural

## RFP for ALEMANY FARMERS' MARKET

programming and entertainment performances, consumer events, trade shows, corporate meetings, social functions and special events while occupying the Property with an administrative office (the "**Permitted Uses**"). Tenant may perform all acts reasonable and necessary in connection with the use, operation, development and maintenance of the Property for the Permitted Uses, including without limitation: (i) the development and construction of improvements, temporary and permanent, as approved by the Director of Property and City and other regulatory agencies as further described below; (ii) the sale of food and beverages for onsite consumption; and (iii) the sale of merchandise related to the Permitted Uses. All uses shall be in accordance with and subject to the requirements of the Lease and lawful.

Tenant shall cooperate and work with the Real Estate Division to transfer the Alemany Farmers' Market Saturday operations to Tenant as set forth in the Lease.

City may plan events, and may study possible improvements to the AFM during the Tenant's tenancy.

Tenant shall notify the Director of Property of the schedule of events at the Property at least thirty (30) days in advance of the event and provide a written calendar of events at least monthly on or before the twenty (20<sup>th</sup>) day of each month. The Director of Property shall have the right, acting in his reasonable discretion, to prohibit any event that the Director of Property determines could be disruptive to the neighborhood or is not appropriate for the AFM or the location, taking into account such factors as deemed relevant by the Director of Property. The parties shall meet and confer in good faith to discuss any particular events or objections to events upon request by either party. Tenant shall obtain all permits and regulatory approvals as may be required under applicable law in accordance with Tenant's use of the Property.

### **K. City Days**

Under the Lease, City shall have the right to exclusive use of the Property, for civic events and other City purposes up to twenty-five days (25) per calendar year, for events approved by the Director of Property (the "**City Days**"). City may request use at any time, and shall have the right to reserve City Days if Tenant has not scheduled any event or occupancy for that day at the time of the City's request. The parties agree to work together in good faith to coordinate Permittee's events and uses, including any maintenance or repair work, and City's requested uses; provided, however, City shall not use or occupy the Property for more than four consecutive days/nights. City Days shall include any days needed for setting up or tearing down in addition to the day of each event, as requested by City. City shall not be required to pay Tenant for the use of the Property nor shall there be any rent abatement, however, every City department, governmental entity and nonprofit organization using a City Day shall be responsible for all actual costs and expenses relating to the use of the Property, including all indemnities, security, custodial and administrative staffing charges and shall demonstrate the ability to pay all such costs before approval of use of any City Day.

### **L. Maintenance and Repair**

During the Lease Term, Tenant shall repair and maintain the Property, and all improvements and facilities placed in or on the Property, at no cost to City, in a clean, secure, safe and good condition, including but not limited to the fencing, gates, administrative office building, vendor stalls. City shall have no duty whatsoever for any maintenance of the Property or any improvements or facilities placed therein, except as agreed to between the parties in writing. Tenant shall bear all costs or expenses of any kind or nature in connection with its use of the Property.

**M. Utilities and Services**

At no cost to City, Tenant shall provide all necessary equipment, supplies and utilities it requires during the Term and for all events, including water, sewer, electricity, trash and recycling removal. Tenant shall not use, borrow, and/or take any of City's utilities without the written approval from the Director of Property or his/her designee. Tenant may install certain temporary and removable facilities and improvements, such as movable tents, canopies, chairs, lights, speakers, and tables, in the Property during the Term. Immediately following the Term, Tenant shall remove all debris and facilities and restore the Property to the satisfaction of City.

**N. Insurance**

Subject to final recommendations by the City's Risk Manager, Tenant will be required to maintain, at a minimum throughout the Term of the Lease, insurance in the following coverages and amounts:

1. General Liability Insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Independent Permittees, Explosion, Collapse and Underground (XCU), Broadform Property Damage, Sudden and Accidental Pollution, Products Liability and Completed Operations;

2. Automobile 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 coverages for owned, non-owned and hired automobiles, as applicable, and Sudden and Accidental Pollution; and

3. Workers' Compensation Insurance with Employer's Liability Coverage with limits of not less than One Million Dollars (\$1,000,000) each accident.

4. During any construction or improvement work, additional insurance will be required by City, including, but not limited to, Builders Risk Insurance with limits and other coverages as approved by the Director of Property.

5. All liability policies required hereunder shall provide for the following: (i) name as additional insureds the City and County of San Francisco, its officers, agents and employees; and (ii) specify that such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of the Lease and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

6. If a subcontractor will be used to complete any portion of improvements at the Premises during the Term of the Lease, the Tenant shall ensure that the subcontractor shall provide all necessary insurance and shall name the City and County of San Francisco, its officers, agents, and employees and the Tenant are listed as additional insureds.

7. Permittee shall be responsible, at its expense, for separately insuring Permittee's personal property.

8. Tenant will be required to meet the City's additional insurance and indemnity requirements, which will be included in Section 19.1 of the Lease and are outlined in Exhibit B. If the general commercial practice in the City and County of San Francisco is to carry liability insurance in an amount or coverage materially greater than the amount or coverage then being carried by Tenant for risks comparable to those associated with the Premises, Tenant shall,

at the City's request, increase the amounts or coverage carried by Tenant to conform to such general commercial practice.

**O. Possessory Interest Taxes**

Tenant will be responsible for paying any possessory interest taxes due in connection with the Lease.

**P. Alterations**

Should Tenant desire to install permanent improvements on, in or at the Property, Tenant shall obtain the written approval of same by the Director of Property in advance of submission of same for review and approval by all appropriate and necessary regulatory agencies, including without limitation, the Historic Preservation Coordinator, if necessary. Tenant shall make such repairs and improvements with materials, apparatus and facilities at least equal if not better in quality, appearance and durability to the materials, apparatus and facilities repaired or replaced, and with all the necessary approvals and review and in accordance with any applicable laws. Tenant shall waive all rights to make repairs at City's expense under sections 1941 and 1942 of the California Civil Code or under any similar law, statute or ordinance now or hereafter in effect.

All work shall be done at Tenant's expense in accordance with the plans and specifications approved by the City, and only by duly licensed and bonded contractors or mechanics approved by City, and subject to any conditions that City may reasonably impose.

For any work meeting the threshold requirements in San Francisco Administrative Code Section 6.22(G), Tenant shall comply with the local hire requirements set forth in Section 6, Tenant Improvements of the Lease.

**Q. No Smoking**

Smoking is prohibited in or on the Property, including inside the office building. Tenant shall not knowingly or intentionally permit, or allow its Vendors or Permittees to permit, smoking in or on the Premises.

**R. Security**

Tenant at all times shall be responsible for on-site security in and about the Property. It shall be Tenant's responsibility to hire security or contact the City's Police Department to determine appropriate security staff for an event, if appropriate. In the event that additional police or other security services are required, Tenant agrees to hire additional security staff and/or enter into an agreement with City's Police Department, and to pay for such additional services, in accordance with the provisions of San Francisco Administrative Code Chapter 10B.

**S. City Requirements**

Tenant will be required to comply with all applicable City requirements including, but not limited to, the Non-Discrimination in Contracts and Benefits Ordinance (Chapters 12B and 12C of the San Francisco Administrative Code (SF Adm. Code), the First Source Hiring Program Ordinance (FSHP) (Chapter 83 of the SF Adm. Code), Minimum Compensation Ordinance (MCO) (Chapter 12P of the SF Adm. Code), the Health Care Accountability Ordinance (HCAO) (Chapter 12Q of the SF Adm. Code), as more specifically described in the lease, the Food Service Waste Reduction Ordinance, the Resource Conservation Ordinance, and the City's Pesticide Ordinance.



### **III. PROPOSAL SUBMISSION REQUIREMENTS**

**A. Minimum Requirements.** Proposers must demonstrate they meet the minimum requirements listed below in order to have their entire proposal considered. Determination of meeting minimum requirements will be based on the materials included in the proposals (please number or identify the materials responsive to the minimum requirement). The selected Tenant must:

1. Operated/owned/managed a successful farmers market or business, such as or similar to, or capable of, event/concert/party planning, for a period of at least two years within the last five years. Success could be measured by gross proceeds sufficient to cover expenses as well as demonstrable business development, education and mentorship provided to those employed in such ventures.

2. Demonstrate sufficient financial capacity and experience to maintain, repair, manage and activate the Property in accordance with the terms of the Lease. In particular, the City may review financial performance in other projects, in particular, whether a Proposer is, and if a Proposer's other projects have been, solvent. The City reserves the right to request a credit report on, and additional financial information from, each Proposer.

3. Be current in the payment of all applicable business tax, possessory interest tax, rentals, and assessments owed by the Proposer, as well as current with all necessary filings with the United States Internal Revenue Service and California Franchise Tax Board with respect to non-profit status.

4. Demonstrate sufficient financial capacity and experience to initiate capital improvements to the Property.

5. Demonstrate sufficient staffing, financial capacity and ability to operate the Alemany Farmers' Market each Saturday along with related food assistance programs as provided in the Lease.

6. Must be currently, or within 60 days of lease approval become, a qualified Farmers' Market Manager that can offer food assistance program management. (See eligibility requirements at [https://www.cdfa.ca.gov/is/i\\_&c/cfm.html](https://www.cdfa.ca.gov/is/i_&c/cfm.html).)

7. Exhibit a thorough understanding of the State of California and the City and County of San Francisco rules and regulations regarding the operation of a Certified Farmers Market.

**B. Submission Requirements.** The RFP must be made in accordance with the specifications set forth below. Any major deviation from these specifications may be cause for rejection of the submittal at the City's sole discretion. Proposers must include the following materials in the submission:

**1. Time and Place for Submission of Proposals.** Proposals must be received no later than 5:00 p.m. on April 12, 2024.

Postmarks will not be considered in judging the timeliness of submissions. Proposals may be delivered in person and left with the Real Estate Division's Front Desk/Reception, during business days between the hours of 8:00 AM and 5:00 PM at the Real Estate Division, located at 25 Van Ness Avenue, Suite 400, San Francisco, CA 94102 or mailed to the same location, attention: Matt Gagin. In addition, but not in lieu of hard copy submittals, it is requested that an electronic copy of the proposal be sent to [matthew.gagin@sfgov.org](mailto:matthew.gagin@sfgov.org).

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Proposers shall submit three (3) written copies of the proposal and proposals submitted with incomplete or missing forms, or received after 5:00 PM on April 12th, 2024, will be deemed non-responsive and will be rejected. After a proposal has been submitted, no modifications to the proposal will be allowed.

All proposals, whether mailed or delivered in person, must be in sealed envelopes and clearly marked "Proposal for Lease of Alemany Farmers' Market" "RED - RFP24-001". Proposals sent by facsimile will not be accepted.

**2. Business Plan.** A comprehensive business plan, specific to the proposed use of the Property, including without limitation: proposed staffing, security, hours of operations, a marketing plan and a financing plan for anticipated start-up costs as well as on-going operations and maintenance expense forecasts, proposed event plan and schedule including possible City Day events and proposed operation of the Alemany Farmers' Market (Saturdays), which ensures market attractiveness, appeal, and attendance.

Within the business plan, please ensure a section on the operation, management, certification and permitting of the Alemany Farmers' Market (on Saturdays at least) including, at least:

- \*Proposed marketing and advertising of same
- \*Certification (or ability to obtain certification)
- \*Plan to offer, manage and accept food assistance programs, currently EBT, MarketMatch, EatSF, WIC and Senior Farmers' Market Nutrition Program and any new programs to be added
- \*Ability to translate written materials in English, Spanish, Mandarin and Cantonese at a minimum
- \*Accounting and Reconciliation ability and plan

**3. External Partners & Relationships in Venture.** A detailed list of established external partners or relationships, with financing and educational institutions, pre-employment training organizations, corporate sponsors, mentors, foundations and other sources of grants, government organizations, and neighborhood outreach agencies. The list should include key contact information, dates of the relationship, and a thorough description of the relationship and the benefits provided to the venture as a result including possible participation rent with the City. And an outline of the intended community engagement process if awarded a lease.

**4. Financial Statements.** In addition to the financial disclosure authorized in the Enterprise Experience Qualifications Questionnaire attached as **Exhibit D** (which must be submitted), a Proposer must submit audited financial statements of the Proposer (personal and/or business, as appropriate), and all subsidiary units and parent organizations for the last two years. Assets shall be stated at book value, or if stated at market value, shall be supported by recent appraisals. If financial statements are unavailable (or unaudited), provide an explanation and at a minimum copies of the last two years of Form 199's filed with the California Franchise Tax Board and a California R & TC Section 23701 filing.

**5. Improvements.** Describe possible improvements projects, if any, for the Property and/or office building the Proposer is qualified, intends and capable of installing, constructing, or financing at the Premises, if any. Presentation materials should be no larger than 8.5" x 11".

**6. Recycling and Resource Conservation.** The City has set ambitious recycling and composting goals for City and maximum participation in the City’s municipal composting program at all City Department locations where there is food service. In addition, the City has a Food Service Waste Reduction Ordinance which, in part, “Prohibits the use of polystyrene foam disposable food service ware and requires the use of recyclable or compostable food service ware by restaurants, retail food vendors, City departments and the City’s contractors and lessees.” Proposers should clearly describe how they plan on meeting these goals and complying with City law.

**7. Document Execution.** The Proposal, Proposer Certificate (**Exhibit C** – which must be submitted) and Enterprise Experience Qualifications Questionnaire (**Exhibit D** – which must be submitted) must be signed in ink. A corporation shall execute these documents by its duly authorized officers in accordance with its corporate bylaws. A partnership shall execute these documents by its duly authorized partners in accordance with the partnership agreement. A limited liability company shall execute these documents by its duly authorized members or managers in accordance with its operating statement.

If the Proposer’s firm is a joint venture consisting of a combination of any of the above entities, each joint venture shall execute these documents. Anyone signing a proposal as an agent of a firm or entity shall submit legal evidence of his/her authority to do so with the proposal. Where necessary due to the number of signatories, copies of the signature pages of the documents may be executed and submitted by such additional signatories.

**IV. EVALUATION AND SELECTION CRITERIA**

**A. Selection Criteria.**

Proposals will be evaluated by a panel comprised of representatives of the City and possibly other parties with relevant experience in commercial leasing and event planning, in accordance with the criteria and procedures identified herein (the “Selection Committee”). The opportunity to lease the Property will be awarded to the Proposer who best demonstrates a sound business acumen that will most likely lead to a sustainable, successful venture within the Leased Property. The City reserves the right to request clarification or additional information from the Proposers. The City intends to evaluate the proposals generally in accordance with the criteria itemized below. Up to three (3) of the Proposers with the highest scoring proposals may be interviewed by the Selection Committee to make the final selection.

The above criteria will be evaluated on a point basis as outlined below:

<b>Criteria</b>	<b>Points</b>
Business Plan	20
Experience in Farmers’ Markets/Event Planning	20
Financial Capacity (organization & partners)	20
Community Programming/Engagement (experience & proposed)	15
Proposed Improvements to Premises	10
Monthly and Participation Rent Proposal	15
<b>TOTAL</b>	<b>100</b>

**B. LBE Participation Bonus**

The following bonus points will be in effect for the selection of the pool (to the extent applicable) for any Proposers whom are certified by CMD as an LBE, or joint venture partners who are certified as an LBE at the time that the proposal is submitted. The application of the bonus points shall be as follows:

1. Two (2) bonus points to a joint venture with LBE participation that equals or exceeds 35%, but is under 40%;
2. Five (5) bonus points to a joint venture with LBE participation that equals or exceeds 40%; and
3. Ten (10) bonus points to an LBE or a joint venture between or among LBEs.

The City strongly encourages proposals from qualified LBEs. Certification applications may be obtained by calling the CMD Contract Compliance Officer at (415) 581-2310 or emailing at [LBEcert@sfgov.org](mailto:LBEcert@sfgov.org).

**C. LBE Certification**

If you are certified as a Local Business Enterprise (LBE) by the San Francisco CMD, attach a copy of your certification letter from the CMD.

**D. Grounds for Rejection**

Any false, incomplete, or unresponsive statements in connection with a proposal may be cause for its rejection at the City's discretion. Any judgment as to the significance of any falsity, incompleteness, or unresponsiveness associated with a proposal shall be the prerogative of the City and its judgment shall be final. The City reserves the right to waive minor defects or irregularities in any proposal.

**E. Tour of the Property**

It is the sole responsibility of the Proposers to attend a tour of the Property to become familiar with the Property's physical conditions and limitations, perform their own independent investigation, and become acquainted with the details requisite to their proposed use of the Property. To facilitate this process, the City will conduct a tour. If RFP interest is significant, City may elect to conduct more than one tour. Immediately following a tour, the City will provide proposers with an opportunity to ask questions about the business opportunity and comment on the content of the RFP. All questions, comments or non-substantive suggested changes to the RFP will be noted and taken into consideration by the City. Following the tour, the City will issue any necessary addenda to the RFP. Such addenda will be faxed or e-mailed to all proposers present at the tour at the facsimile number and e-mail address provided to the City. The tour of the Property will be on March 22, 2024 at 11:00 a.m. (meeting in the parking area). The City will not guarantee full and complete access at any other time.

**F. Oral Interview**

Following the evaluation of the written proposals, the three proposers receiving the highest scores may be invited to an oral interview at the option of the Selection Committee. The interview will consist of four (4) standard questions asked of each of the three proposers worth 25 points each. The scores of the oral interview, if any, will be utilized for the final ranking and selection.

**G. Pre-Proposal Conference**

Proposers are encouraged to attend a pre-proposal conference on March 22, 2024 at 10:00 a.m., at the AFM, at 100 Almenay Blvd., San Francisco (in front of the office building). Questions will be addressed at this conference and any available new information will be provided at that time. If you have further questions regarding this RFP, please contact Matt Gagin, [matthew.gagin@sfgov.org](mailto:matthew.gagin@sfgov.org), 415.554.9850.

**H. Selection Process**

This RFP will be advertised on RED's webpage: <http://sfgov.org/realestate/home> . Printed copies of this RFP may be obtained at the Real Estate Division, 25 Van Ness Avenue, Suite 400, San Francisco. The submission deadline for proposals is no later than 5:00 PM local time on **April 12, 2024**. The review panel will evaluate each proposal on the basis of the selection criteria set forth above.

**I. Award of Lease**

After selection of the successful Proposer, the right to negotiate a Lease will be awarded with approval of the Lease being subject to the City Attorney's Office, the Director of Property and the Board of Supervisors, and the Mayor, in each party's sole and absolute discretion. If the successful Proposer does not enter into a mutually acceptable Lease with the City or occupy the Premises within the timelines set forth in Section III. B. 7, herein, the City may terminate negotiations in its sole discretion and shall retain the bid security in accordance with Section III. B. 7, and the City shall have the right to enter into the Lease with any other qualified Proposer that participated in the RFP process.

**V. TERMS AND CONDITIONS FOR RECEIPT OF PROPOSALS**

**A. Errors and Omissions in RFP**

Proposers are responsible for reviewing all portions of this RFP. Proposers are to promptly notify the Department in writing, if the proposer discovers any ambiguity, discrepancy, omission or other error in the RFP. Any such notification should be directed to Matt Gagin, [matthew.gagin@sfgov.org](mailto:matthew.gagin@sfgov.org), 415.554.9850, promptly after discovery, but in no event later than five working days prior to the date for receipt of proposals. Modifications and clarifications will be made by addenda as provided below.

Failure by the Real Estate Division to object to an error, omission or deviation in the proposal will in no way modify the RFP or excuse the vendor from full compliance with the specifications of the RFP or any lease entered into after the RFP.

**B. Inquiries Regarding RFP**

Inquiries regarding the RFP and notifications of an intent to request written modification or clarification of the RFP, must be directed via email to: Matt Gagin at [matthew.gagin@sfgov.org](mailto:matthew.gagin@sfgov.org).

**C. Invitation to Submit Proposals; No Obligations by City to Contract**

This RFP is only an invitation to submit proposals and does not commit the City in any way to enter into a lease agreement. In addition, the issuance of this RFP does not obligate the City to pay any costs whatsoever incurred by anyone in connection with this RFP, including without limitation, (a) responding to this RFP and the preparation and presentation of documents included in the response, (b) any supplements or modifications of this RFP or (c) discussions with the City or other party arising out of or relating to this RFP or the subject matter of this

RFP.

**D. Change Notices**

The Real Estate Division may modify the RFP, prior to the proposal due date, by issuing Bid Addendum(s), which will be posted on the website. The proposer shall be responsible for ensuring that its proposal reflects any and all Bid Addendum(s) issued by the Real Estate Division prior to the proposal due date regardless of when the proposal is submitted. Therefore, the City recommends that the proposer consult the website frequently, including shortly before the proposal due date, to determine if the proposer has downloaded all Bid Addendum(s).

**E. Revision of Proposal**

A proposer may revise a proposal on the proposer's own initiative at any time before the deadline for submission of proposals. The proposer must submit the revised proposal in the same manner as the original. A revised proposed must be received on or before the proposal due date.

In no case will a statement of intent to submit a revised proposal, or commencement of a revision process, extend the proposal due date for any proposer.

At any time during the proposal evaluation process, the Real Estate Division may require a proposer to provide oral or written clarification of its proposal. The department reserves the right to make an award without further clarifications of proposals received.

**F. Reservation of Rights by City**

The issuance of this RFP does not constitute an agreement by the City that any lease will actually be entered into by the City. The City expressly reserves the right at any time to:

1. Waive or correct any defect or informality in any proposal or procedure, as part of the RFP or any subsequent negotiation process;
2. Reject any and all proposals, without indicating any reason for such rejection;
3. Rescind or reissue a Request For Proposals;
4. Select a Tenant by any other means;
5. Modify the selection procedure;
6. Prior to the submission deadline for proposals, modify all or any portion of the selection procedures, including deadlines for accepting responses, the specifications or requirements for the tenant, or the requirements for contents or format of the proposals;
7. Extend deadlines for accepting proposals, or request amendments to proposals after expiration of deadlines, by mailing such change(s) to each proposer; and
8. Determine that no project will be pursued.

**G. Proposer Certification**

By submitting a proposal, the Proposer certifies to the City that (i) the only persons or parties interested in the proposal as principals are those named therein; (ii) the proposal is

tendered without collusion with any other person, including partnerships, firms and corporations; (iii) the Proposer has not paid nor agreed to pay and will not pay or agree to pay any fee or commission, or any other thing of value contingent on the award of a lease agreement for the Premises to any City employee or official, or to any contracting consultant hired by the City for purposes of this project, or to any agent of the City; (iv) if the proposal is accepted, Proposer will execute a Lease for the Premises on or before the deadline specified by the City; and (v) the Proposer understands and accepts all conditions and requirements contained in this RFP.

#### **H. Sunshine Ordinance**

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

Proposers must mark any net worth or other proprietary financial data in submissions and subsequent requests for information as part of the award process, as "**CONFIDENTIAL**" or "**PROPRIETARY**" if the Proposer wants such data to remain undisclosed if they are not awarded a contract. The City shall not in any way be liable or responsible for the disclosure of any such records including, without limitation; those so marked if disclosure is deemed to be required by law or by an order of the court.

The City will not under any circumstances be responsible for any damages or losses incurred by a proposer or any other person or entity because of the release of such financial information.

#### **I. Term of Proposal**

Submission of a proposal signifies that the proposed services and prices are valid for 120 calendar days from the proposal due date and that the quoted prices are genuine and not the result of collusion or any other anti-competitive activity.

#### **J. Proposer's Obligations under the Campaign Reform Ordinance**

Proposers must comply with Section 1.126 of the S.F. Campaign and Governmental Conduct Code, which states:

No person who contracts with the City and County of San Francisco for the rendition of personal services, for the furnishing of any material, supplies or equipment to the City, or for selling any land or building to the City, whenever such transaction would require approval by a City elective officer, or the board on which that City elective officer serves, shall make any contribution to such an officer, or candidates for such an office, or committee controlled by such officer or candidate at any time between commencement of negotiations and the later of either (1) the termination of negotiations for such contract, or (2) three months have elapsed from the date the contract is approved by the City elective officer or the board on which that City elective officer serves.

If a Proposer is negotiating for a contract that must be approved by an elected local officer or the board on which that officer serves, during the negotiation period the Proposer is prohibited from making contributions to:

- the officer's re-election campaign
- a candidate for that officer's office

## RFP for ALEMANY FARMERS' MARKET

- a committee controlled by the officer or candidate.

The negotiation period begins with the first point of contact, either by telephone, in person, or in writing, when a contractor approaches any city officer or employee about a particular contract, or a city officer or employee initiates communication with a potential contractor about a contract. The negotiation period ends when a contract is awarded or not awarded to the contractor. Examples of initial contacts include: (1) a vendor contacts a city officer or employee to promote himself or herself as a candidate for a contract; and (2) a city officer or employee contacts a contractor to propose that the contractor apply for a contract. Inquiries for information about a particular contract, requests for documents relating to a Request for Proposal, and requests to be placed on a mailing list do not constitute negotiations.

Violation of Section 1.126 may result in the following criminal, civil, or administrative penalties:

1. **Criminal.** Any person who knowingly or willfully violates section 1.126 is subject to a fine of up to \$5,000 and a jail term of not more than six months, or both.
2. **Civil.** Any person who intentionally or negligently violates section 1.126 may be held liable in a civil action brought by the civil prosecutor for an amount up to \$5,000.
3. **Administrative.** Any person who intentionally or negligently violates section 1.126 may be held liable in an administrative proceeding before the Ethics Commission held pursuant to the Charter for an amount up to \$5,000 for each violation.

For further information, Proposers should contact the San Francisco Ethics Commission at (415) 581-2300.

### **K. Public Access to Meetings and Records**

If a Proposer is a non-profit entity that receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the S.F. Administrative Code, the proposer must comply with Chapter 12L. The Proposer must include in its proposal (1) a statement describing its efforts to comply with the Chapter 12L provisions regarding public access to Proposer's meetings and records, and (2) a summary of all complaints concerning the proposer's compliance with Chapter 12L that were filed with the City in the last two years and deemed by the City to be substantiated. The summary shall also describe the disposition of each complaint. If no such complaints were filed, the proposer shall include a statement to that effect. Failure to comply with the reporting requirements of Chapter 12L or material misrepresentation in proposer's Chapter 12L submissions shall be grounds for rejection of the proposal and/or termination of any subsequent Agreement reached on the basis of the proposal.

### **L. Objections to RFP Terms**

Should a Proposer object on any ground to any provision or legal requirement set forth in this RFP, the Proposer must, not more than ten calendar days after the RFP is issued, provide written notice to the Real Estate Division, attention Matt Gagin, 25 Van Ness Avenue, #400, San Francisco, CA 94102, setting forth with specificity the grounds for the objection. The failure of a Proposer to object in the manner set forth in this paragraph shall constitute a complete and irrevocable waiver of any such objection.

### **M. Return of Materials**

The City will not return documents or any information submitted in connection with a proposal hereto unless the Proposer has properly designated financial portions of the proposal as confidential at the time of submittal in accordance with the terms above and has then clearly



requested that such information be returned, and provided that the City is legally permitted to return such documents.

**N. Right to Disqualify**

The City reserves the right to disqualify any Proposer to this RFP on the basis of any real or apparent conflict of interest that is disclosed by the proposals submitted or other data available to the City. This disqualification is at the sole discretion of the City.

**O. No Waiver**

No waiver by the City of any provision of this RFP shall be implied from any failure by the City to recognize or take action on account of any failure by a proposer to observe any provision of this RFP.

**P. Lease Approvals**

The Lease will require approval of the City Attorney's Office, the Director of Property and the Board of Supervisors, and the Mayor, in each party's sole and absolute discretion. As part of the approval process, the successful Proposer may be required, at its sole expense, to prepare and provide documents or exhibits and make presentations associated with the Lease as required by such bodies prior to the execution of the Lease.

**VI. MISCELLANEOUS REQUIREMENTS**

**A.** All proposers shall comply with the conditions, requirements, and specifications contained herein, with any departure constituting sufficient cause for rejection of the proposal, subject to City's discretion.

**B.** No proposal will be accepted from any person, firm, partnership, corporation or other entity that is in arrears upon any obligation to the City or that otherwise may be deemed irresponsible, unreliable or unqualified by the City.

**C.** Only one proposal will be accepted from any one person, firm, partnership, corporation or affiliated entities; however, several alternatives may be included in one submittal.

**B.** The information presented in this RFP is provided solely for the convenience of the Proposers and other interested parties. It is the responsibility of the Proposers and other interested parties to assure themselves that the information contained in this RFP is accurate and complete. The City or their advisors provide no assurances pertaining to the accuracy of the information in this RFP.

**C.** The Proposer shall not obtain by its proposal to this RFP, any claim against the City, or any City property, by reason of any or all of the following: any aspect of this RFP, the selection process or any part thereof, any informalities or defects in the selection process, the rejection of any offer or all such offers, the acceptance of any offer, entering into any lease, the failure to enter into such lease, any statement, representations, acts or omissions of the City, the exercise of any discretion set forth in or concerning any of the foregoing; and any other matters arising out of all or any of the foregoing.

Questions regarding this RFP may be directed to Matt Gagin/Claudia J. Gorham, Managing Deputy Director of Real Estate, at (415) 554-9850.

Submitted this March 8, 2024 by Andrico Q. Penick, Director of Real Estate, City and County of San Francisco, California.

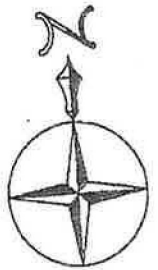
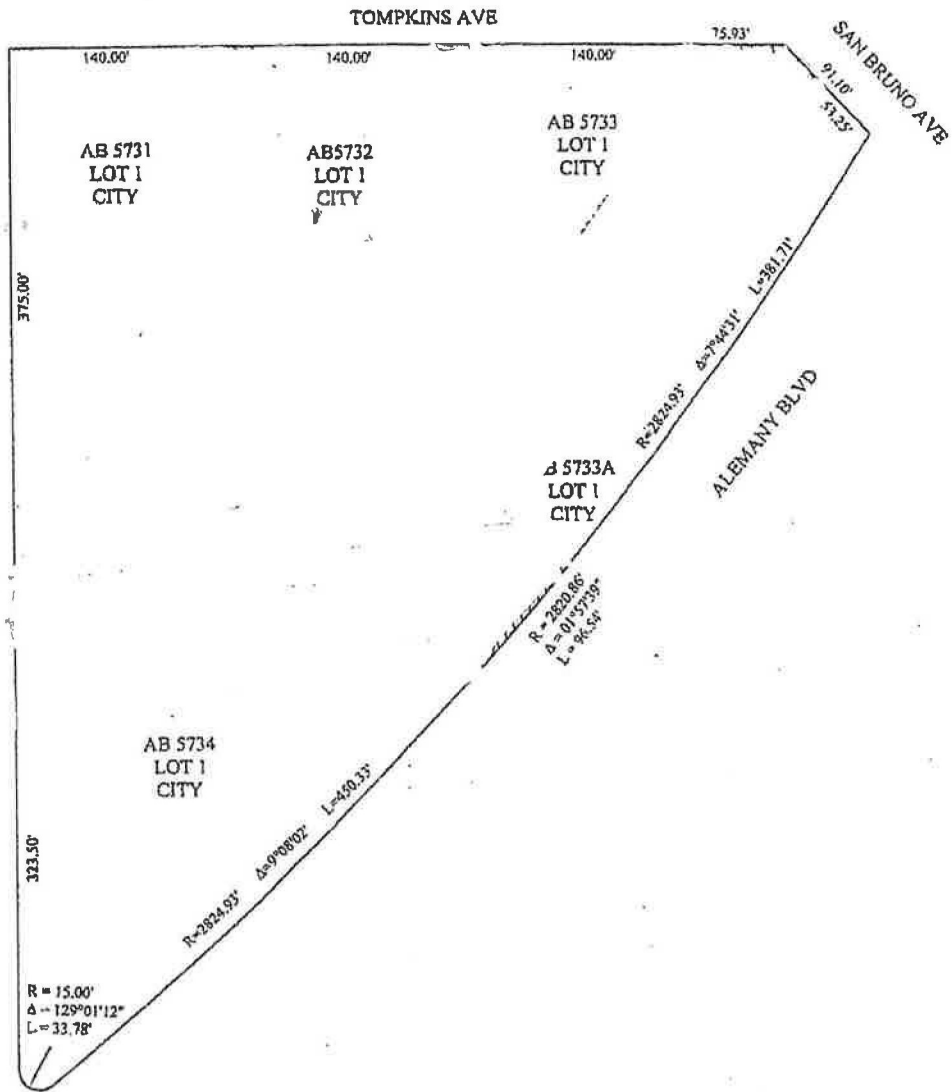
**EXHIBIT A**

**SITE PLAN**

Estimated Number of Parking Spaces: 332



PUTNAM ST



**EXHIBIT B**  
**FORM OF THE LEASE**

LEASE

between

CITY AND COUNTY OF SAN FRANCISCO,  
as Landlord

and

as Tenant

For the lease of  
the real property commonly known as Alemany Farmers' Market  
100 Alemany Boulevard  
(Assessor's Blocks 5733A, Lot 002; 5734, Lot 003; Block 5731, Lots 003 and 004)  
San Francisco, California

DATE

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- EXHIBIT D – TBD
- EXHIBIT E – First Source Hiring Agreement

## LEASE

THIS LEASE (this “**Lease**”), dated for reference purposes only as of \_\_\_\_\_, 2024, is between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“**City**”), and (“**Tenant**”).

City and Tenant hereby covenant and agree as follows:

### 1. BASIC LEASE INFORMATION

The following is a summary of basic lease information (the “**Basic Lease Information**”). Each item below incorporates all of the terms in this Lease related to that item. If there is any conflict between the information in this Section and any more specific provision of this Lease, the more specific provision will control.

Lease Reference Date: \_\_\_\_\_, 2024

Landlord: CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

Tenant:

Property (Section 2.1): Approximately 202,000 square feet of land between Alemany Blvd. to the southeast, Putnam Street to the west, and Tompkins Avenue to the north [APNs 5733A-002, 5734-003 and 5731-003 and 004] 5695, Lot 024], San Francisco, California, see attached **Exhibit A**.

Premises (Section 2.1): Approximately 202,000 square feet of land between Alemany Blvd. to the southeast, Putnam Street to the west, and Tompkins Avenue to the north [APNs 5733A-002, 5734-003 and 5731-003 and 004] 5695, Lot 024], San Francisco, California, including a small office building (911,230 sf) with storage and bathrooms.

Rentable Area of Premises: Approximately 202,00 square feet

Term (Section 3.1): Five years, commencing on the full execution of this Lease (“**Commencement Date**”) subject to prior Board of Supervisors’ and Mayor’s approval  
Estimated commencement date: 2024;  
Expiration date: Five years after the Commencement Date.  
Estimated Expiration Date: 2029

Base Rent (Section 4.1):

Monthly payments:

Rent Adjustment Dates (Section 4.2): Annual percent adjustment each anniversary of the Commencement Date (Section 3.2).

Permitted Use (Section 5.1): Public, private, free and ticketed, events and activities, including opportunities for the community-at-large to access and experience the resource while continuing the Alemany Farmers' Market each and every Saturday of the year (rain or shine).

Tenant Improvements (Section 6): None

Utilities and Services (Section 10): None. Tenant is solely responsible for the cost of all utilities and services, including installation, if any.\_

Security Deposit (Section 22): \$5,000

City's Notice Address (Section 26.1): Real Estate Division  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102  
Attn: Director of Property  
Re: Our Planet Recycling  
Office No.: (415) 554 – 9850  
Email: realestateadmin@sfgov.org

and to: Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102-4682  
Attn: Real Estate & Finance Group  
Re: AFM Lease

Key Contact for City: Matt Gagin

Telephone No.: 415-554-9822

Alternate Contact for City: Lesley Giovannelli

Telephone No.: 415-554-9850

Tenant's Notice Address (Section 26.1):

Key Contact for Tenant:

Telephone No.:

Alternate Contact for Tenant:

Telephone No.:

Brokers (Section 26.8): None.

Other Noteworthy Provisions:

## **2. PREMISES; AS IS CONDITION**

### **2.1. Lease Premises**

Subject to the provisions of this Lease, City leases to Tenant and Tenant leases from City those premises identified in the Basic Lease Information and depicted on the attached **Exhibit A** (the “**Premises**”). The rentable area of the Premises specified in the Basic Lease Information will be conclusive for all purposes. The Premises shall include all improvements thereon and appurtenances thereto. The Premises, the land including the Premises, and all other improvements on and appurtenances to the land are referred to collectively as the “**Property**.”

### **2.2. Accessibility Disclosures**

(a) California Civil Code Section 1938 requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist (“**CASp**”) to determine whether the property meets all applicable construction-related accessibility requirements. The law does not require landlords to have the inspections performed. Tenant is advised that the Premises have not been inspected by a CASp. A CASp can inspect the Premises and determine if they comply with all the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the Premises, City may not prohibit Tenant from obtaining a CASp inspection of the Premises for the occupancy or potential occupancy of Tenant if requested by Tenant. City and Tenant will mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the CASp inspection fee, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises.

### **2.3. As Is Condition**

TENANT ACKNOWLEDGES AND AGREES THAT THE PREMISES ARE BEING LEASED AND ACCEPTED IN THEIR “AS IS” CONDITION, WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, AND SUBJECT TO ALL APPLICABLE LEGAL REQUIREMENTS (AS DEFINED IN SECTION 11.1 (COMPLIANCE WITH LAWS) BELOW) GOVERNING THEIR USE, OCCUPANCY, AND POSSESSION. TENANT REPRESENTS AND WARRANTS TO CITY THAT TENANT HAS INVESTIGATED AND INSPECTED, EITHER INDEPENDENTLY OR THROUGH AGENTS OF TENANT’S OWN CHOOSING, THE CONDITION OF THE PREMISES AND THE SUITABILITY OF THE PREMISES FOR TENANT’S INTENDED USE. BASED SOLELY ON ITS OWN INVESTIGATION, TENANT HAS DETERMINED THAT THE PREMISES ARE SUITABLE FOR TENANT’S BUSINESS AND INTENDED USE. TENANT ACKNOWLEDGES AND AGREES THAT NEITHER CITY NOR ANY OF ITS AGENTS (AS DEFINED IN SECTION 26.5 (PARTIES AND THEIR AGENTS, APPROVALS) BELOW) HAVE MADE, AND CITY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE RENTABLE AREA OF THE PREMISES, THE PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PREMISES OR THE PROPERTY, THE PRESENT OR FUTURE SUITABILITY OF THE PREMISES FOR TENANT’S BUSINESS, OR ANY OTHER MATTER WHATSOEVER

RELATING TO THE PREMISES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

#### **2.4. Energy Consumption Disclosure**

Tenant consents to Tenant's utility service providers disclosing energy use data for the Premises to City for use under California Public Resources Code Section 25402.10, as implemented under California Code of Regulations Sections 1680–1685, and San Francisco Environment Code Chapter 20, as each may be amended from time to time ("**Energy Consumption Reporting Laws**"), and for such data to be publicly disclosed under the Energy Consumption Reporting Laws.

### **3. TERM**

#### **3.1. Lease Term**

The Premises are leased for a term (the "**Term**") commencing on the date the Lease is fully executed by all parties, subject to approval by resolution of City's Board of Supervisors and Mayor. The Term will end on the expiration date specified in the Basic Lease Information, unless sooner terminated as provided in this Lease. The Term may be extended as provided in Section 25.1 (Extension Option).

#### **3.2. Confirmation of Commencement Date and Expiration Date**

The dates that the Term commences and terminates under this Lease are, respectively, the "**Commencement Date**" and the "**Expiration Date**." If the Commencement Date occurs on a date other than that specified in the Basic Lease Information as the estimated commencement date (the "**Estimated Commencement Date**"), then promptly following the Commencement Date, Tenant will deliver to City a notice substantially in the form attached as **Exhibit B**, confirming the actual Commencement Date, but Tenant's failure to do so will not affect the commencement of the Term.

### **4. RENT**

#### **4.1. Base Rent**

Throughout the Term beginning on the Commencement Date, Tenant will pay to City the annual Base Rent specified in the Basic Lease Information, which will increase percent (x%) annually under Section 4.2 (Adjustments in Base Rent) (the "**Base Rent**"). The Base Rent will be paid to City in advance, without prior demand and without any deduction, setoff, or counterclaim whatsoever, in equal consecutive monthly payments on or before the first day of the Term and on or before the first day of each month thereafter. All sums payable by Tenant to City must be paid in cash or by good funds to the City and County of San Francisco in care of the Director of Property at the primary address for City specified in the Basic Lease Information, or such other place as City may designate in writing. If Tenant pays by personal or business check and the check is not honored, then City may require Tenant to make all future payments in cash or by cashier's check. If the Commencement Date occurs on a day other than the first day of a calendar month, or the Expiration Date occurs on a day other than the last day of a calendar month, then the Base Rent for the partial month will be prorated based on a thirty (30) day month. Within five (5) days after the parties execute this Lease, Tenant will pay to City the Base Rent for the first full month.

#### **4.2. Adjustments in Base Rent**

On each date specified in the Basic Lease Information for adjustment of the Base Rent (an “**Adjustment Date**”), the Base Rent payable under this Lease will be adjusted by     percent (x%).

#### **4.3. Additional Charges**

Tenant will pay to City all charges and other amounts required under this Lease as additional rent, whether or not those amounts are specifically characterized as rent (collectively, “**Additional Charges**”). All Additional Charges will be payable to City at the same place and the same manner as the Base Rent. City will have the same remedies for a default in the payment of any Additional Charges as for a default in the payment of Base Rent. The term “**Rent**” means Base Rent and Additional Charges.

#### **4.4. Late Charges**

Each time Tenant fails to pay any Rent or any portion of Rent within five (5) days following the due date, the unpaid amount will be subject to a late payment charge equal to six percent (6%) of the unpaid amount. City and Tenant have agreed on the late payment charge, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that City will incur resulting from Tenant’s failure to timely pay Rent, the actual costs being extremely difficult if not impossible to determine. Tenant will pay the late charge to City together with the unpaid amount.

#### **4.5. Default Interest**

Any Rent, if not paid within five (5) days after the due date, will bear interest from the due date until paid the Prime Rate most recently announced by Bank of America, for the immediately preceding month, plus four percent (4%), which rate will automatically be reduced if it is higher than the rate an individual is permitted to legally charge (the “**Interest Rate**”). Interest will not be payable on late charges or on any amounts on which Tenant paid late charges to the extent this interest would cause the total interest to be more than lawfully permitted. Payment of interest will not excuse or cure any default by Tenant.

#### **4.6. Costs of Collection**

In addition to any interest or late charges under Section 4.4 and Section 4.5 above, if Tenant fails to pay Rent in immediately available funds or by good check (if Tenant is permitted to pay by personal or business check), to the extent that the costs incurred by City because of Tenant’s failure exceed the late charges applicable to that failure, then Tenant will pay to City immediately upon demand as Additional Charges the amount of any fees, charges, or other costs incurred by City, including dishonored check fees, increased staff time, and any costs of collection.

### **5. USE**

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

Tenant will use and continuously occupy the Premises during the Term solely for the uses specified in the Basic Lease Information (the “**Permitted Use**”), and for no other purpose. Tenant acknowledges that this prohibition on the change in use is expressly authorized by California Civil Code Section 1997.230 and is fully enforceable.

#### **5.2. No Unlawful Uses, Nuisances or Waste**

Without limiting the foregoing, Tenant may not use, occupy, or permit the use or occupancy of any of the Premises in a manner that would violate any Legal Requirements or for

any illegal purpose, or permit any offensive, noisy, or hazardous use or any waste on or about the Premises. Tenant will take all precautions to eliminate any nuisances or hazards relating to its activities on or about the Premises. Tenant may not conduct any business, place any sales display, or advertise in any manner in areas outside the Premises, Building, or on or about the Property except identification signs in a location and size and design approved by City in its sole discretion.

## TO BE DETERMINED RENT CREDIT

### 6. TENANT IMPROVEMENTS

#### 6.1. Tenant Improvement Work

Tenant is responsible, at no cost to City, for (a) performing any construction and installation of tenant improvements in the Premises (the “**Tenant Improvement Work**” or “**Tenant Improvements**”) in accordance with plans and specifications that are approved in advance by the Director of Property (“**Plans**”) and the standards contained in Section 7.1 (Tenant’s Alterations) below and (b) obtaining all permits and licenses required in connection with the Tenant Improvements. No Tenant Improvement Work may commence in the Premises unless and until this Lease is approved by City’s Board of Supervisors and Mayor as further provided in Section 26.25 (Effective Date) below and is fully executed. Tenant may not make any material change to the approved Plans or consent to any change order during the course of construction without first obtaining City’s written approval. Tenant will ensure that the Tenant Improvement Work does not obstruct access to or through the Building/Common Area and that it does not interfere with City’s business being conducted in the Building, other tenant’s use of their premises, or with any other work being done in the Building. On completion of the Tenant Improvements, Tenant will provide City a copy of the final as-built plans and specifications. No approval by City or any of its Agents of the Plans, any changes, or of any Alterations under this Lease will be deemed to constitute approval of any federal, state, or local regulatory authority with jurisdiction over the Premises or Tenant’s use of the Premises, and nothing in this Lease limits Tenant’s obligation to obtain all needed regulatory approvals at no cost to City.

#### 6.2. Local Hiring Requirements

(a) Any undefined, initially-capitalized term used in this Section has the meaning given to that term in San Francisco Administrative Code Section 23.62 (the “**Local Hiring Requirements**”). Tenant Improvements and Alterations (as defined in Section 7.1 (Tenant’s Alterations)) are subject to the Local Hiring Requirements unless the cost for the work is (i) estimated to be less than \$750,000 per building permit or (ii) meets any of the other exemptions in the Local Hiring Requirements. Tenant will comply with the Local Hiring Requirements to the extent applicable. Before starting any Tenant Improvement Work or any Alteration, Tenant will contact City’s Office of Economic Workforce and Development (“**OEWD**”) to verify if the Local Hiring Requirements apply to the work (i.e., whether the work is a “**Covered Project**”).

(b) In any contract for a Covered Project, Tenant will include, and will require its subtenants to include, a requirement to comply with the Local Hiring Requirements with specific reference to San Francisco Administrative Code Section 23.62. Each contract will name the City and County of San Francisco as a third party beneficiary for the limited purpose of enforcing the Local Hiring Requirements, including the right to file charges and seek penalties.



Tenant will cooperate, and require its subtenants to cooperate, with City in any action or proceeding against a contractor or subcontractor that fails to comply with the Local Hiring Requirements when required. Tenant's failure to comply with its obligations under this Section will constitute a material breach of this Lease. A contractor's or subcontractor's failure to comply with this Section will enable City to seek the remedies specified in San Francisco Administrative Code Section 23.62 against the breaching party.

### **6.3. Prevailing Wages and Working Conditions**

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

(b) Tenant will include, and will require its subtenants, and Contractors and Subcontractors (regardless of tier), to include in any Construction Contract the Prevailing Wage Requirements, with specific reference to San Francisco Administrative Code Section 23.61, and the agreement to cooperate in City enforcement actions. Each Construction Contract will name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third-party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any Contractor or Subcontractor in accordance with San Francisco Administrative Code Section 23.61. Tenant's failure to comply with its obligations under this Section will constitute a material breach of this Lease. A Contractor's or Subcontractor's failure to comply with this Section will enable City to seek the remedies specified in San Francisco Administrative Code Section 23.61 against the breaching party. For the current Prevailing Rate of Wages, see [www.sfgov.org/olse](http://www.sfgov.org/olse) or call City's Office of Labor Standards Enforcement at 415-554-6235.

(c) Tenant will also pay, and will require its subtenants, and Contractors and Subcontractors (regardless of tier) to pay, the Prevailing Rate of Wage for the following activities on the Premises as set forth in and to the extent required by San Francisco Administrative Code Chapter 21C: a Public Off-Street Parking Lot, Garage or Automobile Storage Facility (as defined in Section 21C.3), a Show (as defined in Section 21C.4), a Special Event (as defined in Section 21C.8), Broadcast Services (as defined in Section 21C.9), Commercial Vehicles, Loading and Unloading for Shows and Special Events (as defined in Section 21C.10), and Security Guard Services for Events (as defined in Section 21C.11).

## **7. ALTERATIONS**

### **7.1. Tenant's Alterations**

(a) **General.** Tenant will not make or permit any alterations, installations, additions, or improvements, structural or otherwise (collectively, "**Alterations**") (i) in, to or about

the Premises without City's prior written consent in each instance. All Alterations will be done at Tenant's expense in accordance with plans and specifications approved by City, only by duly licensed and bonded contractors or mechanics approved by City, and subject to any conditions that City may reasonably impose. Tenant will obtain the prior written approval of City's Arts Commission to the extent the Arts Commission has jurisdiction over the design of the proposed alterations under City's Charter Section 5.103.

**(b) Asbestos.** Without limiting Section 24.2 (No Hazardous Materials) below, if it is determined that asbestos-containing materials ("ACM") exist in or about the Premises, Tenant will ensure that all Alterations and any asbestos-related work, as defined in California Health & Safety Code Section 25914.1(b), is performed in compliance with all Legal Requirements relating to asbestos, including California Occupational Safety and Health (OSHA) regulations found in Title 8 of the California Code of Regulations, Sections 1502 and 1529. Additionally, Tenant will distribute notifications to all employees and contractors as required under California Health & Safety Code Section 25915 et seq. informing them of the existence of ACM and that moving, drilling, boring, or otherwise disturbing ACM may present a health risk and should not be attempted by an unqualified employee. No Alterations affecting ACM-containing areas or any asbestos related work may be performed without City's prior written consent in each instance.

**(c) Prevailing Wage and Local Hiring Requirements.** Tenant and its subtenants will comply with the applicable requirements of Section 6.2 (Local Hiring Requirements) and Section 6.3 (Prevailing Wages and Working Conditions) above in the performance of any Alterations.

## **7.2. Title to Improvements**

Except for Tenant's Personal Property (as described in the next section), or as may be specifically provided to the contrary in the approved Plans, all appurtenances, fixtures, improvements, equipment, additions, and other property attached or affixed to or installed in the Premises at the Commencement Date or during the Term, including the Tenant Improvements and any Alterations, will be and remain, City's property. Tenant may not remove any City property at any time during or after the Term unless City so requests as further provided in Section 23 (Surrender of Premises) below.

## **7.3. Tenant's Personal Property**

All furniture, trade fixtures, office equipment, and articles of movable personal property installed in the Premises by or for the account of Tenant, without expense to City, and that can be removed without structural or other damage to the Premises, including the security guard shed, awning, storage unit, shed, and trailer installed by Tenant (collectively, "**Tenant's Personal Property**") will be and remain, Tenant's property. Tenant may remove its Personal Property at any time during the Term, subject to the provisions of Section 23 (Surrender of Premises) below. Tenant will pay any taxes or other impositions levied or assessed on Tenant's Personal Property, at least ten (10) days before delinquency, and, on request, deliver satisfactory evidence of that payment to City.

## **8. REPAIRS AND MAINTENANCE**

### **8.1. City's Repairs**

City shall have no obligation to maintain the Premises, any existing improvements or structure, any Tenant Improvements or Alterations or ensure access to, through, or from the Premises. Tenant waives any claim for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises, or any other loss occasioned thereby.

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

At no expense to City, Tenant will maintain (and replace, if necessary) the Premises in good repair and working order and in a clean, secure, safe, and sanitary condition. Tenant will promptly make all repairs and replacements: **(a)** at no cost to City, **(b)** by licensed contractors or qualified mechanics approved by City, **(c)** so that the repairs and replacements will be at least equal in quality, value, and utility to the original work or installation, **(d)** in a manner and using equipment and materials that will not interfere with or impair the permitted use and adjacent parcels, and **(e)** in compliance with all applicable Legal Requirements (Section 11.1). If the cost of any those repairs or replacements is in excess of Five Thousand Dollars (\$5,000) in any instance and results from the acts or omissions of Tenant, its Agents, or Invitees, then Tenant will pay to City an administrative fee equal to ten percent (10%) of the total "hard" costs of the work. Tenant hereby waives all rights to make repairs at City's expense under Sections 1941 and 1942 of the California Civil Code or under any similar Legal Requirements. Tenant will give to City at least fifteen (15) days' prior written notice of commencement of any repair, replacement, or construction on the Premises.

## **9. LIENS AND ENCUMBRANCES**

### **9.1. Liens**

Tenant will keep the Premises and the rest of the Property free from any liens arising out of any work performed, material furnished, or obligations incurred by or for Tenant. If, within five (5) days after the imposition of any lien, Tenant does not cause the lien to be released of record by payment or posting a bond, then, in addition to all other remedies, City may, but is not obligated to, cause the lien to be released in any way it deems proper, including payment of the claim giving rise to the lien. All sums paid by City and all expenses incurred by it in connection with releasing the lien (including reasonable attorneys' fees) will be payable by Tenant to City on demand. City may post on the Premises any notices that City may deem proper for the protection of City, the Premises, and the Building from mechanics' and material supplier's liens. Tenant will indemnify, defend, and hold City and its Agents harmless from and against any claims for mechanic's, material supplier's, or other liens in connection with any Alterations, repairs, or construction on the Premises, or materials furnished or obligations incurred by or for Tenant.

### **9.2. Encumbrances**

Tenant may not create, permit, or suffer any liens or encumbrances affecting any portion of the Premises, the Property, or City's interest in the Property or under this Lease.

## 10. UTILITIES AND SERVICES

Tenant acknowledges utilities available to the Premises, and City shall have no obligation to provide for any utilities or pay for any utilities at the Premises.

## 11. COMPLIANCE WITH LEGAL REQUIREMENTS AND RISK MANAGEMENT REQUIREMENTS

### 11.1. Compliance with Legal Requirements

At no cost to City, Tenant will promptly comply with all present or future federal, state, local, and administrative laws, ordinance, resolution, regulation, requirement, proclamation, order, or decree of any municipal, county, state, or federal government or other governmental or regulatory authority, board of fire underwriters, or any directive or occupancy certificate issued under any law by any public officer or officers acting in their regulatory capacity (now or later in effect, collectively “**Legal Requirements**”) relating to the Premises or the Property or the use or occupancy of the Premises and with any and all recorded covenants, conditions, and restrictions affecting all or any portion of the Property, whether in effect at the time of the execution of this Lease or adopted or recorded at any time later and whether or not they were considered by the parties in negotiating this Lease. It is Tenant’s obligation, at no cost to City, to cause the Premises and Tenant’s uses thereof to be conducted in compliance with the Americans With Disabilities Act, 42 U.S.C. Section 12101 et seq. and any other applicable disability access Legal Requirements. Tenant will not be required to make any structural Alterations in order to comply with disability access Legal Requirements unless the Alterations are required, in whole or in part, directly or indirectly, by the Tenant Improvements or any other Alterations, Tenant’s use of the Premises, or any act or omission of Tenant, its Agents, or Invitees. Any Alteration made by or on behalf of Tenant under the provisions of this Section will comply with the provisions of Section 8.2 (Tenant’s Repairs) above. Tenant’s obligation to comply with all Legal Requirements is a material part of the bargained-for consideration under this Lease. Tenant’s obligation under this Section includes its responsibility to make substantial or structural repairs and Alterations to the Premises (including any of the Tenant Improvements or any of Tenant’s Alterations), regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term, the relative benefit of the repairs to Tenant or City, the degree to which the curative action may interfere with Tenant’s use or enjoyment of the Premises, the likelihood that the parties contemplated the particular Legal Requirements involved, and whether the Legal Requirements involved are related to Tenant’s particular use of the Premises.

### 11.2. Regulatory Approvals

(a) **Responsible Party.** Tenant’s use of the Premises and construction of any Alterations permitted hereunder may require authorizations, approvals, or permits from governmental regulatory agencies with jurisdiction over the Premises, including City agencies such as the Department of Public Works. Tenant is solely responsible for obtaining all regulatory approvals. Tenant may not seek any regulatory approval without first obtaining City’s written consent. Tenant will bear all costs associated with applying for and obtaining any regulatory approval and is solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval; provided, however, any condition that could affect use or occupancy of the Property or City’s interest in the Property will first be approved by City in its sole discretion. Tenant will immediately pay and discharge any fines or penalties levied as a result of Tenant’s failure to comply with the terms and conditions of any regulatory approval, and City

will have no liability, monetary or otherwise, for any fines or penalties. Tenant will Indemnify City and the other Indemnified Parties (defined in Section 18.2 (Tenant's Indemnity) below) against all Claims arising in connection with Tenant's failure to obtain or failure by Tenant, its Agents, or its Invitees to comply with the terms and conditions of any regulatory approval.

(b) **City Acting as Owner of Real Property.** City is entering into this Lease in its capacity as a property owner with a proprietary interest in the Premises and not as a regulatory agency with police powers. Nothing in this Lease will limit in any way Tenant's obligation to obtain any required approvals from City officials, departments, boards, agencies, commissions, or other body having jurisdiction over the Premises. By entering into this Lease, City is not modifying or limiting Tenant's obligation to cause the Premises to be used and occupied in accordance with all applicable Legal Requirements.

### **11.3. Compliance with City's Risk Management Requirements**

Tenant will not do anything, or permit anything to be done, in or about the Premises that would be prohibited by or increase rates under a standard form fire insurance policy or subject City to potential premises liability. At no cost to City, Tenant will faithfully observe any and all requirements of City's Risk Manager with respect to Tenant's use and occupancy of the Premises.

## **12. SUBORDINATION**

This Lease is and will be subordinate to any reciprocal easement agreement, ground lease, facilities lease, or other underlying lease and the lien of any mortgage or deed of trust and all renewals, modifications, consolidations, replacements, and extensions of any of the foregoing, that may now exist or later be executed by City affecting the Property or City's interest in the Property, without the necessity of executing any instrument to effectuate the subordination. Notwithstanding the foregoing, City or the holder will, in its respective discretion, may elect not to subordinate those interests to this Lease. If any ground lease or underlying lease terminates for any reason or any mortgage or deed of trust is foreclosed or a conveyance in lieu of foreclosure is made for any reason, Tenant will attorn to City's successor-in-interest, if desired by the successor-in-interest. The provisions of this Section are self-operative and no further instrument will be required. On City's demand, however, Tenant will execute and deliver any additional documents in the form requested by City evidencing the priority or subordination of this Lease.

## **13. INABILITY TO PERFORM**

No actual or constructive eviction, in whole or in part, will entitle Tenant to any abatement or reduction of Rent or relieve Tenant from any of its obligations under this Lease. If City is unable to perform or is delayed in performing any of City's obligations under this Lease by reason of acts of God, accidents, breakage, repairs, strikes, lockouts, other labor disputes, protests, riots, demonstrations, inability to obtain utilities or materials, or by any other reason beyond City's reasonable control, then that inability or delay will not constitute an eviction under this Lease, or impose any liability on City or its Agents because of the inconvenience, annoyance, interruption, injury, or loss to or interference with Tenant's business or use and occupancy or quiet enjoyment of the Premises or any other loss or damage due to City's inability or delay. Tenant waives and releases any right to terminate this Lease under Section 1932, subdivision 1 of the California Civil Code or any similar Legal Requirements.

## 14. DAMAGE AND DESTRUCTION

If all or any portion of the Premises are damaged by casualty but the Premises remain tenantable for the Permitted Use, then the damage will be repaired in accordance with Section 8 (Repairs and Maintenance) above. If the Premises or any portion of it are completely destroyed by any cause, or are so damaged that the Premises are untenable, then, within forty-five (45) days after the date the destruction or damage, City will give Tenant written notice whether or not City will repair the Premises so that the Premises are in a tenantable condition for Tenant's Permitted Use (the "**Repairs**") within one hundred eighty (180) days after the date of the destruction or damage. If City's notice states that the Repairs will not be made within one hundred eighty (180) days after the date of the damage or destruction, then either City or Tenant may terminate this Lease by written notice given to the other within thirty (30) days after receipt of City's Repair notice. If neither party terminates this Lease, then, with due diligence, City will repair the Premises for the Permitted Use, and City will proportionally reduce the Base Rent (based upon the extent that the damage and the Repairs materially interferes with Tenant's Permitted Use of the Premises) that would be payable between the date of the damage and the date the repairs are substantially completed.

Notwithstanding anything to the contrary in this Lease, if the Premises are damaged or destroyed in the last twelve (12) months of the Term, then either party may terminate this Lease upon written notice to the other party given within thirty (30) days after the damage or destruction occurs; provided, however, Tenant may terminate only if such damage or destruction substantially impairs its use or occupancy of the Premises for the uses permitted hereunder. The effective date of termination shall be specified in the notice of termination; which date shall not be more than thirty (30) days from the date of the notice.

City shall have no obligation to repair the Premises in the event the damage or destruction is attributable to any act or omission of Tenant, its Agents, or Invitees. In no event shall City be required to repair any damage to Tenant's Personal Property or any Tenant Improvements or Alterations installed or made on the Premises by or at the expense of Tenant, including those existing on the Premises at the time of the Commencement of this Lease. In the event the Premises is substantially damaged or destroyed and City intends to repair for public purposes inconsistent with the Lease, City may terminate this Lease upon written notice to Tenant.

City and Tenant intend that in the event of any damage or destruction to the Premises that this Section 14 will govern the rights and obligation of the parties; accordingly, Tenant waives the provisions of Subdivision 2 of Section 1932 of the California Civil Code and the provisions of Subdivision 4 of Section 1933 of the California Civil Code, and all similar Legal Requirements.

## 15. EMINENT DOMAIN

### 15.1. 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 any Legal Requirements. A Taking may occur under 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 that title to the portion of the Property taken passes to and vests in the condemnor or (ii) the date that Tenant is dispossessed.

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

(d) “Improvements Pertaining to the Realty” means machinery or equipment installed for use on the Property that cannot be removed without a substantial economic loss or without substantial damage to the Property, regardless of the method of installation. In determining whether particular machinery or equipment can be removed “without a substantial economic loss,” the value of the machinery or equipment in place and considered as part of the realty should be compared with its value if it were removed and sold.

## **15.2. 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 under this Lease will be determined under this Section. City and Tenant intend that the provisions of this Section 15 govern fully in the event of a Taking and accordingly, the parties each 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 Legal Requirements.

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

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

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

(a) If there is a Taking of any portion (but less than all) of the Premises, then this Lease will terminate in its entirety under either of the following circumstances: (i) if all of the following exist: (A) the partial Taking renders the remaining portion of the Premises untenable or unsuitable for Tenant’s continued use, (B) the condition rendering the Premises untenable or unsuitable either is not curable or is curable but City is unwilling or unable to cure the condition, and (C) Tenant elects to terminate; or (ii) if City elects to terminate; provided, however, that this Lease will not terminate if Tenant agrees to, and does, pay full Rent, without abatement, and otherwise agrees to, and does, fully perform all of its obligations under this Lease.

(b) If there is a partial Taking of a substantial portion of the Building but not the Premises, City may terminate this Lease in its entirety.

(c) Either party electing to terminate under the provisions of this Section 15.4 will do so by giving written notice to the other party before or within thirty (30) days after the Date of Taking, and this Lease will terminate on the later of the thirtieth (30th) day after the written notice is given or the Date of Taking.

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

On termination of this Lease in its entirety under Section 15.3 (Total Taking; Automatic Termination), or under an election under Section 15.4 (Partial Taking, Election to Terminate) above, then: (a) Tenant’s obligation to pay Rent will continue only up to date of termination, and (b) City will be entitled to the entire Award (including any portion of the Award made for the value of the leasehold estate created by this Lease and any Improvements Pertaining to the Realty). Tenant will have no claim against City for the value of any unexpired Term, but Tenant may make a separate claim with the condemnor for Tenant’s relocation expenses or the interruption of or

damage to Tenant's business, or damage to movable Tenant's Personal Property, and Tenant will be entitled to that separate Award.

#### **15.6. Partial Taking; Continuation of Lease**

If there is a partial Taking of the Premises and this Lease is not terminated in its entirety under Section 15.4 (Partial Taking; Election to Terminate), then this Lease will terminate as to the portion of the Premises taken, but will remain in full force and effect as to the portion not taken, and the rights and obligations of the parties will be as follows: **(a)** Base Rent will be reduced by an amount that is in the same ratio to the Base Rent as the area of the Premises taken bears to the area of the Premises before the Date of Taking; provided, that in no event will the monthly Base Rent be reduced to less than seventy-five percent (75%) of the monthly Base Rent immediately before the Date of Taking, and **(b)** City will be entitled to the entire Award (including any portion of the Award made for the value of the leasehold estate created by this Lease). Tenant will have no claim against City for the value of any unexpired Term, but Tenant may make a separate claim with the condemnor for Tenant's relocation expenses or the interruption of or damage to Tenant's business, or damage to movable Tenant's Personal Property, and Tenant will be entitled to that separate Award.

#### **15.7. Temporary Takings**

Notwithstanding anything to contrary in this Section, if there is a Taking of all or any part of the Premises for less than one hundred eighty (180) consecutive days, then **(a)** this Lease will not be affected by the temporary Taking; **(b)** Tenant will continue to pay Rent and perform all of the terms, conditions, and covenants of this Lease; **(c)** Tenant will be entitled to receive that portion of any Award for the use or occupancy of the Premises up to the total Rent owing by Tenant for the period of the Taking; and **(d)** City will be entitled to receive the balance, if any, of the Award.

### **16. ASSIGNMENT AND SUBLETTING**

#### **16.1. Restriction on Assignment and Subletting**

Tenant may not directly or indirectly (including by merger, acquisition, or other transfer of any controlling interest in Tenant), voluntarily or by operation of law, sell, assign, encumber, pledge, or otherwise transfer any part of its interest in or rights with respect to the Premises or its leasehold estate hereunder (collectively, an "**Assignment**"), or permit or license any portion of the Premises to be used or occupied by anyone other than itself, or sublet any portion of the Premises (collectively, "**Sublease**"), without City's prior written consent in each instance, as provided below. Notwithstanding the foregoing, Tenant may Assign this Lease or Sublet any or all portions of the Premises to any Tenant's Affiliate (as defined below) without obtaining City's consent by giving City written notice of its intent thereof at least fifteen (15) business days before the proposed effective date of the transfer. As used in this Section, the term "**Tenant's Affiliate**" means any of the following: **(a)** any person or entity owning, directly or indirectly, fifty percent (50%) or more of the ownership interests of Tenant (an "**Owning Person**"), **(b)** any entity, fifty percent (50%) or more of the ownership interests of which are owned, directly or indirectly, by any Owning Person, **(c)** any entity, fifty percent (50%) or more of the ownership interests of which are owned, directly or indirectly, by Tenant.



## 16.2. Notice of Proposed Transfer

If Tenant desires to enter into an Assignment or a Sublease, it will give written notice (a “**Notice of Proposed Transfer**”) to City of its intention to do so. The Notice of Proposed Transfer will identify the proposed transferee and state the terms and conditions of the proposed Assignment or Sublease. Tenant will deliver to City with its request for City’s consent, the proposed Assignment or Sublease and current financial statements of the proposed Transferee, prepared by an independent certified public accountant, and promptly on City’s request, any additional documents or information reasonably related to the proposed transaction or Transferee.

## 16.3. City’s Response

(a) Within twenty (20) business days after City’s receipt of the Notice of Proposed Transfer (the “**Response Period**”), by written notice to Tenant, City may elect to: (i) sublease the portion of the Premises specified in the Notice of Proposed Transfer on the terms and conditions set forth in the notice, except as otherwise provided in Section 16.4 (City Sublease or Recapture Space) (a “**City Sublease**”), or (ii) terminate this Lease as to the portion of the Premises that is specified in the Notice of Proposed Transfer, with a proportionate reduction in Base Rent (a “**Recapture**”).

(b) If City declines to exercise either of its options under subsection (a) above, then Tenant will have ninety (90) days following the earlier of (i) City’s notice that it will not elect either option or (ii) the expiration of the Response Period, to enter into the Assignment or Sublease, subject to City’s prior written approval of the proposed assignee or subtenant (in either case, a “**Transferee**”) and the terms and conditions of the proposed Sublease or Assignment. Fifty percent (50%) of any rent or other consideration realized by Tenant under any Assignment or Sublease in excess of the Base Rent and Additional Charges will be paid to City, after Tenant has recovered any reasonable brokers’ commissions and the reasonable cost of any leasehold improvements that Tenant has incurred in connection with the Sublease or Assignment. Tenant will provide City with any information regarding the proposed Transferee and the Assignment or Sublease as City may reasonably request. City will not unreasonably withhold its approval of any proposed Transferee. If Tenant does not enter into the Assignment or Sublease within ninety (90) days after the earlier of the events described in clauses (i) or (ii) above, then Tenant will submit a new Notice of Proposed Transfer for any Assignment or Sublease.

(c) If, after City declines to exercise any of the options under subsection (a) above, Tenant desires to enter into an Assignment or a Sublease (i) on terms and conditions materially more favorable to Tenant than those contained in the Notice of Proposed Transfer or (ii) with a Transferee that is currently a tenant or other occupant of the Building, then Tenant will give City a new Notice of Proposed Transfer, which notice will state the terms and conditions of the Assignment or Sublease and identify the proposed Transferee, and City will again be entitled to elect one of the options provided in subsection (a) at any time within twenty (20) business days after City’s receipt of the new Notice of Proposed Transfer.

(d) If City elects either of the options provided in subsection (a), City may enter into a lease, sublease, or assignment agreement for the Premises (or portion specified in the Notice of Proposed Transfer) with any party, including the proposed Transferee identified in Tenant’s notice.

(e) Notwithstanding the foregoing, if any Event of Default by Tenant has occurred and is continuing at the time of Tenant’s Notice of Proposed Transfer (or if any event occurs that, with the giving of notice or the passage of time or both, would constitute an Event of

Default), then City may elect by notice to Tenant to refuse to consent to Tenant's proposed Transfer and pursue any of its right or remedies or at law or in equity.

#### **16.4. City Sublease or Recapture Space**

If City elects to Sublease or Recapture from Tenant as described in Section 16.3 (City's Response), then the following apply:

(a) In the case of a City Sublease, (i) City may use the portion of the Premises covered by the Notice of Proposed Transfer (the "**City Sublease Space**") for any legal purpose, (ii) the rent payable by City to Tenant will be the lesser of (A) the amount in the Notice of Proposed Transfer or (B) the Base Rent payable by Tenant under this Lease at the time of the City Sublease (or, if the City Sublease is for less than the entire Premises, the amount proportionate to the City Sublease Space), (iii) City may make alterations and improvements to the City Sublease Space and may remove any alterations or improvements, in whole or in part, before or on the expiration of the City Sublease, provided that City will repair any damage or injury to the City Sublease Space caused by that removal, (iv) City will have the right to further sublease or assign the City Sublease Space to any party, without Tenant's consent, and (v) Tenant will pay to City on demand any costs incurred by City in physically separating the City Sublease Space (if less than the entire Premises) from the balance of the Premises and in complying with any applicable Legal Requirements or regulations relating to the separation.

(b) In the case of Recapture, (i) the portion of the Premises subject to the Recapture (the "**Recapture Space**") will be deleted from the Premises for all purposes under this Lease, and Tenant and City will be relieved of all their rights and obligations under this Lease with respect to the Recapture Space, unless those rights and obligations expressly survive the Expiration Date or other termination of this Lease, and (ii) City will pay any cost incurred in physically separating the Recapture Space (if less than the entire Premises) from the balance of the Premises and in complying with any applicable Legal Requirements relating to the separation.

#### **16.5. Effect of Sublease or Assignment**

No Sublease or Assignment by Tenant or any consent by City will relieve Tenant, or any guarantor, of any obligation to be performed by Tenant under this Lease. Any Sublease or Assignment not in compliance with this Section will be void and, at City's option, will constitute a material default by Tenant under this Lease. City's acceptance of any Base Rent or other payments from a proposed Transferee will not constitute City's consent to any Sublease or Assignment or a recognition of any Transferee, or City's waiver of any failure of Tenant or other transferor to comply with this Section. If there is an Assignment or Sublease, whether in violation of or in compliance with this Section, and a Transferee or any successor of Tenant defaults in the performance or observance of any of the terms of this Lease or any Sublease or Assignment agreement, City may proceed directly against Tenant without the necessity of exhausting remedies against the Transferee or successor.

#### **16.6. Assumption by Transferee**

Each Transferee (other than City) will assume all obligations of Tenant under this Lease and will be liable jointly and severally with Tenant for the payment of the Rent, and for the performance of all of Tenant's obligations under this Lease. No Assignment will be binding on City unless Tenant or Transferee has delivered to City a counterpart of the Assignment and an instrument in recordable form that contains a covenant of assumption by the Transferee satisfactory in form and substance to City. Transferee's failure or refusal under an Assignment to execute the instrument of assumption, however, will not release the Transferee from its liability

under this Lease, as set forth above. Tenant will reimburse City on demand for any reasonable costs that may be incurred by City in connection with any proposed Sublease or Assignment, including the costs of making investigations as to the acceptability of the proposed Transferee and legal costs incurred in connection with the granting of any requested consent.

#### **16.7. Indemnity for Relocation Benefits**

Without limiting Section 16.6 (Assumption by Transferee) above, Tenant will cause any Transferee to expressly waive entitlement to any and all relocation assistance and benefits in connection with this Lease. Tenant will Indemnify City for any and all Claims (as defined in Section (Tenant's Indemnity)) arising out of any relocation assistance or benefits payable to any Transferee. Tenant's obligation to Indemnify City will survive the expiration or termination of this Lease and any Assignment or Sublease.

### **17. DEFAULT; REMEDIES**

#### **17.1. Events of Default**

Any of the following will constitute an event of default (the "**Event of Default**") by Tenant under this Lease:

(a) a failure to pay Base Rent or Additional Charges when due that continues for three (3) days after the date of City's written notice, but City will not be required to provide notice more than twice during any twelve (12)-month period, and any failure by Tenant after Tenant has received two (2) notices in a twelve (12)-month period will constitute an Event of Default by Tenant under this Lease without any further notice from City or opportunity for Tenant to cure except as may be required by Section 1161 of the California Code of Civil Procedure;

(b) a failure to comply with any other covenant, condition, representation, or warranty made under this Lease that continues for fifteen (15) days after the date of written notice by City, provided that if the default is not capable of cure within the fifteen (15)-day period, Tenant will have a reasonable period to complete the cure if Tenant promptly undertakes action to cure the default within the fifteen (15)-day period and thereafter diligently prosecutes the same to completion within sixty (60) days after the receipt of City's notice of default. City will not be required to provide a written notice of default more than twice in any twelve (12)-month period for any material non-monetary defaults and after the second notice in any twelve (12)-month period, any subsequent failure by Tenant during that twelve (12)-month period will constitute an Event of Default;

(c) a vacation or abandonment of the Premises for a continuous period in excess of five (5) business days; or

(d) an appointment of a receiver to take possession of all or substantially all of Tenant's assets, or an assignment by Tenant for the benefit of creditors, or any action taken or suffered by Tenant under any insolvency, bankruptcy, reorganization, moratorium, or other debtor relief act or statute, whether now existing or hereafter amended or enacted, if the receiver, assignment, or action is not released, discharged, dismissed, or vacated within sixty (60) days.

#### **17.2. Remedies**

On the occurrence of an Event of Default City will have the following remedies, which are not exclusive but are cumulative and in addition to any other remedies now or later allowed by law or in equity:

(a) City may terminate Tenant's right to possession of the Premises at any time by written notice to Tenant. Tenant expressly acknowledges that in the absence of a written notice from City, no other act of City, including its re-entry into the Premises, its efforts to relet the Premises, its reletting of the Premises for Tenant's account, its storage of Tenant's Personal Property and trade fixtures, its acceptance of keys to the Premises from Tenant, its appointment of a receiver, or its exercise of any other rights and remedies under this Section 17.2 or otherwise under Legal Requirements, will constitute an acceptance of Tenant's surrender of the Premises or constitute a termination of this Lease or of Tenant's right to possession of the Premises.

(b) On a written termination of Tenant's right to possession of the Premises, this Lease will terminate and City will be entitled to recover damages from Tenant as provided in California Civil Code Section 1951.2 or any other applicable existing or future Legal Requirement providing for recovery of damages for a breach, including the following:

(i) The reasonable cost of recovering the Premises; plus

(ii) The reasonable cost of removing Tenant's Alterations, trade fixtures, and improvements; plus

(iii) All unpaid Rent due or earned under this Lease before the date of termination, less the proceeds of any reletting or any rental received from subtenants before the date of termination, together with interest at the Interest Rate, on those amounts from the date the Rent is due and payable until the date of the award of damages; plus

(iv) The amount by which the Rent which would be payable by Tenant under this Lease, as reasonably estimated by City, from the date of termination until the date of the award of damages, exceeds the amount of the rental loss that Tenant proves could have been reasonably avoided, together with interest at the Interest Rate on those amounts from the date the Rent is due and payable until the date of the award of damages; plus

(v) The amount by which the Rent which would be payable by Tenant under this Lease, as reasonably estimated by City, for the remainder of the Term, after the date of the award of damages exceeds the amount the rental loss that Tenant proves could have been reasonably avoided, discounted at the discount rate published by the Federal Reserve bank of San Francisco for member banks at the time of the award plus one percent (1%); plus

(vi) Other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable Legal Requirements, including any other amount necessary to compensate City for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease that, in the ordinary course of things, would be likely to result therefrom.

(c) City has the remedy described in California Civil Code Section 1951.4 (a landlord may continue the lease in effect after the tenant's breach and abandonment and recover rent as it becomes due, if the tenant has the right to sublet and assign subject only to reasonable limitations), and may continue this Lease in full force and effect and may enforce all of its rights and remedies under this Lease, including the right to recover Rent as it becomes due. After the occurrence of an Event of Default, City may enter the Premises without terminating this Lease and sublet all or any part of the Premises for Tenant's account to any person, for a term (which may be a period beyond the remaining Term), at rents, and on other terms and conditions that City deems advisable. If City sublets, rents received by City from the subletting will be applied (i) first, to the payment of the costs of maintaining, preserving, altering, and preparing the Premises for subletting, the other costs of subletting, including brokers' commissions, attorneys' fees, and

expenses of removal of Tenant's Personal Property, trade fixtures, and Alterations; **(ii)** second, to the payment of Rent then due and payable under this Lease; **(iii)** third, to the payment of future Rent as it becomes due and payable under this Lease; and **(iv)** fourth, the balance, if any, will be paid to Tenant on (but not before) expiration of the Term. If the rents received by City from any subletting, after application as provided above, are insufficient in any month to pay the Rent due under this Lease for the month, Tenant will pay the deficiency to City on demand. Notwithstanding any subletting for Tenant's account without termination, at any time thereafter, by written notice to Tenant, City may elect to terminate this Lease by virtue of a previous Event of Default.

**(d)** During the continuance of an Event of Default, for so long as City does not terminate Tenant's right to possession of the Premises and subject to Section 16 (Assignment and Subletting) and the rights granted to City under that Section, City will not unreasonably withhold its consent to an Assignment or Sublease of Tenant's interest in the Premises or in this Lease.

**(e)** During the continuance of an Event of Default, City may enter the Premises without terminating this Lease and remove all Tenant's Personal Property, Alterations, and trade fixtures from the Premises and store them at Tenant's risk and expense. If City removes Tenant's Personal Property, Alterations, and trade fixtures from the Premises and stores it at Tenant's risk and expense, and if Tenant fails to pay the cost of the removal and storage after written demand and/or to pay any Rent then due, then, after the property has been stored for a period of thirty (30) days or more, City may sell it at public or private sale, in the manner and at the times and places as City deems commercially reasonable following reasonable notice to Tenant of the time and place of the sale. The sale proceeds will be applied first to the payment of the expenses for removal and storage of the property, the preparation for and conducting of the sale, and for attorneys' fees and other legal expenses incurred by City, and the balance will be applied as provided in Section 17.2(b) above. Tenant waives all claims for damages that may be caused by City's reentering and taking possession of the Premises or removing and storing Tenant's Personal Property under this Section 17.2, and Tenant will Indemnify City for all Claims resulting from City's reentering and taking possession of the Premises or removing and storing Tenant's Personal Property. No reentry by City will constitute or be construed as a forcible entry by City.

**(f)** City may require Tenant to remove any and all Alterations from the Premises or, if Tenant fails to do so within ten (10) days after City's request, City may do so at Tenant's expense.

**(g)** City may cure the Event of Default at Tenant's expense, it being understood that City's cure will not waive or cure the Event of Default. If City pays any sum or incurs any expense in curing the Event of Default, Tenant will reimburse City on demand for the amount of the payment or expense with interest at the Interest Rate from the date the sum is paid or the expense is incurred until City is reimbursed by Tenant.

### **17.3. Waiver of Redemption**

Tenant hereby waives, for itself and all persons claiming by and under Tenant, all rights and privileges that it might have under any present or future Legal Requirement to redeem the Premises or to continue this Lease after being dispossessed or ejected from the Premises.

### **17.4. City's Right to Cure Tenant's Defaults**

If Tenant defaults in the performance of any of its obligations under this Lease, then, at City's sole option, City may remedy the default for Tenant's account and at Tenant's expense by providing Tenant with three (3) days' prior written or oral notice of City's intention to cure the

default (except that no prior notice will be required in the event of an emergency as determined by City). No City action to cure Tenant's default will be construed as a waiver of Tenant's default or any of City's rights or remedies, and nothing in this Section implies any duty on City to do any act that Tenant is obligated to perform. Tenant will pay to City on demand, as Additional Charges, all costs, damages, expenses, or liabilities incurred by City, including reasonable attorneys' fees, in remedying or attempting to remedy the default. Tenant's obligations under this Section will survive the expiration or termination of this Lease.

## **18. WAIVER OF CLAIMS; INDEMNIFICATION**

### **18.1. Limitation on City's Liability; Waiver of Claims**

City will not be responsible for or liable to Tenant, and Tenant hereby assumes the risk of, and waives and releases City and its Agents from all Claims for any injury, loss, or damage to any person or property in or about the Premises by or from any cause whatsoever including: **(a)** any act or omission of persons occupying adjoining premises or any part of the Building adjacent to or connected with the Premises; **(b)** theft; **(c)** explosion, fire, steam, oil, electricity, water, gas, rain, pollution, or contamination; and **(d)** any other acts, omissions, or causes. Nothing in this Section will relieve City from liability caused solely and directly by the active gross negligence or willful misconduct of City or its Agents, but City will not be liable under any circumstances for any consequential, incidental, or punitive damages.

### **18.2. Tenant's Indemnity**

Tenant, on behalf of itself and its successors and assigns, will indemnify, defend, and hold harmless ("**Indemnify**") City, including all of its boards, commissions, departments, agencies, and other subdivisions, and all of its and their Agents, and their respective heirs, legal representatives, successors, and assigns (individually and collectively, the "**Indemnified Parties**"), and each of them, from and against all liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties, and expenses, including direct and vicarious liability of every kind (collectively, "**Claims**"), incurred in connection with or arising in whole or in part from: **(a)** any accident, injury to or death of a person (including Tenant's employees), or loss of or damage to property, howsoever or by whomsoever caused, occurring in or about the Premises; **(b)** any default by Tenant in the observation or performance of any of the terms, covenants, or conditions of this Lease to be observed or performed on Tenant's part; **(c)** the use or occupancy or manner of use or occupancy of the Premises by Tenant, its Agents, its Invitees, or any person or entity claiming through or under any of them; **(d)** the condition of the Premises; **(e)** any construction or other work undertaken by Tenant on the Premises whether before or during the Term; or **(f)** any acts, omissions, or negligence of Tenant, its Agents, or its Invitees, in, on, or about the Premises or the Property, all regardless of the active or passive negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on, the Indemnified Parties, except to the extent that the Indemnity is void or otherwise unenforceable under applicable Legal Requirements and further except only those Claims as are caused exclusively by the willful misconduct or active gross negligence of the Indemnified Parties. The foregoing Indemnity includes reasonable fees of attorneys, consultants, and experts and related costs and City's costs of investigating any Claim. Tenant expressly acknowledges that Tenant has an immediate and independent obligation to defend City from any Claim that actually or potentially falls within this indemnity provision even if the allegation is or may be groundless, fraudulent, or false, which obligation arises at the time

the Claim is tendered to Tenant by City and continues at all times thereafter. Tenant's obligations under this Section will survive the expiration or termination of this Lease.

## **19. INSURANCE**

### **19.1. Tenant's Insurance**

(a) At no cost to City, Tenant will procure and keep in effect at all times during the Term insurance as follows:

(i) General Liability Insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Independent Permittees, Explosion, Collapse and Underground (XCU), Broadform Property Damage, Sudden and Accidental Pollution, Products Liability and Completed Operations;

(ii) Worker's Compensation Insurance with Employer's Liability limits not less than One Million Dollars (\$1,000,000) each accident.

(iii) Automobile 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 coverages for owned, non-owned and hired automobiles, as applicable, and Sudden and Accidental Pollution; and

(iv) During any construction or improvement work, additional insurance will be required by City, including, but not limited to, Builders Risk Insurance with limits and other coverages as approved by the Director of Property.

(v) Business interruption insurance insuring that the Rent will be paid to City for a period of at least one (1) year if Tenant is unable to operate its business at the Premises. Business Interruption Insurance will also cover business interruptions due to failures or interruptions in telecommunications services, strikes, employee lockouts, riots, or other civil commotion.

(vi) Other insurance as is generally required by commercial owners of similar businesses, as may change from time to time.

(b) If any of the required insurance is provided under a claims-made form, Tenant will maintain the coverage continuously throughout the Term and, without lapse, for a period of three (3) years beyond the expiration or termination of this Lease, to the effect that, if occurrences during the Term give rise to claims made after expiration or termination of this Lease, those claims will be covered by the claims-made policies. Tenant's obligations under this Section will survive the expiration or termination of this Lease.

(c) If any of the required insurance is provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in the general annual aggregate limit, the general aggregate limit will be double the occurrence or claims limits specified above.

(d) All liability insurance policies will be endorsed to provide the following:

(i) Name as additional insured the City and County of San Francisco, its officers, agents, and employees.

(ii) Specify that such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of the Lease and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

(e) If a subcontractor will be used to complete any portion of improvements at the Premises during the Term of the Lease, the Tenant shall ensure that the subcontractor shall provide all necessary insurance and shall name the City and County of San Francisco, its officers, agents, and employees and the Tenant are listed as additional insureds.

(f) Permittee shall be responsible, at its expense, for separately insuring Permittee's personal property.

(g) Each insurance policy required under Section 19.1(a) above will be issued by an insurance company licensed in the State of California and with a general policyholders' rating of "A-" or better and a financial size ranking of "Class VIII" or higher in the most recent edition of Best's Insurance Guide.

(h) All insurance policies required to be maintained by Tenant will be endorsed to provide thirty (30) days' prior written notice of cancellation for any reason, intended non-renewal, or reduction in coverage to both Tenant and City. If Tenant's insurer refuses to offer this endorsement, Tenant will promptly provide the thirty (30) day's prior written notice of cancellation, intended non-renewal, or reduction in coverage to City. Notice to City will be mailed to the addresses for City set forth in the Basic Lease Information.

(i) On or before the Commencement Date, Tenant will deliver to City certificates of insurance and additional insured policy endorsements from insurers in a form satisfactory to City, evidencing the coverage required under this Lease, together with complete copies of the policies and at any other time promptly after City's request. During the Term, Tenant will provide City with certificates or policies at least thirty (30) days before the expiration dates of expiring policies. If Tenant fails to procure the required insurance, or to deliver the policies or certificates, then at its option and without waiving any rights or remedies that City may have for Tenant's default, City may procure the insurance for Tenant's account, and Tenant will pay the cost to City within five (5) days after delivery to Tenant of invoices therefor.

(j) On City's request, Tenant and City will periodically review the limits and types of insurance carried under this Section. If the general commercial practice in San Francisco is to carry liability insurance in an amount or coverage materially greater than the amount or coverage then being carried by Tenant for risks comparable to those associated with the Premises, then, at City's request, Tenant will increase the amounts or coverage carried by Tenant to conform to the general commercial practice.

(k) Tenant's compliance with the provisions of this Section will in no way relieve or decrease Tenant's liability under Section 18.2 (Tenant's Indemnity), or any of Tenant's other obligations under this Lease.

(l) Notwithstanding anything to the contrary in this Lease, if any of the required insurance coverage lapses, this Lease will terminate on three (3) days' notice to Tenant unless Tenant renews the insurance coverage within the notice period.



## **19.2. Tenant's Personal Property**

At no cost to City, Tenant is responsible for separately insuring Tenant's Personal Property.

## **19.3. City's Self Insurance**

Tenant acknowledges that City self-insures against casualty, property damage, and public liability risks and agrees that, at City's sole election (but without obligation to do so), City may carry any third party insurance coverage for the Building, the Premises, or otherwise.

## **19.4. Waiver of Subrogation**

Notwithstanding anything to the contrary in this Lease, City and Tenant (each a "**Waiving Party**") each waives any right of recovery against the other party for any loss or damage relating to the Building or the Premises or any operations or contents, whether or not the loss is caused by the fault or negligence of the other party, to the extent the loss or damage is covered by third-party insurance that is required to be purchased by the Waiving Party under this Lease or is actually covered by insurance held by the Waiving Party or its Agents. Each Waiving Party will obtain a waiver of subrogation rights endorsements from applicable insurance carriers issuing policies relating to the Building or the Premises; provided, the failure to obtain the endorsement will not affect the above waiver.

## **20. ACCESS BY CITY**

City reserves for itself and any of its designated Agents the right to enter the Premises as follows: **(a)** on a regular basis without advance notice to supply any necessary or agreed-upon service provided by City under this Lease; **(b)** on an occasional basis, at all reasonable times after giving Tenant reasonable advance written or oral notice, to show the Premises to prospective tenants or other interested parties; to post notices of non-responsibility; to conduct any environmental audit of Tenant's use of the Premises; and for any other lawful purpose; and **(c)** on an emergency basis without notice whenever City believes that emergency access is required. City will have the right to use any means that it deems proper to open doors or gates in an emergency to obtain access to any part of the Premises, and that entry will not be construed or deemed to be a forcible or unlawful entry into or a detainer of the Premises, or an eviction, actual or constructive, of Tenant from the Premises or any portion of the Premises. Tenant will not alter any lock or install any new or additional locking devices without City's prior written consent. Tenant shall provide City keys to open all locks installed in the Premises (excluding Tenant's vaults, safes or special security areas, if any designated by Tenant in writing to City).

## **21. CERTIFICATES**

### **21.1. Tenant's Estoppel Certificates**

At any time and from time to time on not less than ten (10) days' prior notice from City, Tenant will execute and deliver to City or to any party designated by City a certificate stating: **(a)** that Tenant has accepted the Premises, **(b)** the Commencement Date and Expiration Date of this Lease, **(c)** that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), **(d)** whether or not there are then existing any defenses against the enforcement of any of Tenant's obligations under this Lease (and if so, specifying the same), **(e)** whether or not there are any defaults then existing under this Lease (and if so specifying the same), **(f)** the dates, if any, to

which the Base Rent and Additional Charges have been paid, and (g) any other information that may be required.

### **21.2. City's Certificates**

At any time and from time to time on not less than ten (10) days' prior notice from Tenant, City will execute and deliver to Tenant or to any party designated by Tenant 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, that the Lease is in full force and effect as modified and stating the modifications), (c) whether or not there are any known defaults then existing under this Lease (and if so specifying the same), and (d) the dates, if any, to which the Base Rent and Additional Charges have been paid.

## **22. SECURITY DEPOSIT**

Tenant has paid to City the sum specified as the security deposit in the Basic Lease Information (the "**Security Deposit**"), as set forth in the Basic Lease Information, to secure Tenant's faithful performance of all terms, covenants, and conditions of this Lease. City may apply (but will not be required to apply) the Security Deposit in whole or in part to remedy any damage to the Premises caused by Tenant, its Agents, or its Invitees, or any failure of Tenant to perform any other terms, covenants, or conditions in this Lease (including the payment of Rent either before or after a default), without waiving any of City's other rights and remedies under this Lease or under applicable Legal Requirements. Tenant waives the provisions of Section 1950.7 of the California Civil Code or any similar Legal Requirements now or hereafter in effect and agrees that City may retain any portion of Security Deposit reasonably necessary to compensate it for any foreseeable or unforeseeable loss or damage caused by the acts or omissions of Tenant, its Agents, or its Invitees. Without limiting the foregoing, City may apply some or all of the Security Deposit to the payment of future Rent following a Tenant default.

If City uses any portion of the Security Deposit to cure any default by Tenant, Tenant will immediately replenish the Security Deposit to the original amount. If the Base Rent is increased under any of the provisions of this Lease, Tenant will increase the amount of the Security Deposit by the same percentage increase. City's obligations regarding the Security Deposit are solely that of debtor and not trustee. City will not be required to keep the Security Deposit separate from its general funds, and Tenant will not be entitled to interest on the Security Deposit. The amount of the Security Deposit will in no way limit the liabilities of Tenant under any provision of this Lease.

## **23. SURRENDER OF PREMISES**

On the Expiration Date or other termination of this Lease, Tenant will peaceably quit and surrender to City the Premises, together with the Tenant Improvements and all Alterations approved by City, in good order and condition, except for normal wear and tear (after Tenant has made the last necessary repair required under this Lease), and further except for any portion of the Premises condemned and any damage and destruction for which Tenant is not responsible under this Lease. The Premises will be surrendered free and clear of all liens and encumbrances other than those existing as of the date of this Lease and any other encumbrances created by City. Immediately before the Expiration Date or other termination of this Lease, Tenant will remove all of Tenant's Personal Property as provided in this Lease, and repair any damage resulting from the removal; provided, in City's sole discretion, City may reserve ownership of any

telecommunications equipment, wire, cabling, and/or conduit installed in the Premises or any other portion of the Building by or on behalf of Tenant. If the removal is not completed at the expiration or other termination of this Lease, City may perform the removal at Tenant's expense. Notwithstanding anything to the contrary in this Lease, at any time before the Expiration Date or within five (5) days after termination of this Lease, City may elect to require Tenant to remove, at Tenant's sole expense, all or part of the Tenant Improvements, Alterations, or other improvements or equipment constructed or installed by or at Tenant's expense, including any telecommunications equipment, wires, cabling, and/or conduit installed in the Premises or any other portion of the Building by or on behalf of Tenant. Tenant will promptly remove those items and repair, at no cost to City, any damage to the Premises or the Building resulting from the removal, or if Tenant fails to repair, City may do so at Tenant's expense. Tenant's obligations under this Section will survive the expiration or sooner termination of this Lease. At City's option, any items of Tenant's Personal Property remaining in the Premises after the Expiration Date or sooner termination of this Lease may be deemed abandoned and disposed of in accordance with Section 1980 et seq. of the California Civil Code or in any other manner allowed by Legal Requirements.

Concurrently with the surrender of the Premises, if requested by City, Tenant will execute, acknowledge, and deliver to City a quitclaim deed to the Premises and any other instrument reasonably requested by City to evidence the termination of Tenant's leasehold estate and to effect the transfer or vesting of title to the Tenant Improvements or other improvements or equipment that remain part of the Premises. The terms of this Section will survive the expiration or sooner termination of this Lease.

## **24. HAZARDOUS MATERIALS**

### **24.1. Definitions**

As used in this Lease:

(a) **“Environmental Laws”** means all present or future Legal Requirements relating to Hazardous Material (including its use, handling, transportation, production, disposal, discharge, or storage), or to health and safety, industrial hygiene, or the environment, including soil, air, and groundwater conditions.

(b) **“Hazardous Material”** means any material that, because of its quantity, concentration, or physical or chemical characteristics, is at any time, now or later, deemed by any federal, state, or local governmental authority to pose a present or potential hazard to human health, welfare, or safety or to the environment. Hazardous Material includes any material or substance defined as a “hazardous substance,” “pollutant,” or “contaminant” under 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 under Section 25316 of the California Health & Safety Code; any “hazardous waste” listed under Section 25140 of the California Health & Safety Code; and petroleum, including crude oil or any fraction thereof, natural gas, or natural gas liquids.

(c) **“Investigate”** and **“Investigation”** means undertaking any activities to determine the nature and extent of Hazardous Material that may be located in, on, under, or about the Property or that has been, are being or threaten to be Released into the environment; **“Remediate”** and **“Remediation”** means to clean up, remove, contain, treat, stabilize, monitor, or otherwise control the Hazardous Material.

(d) “Release” when used with respect to Hazardous Material includes any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside the Premises, or in, on, under, or about any other part of the Property or into the environment.

#### **24.2. No Hazardous Materials**

Neither Tenant nor any of its Agents or Invitees will cause or permit any Hazardous Material to be brought on, kept, used, stored, generated or disposed of in, on, or about the Property, or transported to or from the Property,. Tenant will give City immediate written notice of: (a) any action, proceeding, or inquiry by any governmental authority (including the California State Department of Health Services, the State or any Regional Water Quality Control Board, the Bay Area Air Quality Management District, or any local governmental entity) against Tenant with respect to the presence or Release or suspected presence or Release of Hazardous Material on the Premises, or Property or the migration thereof from or to other property; (b) all demands or claims made or threatened by any third party against Tenant or the Premises, or Property relating to any loss or injury resulting from any Hazardous Materials; (c) any Release of Hazardous Material on or about the Premises or any other part of the Property that has occurred and may require any Investigation or Remediation; and (d) all matters of which Tenant is required to give notice under Section 25359.7 of the California Health and Safety Code.

#### **24.3. Tenant’s Environmental Indemnity**

If Tenant breaches any of its obligations contained in this Section, or, if any act or omission of Tenant, its Agents, or its Invitees results in any Release of Hazardous Material in, on, under, or about the Premises or any other part of the Property in violation of any applicable Environmental Laws, then, without limiting Tenant’s Indemnity contained in Section 18.2 (Tenant’s Indemnity), on behalf of itself and its successors and assigns, Tenant will Indemnify the Indemnified Parties, and each of them, from and against all Claims (including damages for decrease in value of the Premises or the Property, the loss or restriction of the use of rentable or usable space or of any amenity of the Premises or the Property, and sums paid in settlement of claims, attorneys’ fees, consultants’ fees, and experts’ fees and costs) arising during or after the Term and relating to the Release. The foregoing Indemnity includes costs incurred in connection with activities undertaken to Investigate and Remediate Hazardous Material and to restore the Property to its prior condition, fines and penalties assessed for the violation of any applicable Environmental Laws, and any natural resource damages. Without limiting the foregoing, if Tenant or any of its Agents or Invitees causes or permits the Release of any Hazardous Materials in, on, under, or about the Premises or any other part of the Property, Tenant will immediately and at no expense to City take all appropriate actions to return the Premises or the Property affected by the Release to the condition existing before the Release and otherwise Investigate and Remediate the Release in accordance with all Environmental Laws. Tenant expressly acknowledges that Tenant has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnity provision even if the allegation is or may be groundless, fraudulent, or false, and this obligation arises at the time the claim is tendered to Tenant by City and continues at all times thereafter. Tenant will afford City a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, or other compromise or proceeding involving Hazardous Material.

#### **24.4. Survival of Obligation**

Tenant's obligations under this Section 24 will survive the expiration or earlier termination of this Lease.

### **25. SPECIAL PROVISIONS**

#### **25.1. Extension Option**

(a) **Option to Extend Term.** City grants to Tenant a one-time option to extend the Term as to the entire Premises (the "**Extension Option**") for an additional five (5) years (the "**Extension Term**") commencing on the Expiration Date on the following terms and conditions. Tenant may exercise the Extension Option at any time during the Term but at least one hundred twenty (120) days before the Expiration Date by giving written notice to City. Once given, Tenant may not revoke its notice exercising the Extension Option. If any Event of Default by Tenant is outstanding either at the time Tenant exercises the Extension Option or at any time before the first day of the Extension Term (or if any event has occurred that, with the giving of notice or the passage of time or both, would constitute an Event of Default), then City may elect by notice to Tenant to reject Tenant's exercise of the Extension Option, in which case, the Extension Option will be null and void. City may also void Tenant's Extension Option if Tenant has assigned its interest under this Lease or sublet more than fifty percent (50%) of the Premises.

(b) **Base Rent and Other Terms.** If Tenant elects to exercise the Extension Option, then the lease for the Extension Term will cover the entire Premises and be on all of the terms, covenants, and conditions of this Lease, except that Base Rent will be adjusted per negotiations between the parties at the time.

### **26. GENERALLY APPLICABLE PROVISIONS**

#### **26.1. Notices**

Any notice given under this Lease will be effective only if in writing and delivered in person or by sending it first-class mail or certified mail with a return receipt requested or by overnight courier, return receipt requested, with postage prepaid, to: (a) Tenant, (i) at Tenant's address set forth in the Basic Lease Information, if sent before Tenant takes possession of the Premises, or (ii) at the Premises if sent on or after Tenant takes possession of the Premises, or (iii) at any place where Tenant or any Agent of Tenant may be found if sent after Tenant vacates, abandons, or surrenders the Premises; or (b) City, at City's address set forth in the Basic Lease Information; or (c) to any other address that either City or Tenant designates as its new address by notice given to the other in accordance with the provisions of this Section at least ten (10) days before the effective date of the change. A properly addressed notice transmitted by one of the foregoing methods shall be deemed to have been given two (2) days after the date it is mailed by first class or certified mail, one day after the date it is deposited with an overnight courier for overnight delivery, or on the date of personal delivery. For convenience of the parties, copies of notices may also be given by email to the email address set forth in the Basic Lease Information or as may be provided from time to time; however, neither no official or binding notice may be given by email; a notice will only be deemed given and effective when sent as provided in the first two (2) sentences of this Section. Tenant will promptly provide City with copies of all notices received regarding any alleged violation of Legal Requirements or insurance requirements or any alleged unsafe condition or practice.

## **26.2. No Implied Waiver**

No failure by City to insist on the strict performance of any obligation of Tenant under this Lease or to exercise any right, power, or remedy arising out of a breach, regardless of the length of time that the breach continues, no acceptance of full or partial Base Rent or Additional Charges during any breach, and no acceptance of the keys to or possession of the Premises before the expiration of the Term by any Agent of City, will constitute a waiver of the breach or of City's right to demand strict compliance with any term, covenant, or condition or operate as a surrender of this Lease. No express written waiver of any default or the performance of any provision of this Lease will affect any other default or performance, or cover any other period of time, other than the default, performance, or period of time specified in the express waiver. One or more written waivers of a default or the performance of any provision of this Lease will not be deemed to be a waiver of a subsequent default or performance. Any City consent under this Lease will not relieve Tenant of any obligation to secure City's consent in any other or future instance as required by this Lease.

## **26.3. Amendments**

Neither this Lease nor any of its terms or provisions 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. Whenever this Lease requires or permits City's consent or approval, the Director of Property or his or her designee will be authorized to provide the consent or approval, except as otherwise provided by applicable Legal Requirements, including the Charter. Any amendments or modifications to this Lease, including amendments to or modifications to the exhibits to this Lease, are subject to the mutual written agreement of City and Tenant, and City's agreement may be made upon the sole approval of the Director of Property, or his or her designee; provided, however, (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 that materially increases City's liabilities or financial obligations under this Lease may also require the approval of City's Board of Supervisors.

## **26.4. Authority**

If Tenant signs as a corporation, a limited liability company, or a partnership, then each of the persons executing this Lease on behalf of Tenant covenants and warrants that Tenant is a duly authorized and existing entity, Tenant has and is qualified to do business in California, Tenant has full right and authority to enter into this Lease, and each and all of the persons signing on behalf of Tenant are authorized to do so. On City's request, Tenant will provide City with evidence reasonably satisfactory to City confirming these representations and warranties.

## **26.5. Parties and Their Agents; Approvals**

The words "**City**" and "**Tenant**" include the plural as well as the singular. If there is more than one entity that comprises Tenant, Tenant's obligations and liabilities under this Lease are joint and several. The term "**Agents**" when used with respect to either party includes the agents, employees, officers, contractors, and representatives of the party, and the term "**Invitees**" when used with respect to Tenant includes the clients, customers, invitees, guests, licensees, assignees, or subtenants of Tenant. All approvals, consents, or other determinations permitted or required by City will be made by or through City's Director of Property unless otherwise provided in this Lease, subject to applicable Legal Requirements.

## **26.6. 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 in no way define or limit the scope or intent of any provision of this Lease. Provisions in this Lease relating to number of days are calendar days, unless otherwise specified, but if the last day of any period to give notice, reply to a notice, or to undertake any other action occurs on a Saturday, Sunday, or a bank or City holiday, then the last day for undertaking the action or giving or replying to the notice will be the next succeeding business day. Use of the word “**including**” or similar words will 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.

## **26.7. Successors and Assigns**

Subject to the provisions of this Lease relating to Assignment and Subletting, the terms, covenants, and conditions contained in this Lease will bind and benefit City and Tenant and their successors and assigns; provided, however, that on any sale, assignment, or transfer by City (or by any subsequent landlord) of its interest in the Building as owner or lessee, including any transfer by operation of law, City (or any subsequent landlord) will be relieved from all obligations and liabilities arising under this Lease after the sale, assignment, or transfer.

## **26.8. Brokers**

Neither party has had any contact or dealings regarding leasing the Premises to Tenant, or any communication in connection that leasing, 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 in this Lease except as identified in the Basic Lease Information, whose commission, if any is due, will be paid under a separate written agreement between the broker and the party through which the broker contracted. If any broker or finder perfects a claim for a commission or finder’s fee based on a contact, dealings, or communication, then the party through whom the broker or finder makes a claim will be responsible for the commission or fee and will Indemnify the other party from any and all Claims incurred by the indemnified party in defending against the broker’s or finder’s claim. The provisions of this Section will survive the expiration or any earlier termination of this Lease.

## **26.9. Severability**

If any provision of this Lease or its application to any person, entity, or circumstance is invalid or unenforceable, then the remainder of this Lease, or the application of the provision to persons, entities, or circumstances other than those as to which it is invalid or unenforceable, will not be affected thereby, and each other provision of this Lease will be valid and enforceable to the fullest extent permitted by Legal Requirements, 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.

## **26.10. Governing Law**

This Lease will be construed and enforced in accordance with the Legal Requirements of the State of California and City’s Charter.

## **26.11. Entire Agreement**

This Lease, including its attached exhibits, which are made a part of this Lease by this reference, contains the entire agreement between the parties and all prior written or oral

negotiations, understandings, and agreements are merged into this Lease. The parties intend that this Lease constitutes the complete and exclusive statement of its terms and no extrinsic evidence whatsoever (including prior drafts and changes) may be introduced in any judicial, administrative, or other legal proceeding involving this Lease. Tenant acknowledges that neither City nor City's Agents have made any representations or warranties with respect to the Premises, the Building, or this Lease except as expressly set forth in this Lease, and no rights, easements, or licenses are or will be acquired by Tenant by implication or otherwise unless expressly set forth in this Lease.

#### **26.12. Attorneys' Fees**

If either City or Tenant fails to perform any of its obligations under this Lease or if a dispute arises concerning the meaning or interpretation of any provision of this Lease, then the defaulting party or the non-prevailing party in the dispute, as the case may be, will pay the prevailing party's 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 the action and enforcing or establishing its rights under this Lease (whether or not the action is prosecuted to a judgment). For purposes of this Lease, the terms "court costs and reasonable attorneys' fees" means the fees and expenses of counsel to the party, which may include printing, duplicating, and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, librarians, and others not admitted to the bar but performing services under the supervision of an attorney. The term "court costs and attorneys' fees" also includes all fees and expenses incurred with respect to appeals, mediation, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which the fees and costs were incurred. For the purposes of this Lease, reasonable fees of attorneys of City's Office of the City Attorney will 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.

#### **26.13. Holding Over**

(a) If Tenant retains possession of any portion of the Premises after the expiration or the earlier termination of this Lease, then unless City expressly agrees to the holdover in writing, Tenant will pay City, on a month-to-month basis, Base Rent equal to two hundred percent (200%) of the latest Base Rent payable by Tenant before the expiration or termination of the Lease, together with an amount estimated by City for the monthly Additional Charges, and will otherwise be on the terms and conditions specified in this Lease so far as applicable (except for those pertaining to the Term and any Extension Options). Any failure by Tenant to surrender, discontinue using, or, if required by City, any failure to remove any property or equipment following written demand by City, will constitute continuing possession for purposes of this Section. Tenant acknowledges that the foregoing provisions do not serve as permission for the Tenant to hold over, or serve to extend the Term. Any holding over without City's consent will constitute a default by Tenant and entitle City to exercise any or all of its remedies, notwithstanding that City may elect to accept one or more payments of Rent, and whether or not the amounts are at the holdover rate specified above or the rate in effect at the end of the Term.

(b) Any holding over after the expiration of the Term with City's express written consent will be construed to automatically extend the Term on a month-to-month basis at a Base Rent equal to one hundred fifty percent (150%) of the latest Base Rent payable by Tenant before the expiration, together with an amount estimated by City for the monthly Additional



Charges, and will otherwise be on the terms and conditions specified in this Lease so far as applicable (except for those pertaining to the Term and any Extension Options).

(c) Tenant's obligations under this Section will survive the expiration or termination of this Lease.

**26.14. Time of Essence**

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

**26.15. Cumulative Remedies**

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

**26.16. Survival of Indemnities**

Termination of this Lease will not affect the either party's right to enforce any indemnities and representations and warranties given or made to the other party under this Lease, or affect any provision of this Lease that expressly states it will survive expiration or termination of the Lease.

**26.17. Signs**

Tenant will not erect or maintain, or permit to be erected or maintained, any signs, notices or graphics on or about the Premises that are visible in or from public corridors or other portions of any Common Areas of the Building or from the exterior of the Premises without City's prior written consent, which City may withhold, grant, or condition in its sole discretion.

**26.18. Relationship of the Parties**

City is not, and none of the provisions in this Lease will be deemed to render City, a partner in Tenant's business, or a member in any joint enterprise or venture with Tenant. Neither party may act as the agent of the other party for any purpose under this Lease. This Lease is not intended and it will not be construed to create any third-party beneficiary rights in any party, unless otherwise expressly provided.

**26.19. Light and Air**

No diminution of light, air, or view by any structure that may later be erected (whether or not by City) will entitle Tenant to any reduction of the Base Rent or Additional Charges under this Lease, result in any City liability to Tenant, or in any other way affect this Lease or Tenant's obligations under the Lease.

**26.20. No Recording**

Tenant may not record this Lease or any memorandum of this Lease in the public records.

**26.21. Options Personal**

Any right or option to extend the Term or renew this Lease is personal to the original named Tenant and may be exercised only by the original named Tenant while occupying the Premises without the intent of then making an Assignment of this Lease or Subletting of all or any portion of the Premises. No right or option to extend the Term or renew this Lease may be exercised by or assigned, voluntarily or involuntarily, by or to any person or entity other than the original named Tenant. The options, if any, granted to Tenant are not assignable separate and apart from this Lease, and no option may be separated from this Lease in any manner, either by reservation or otherwise.

## **26.22. Non-Liability of City Officials, Employees, and Agents**

No elected or appointed board, commission, member, officer, employee, or other Agent of City will be personally liable to Tenant or its successors and assigns for any City default or breach or for any amount that may become due to Tenant or its successors and assigns, or for any City obligation under this Lease.

## **26.23. 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 will be considered the drafter of this Lease, and no presumption or rule that an ambiguity will be construed against the party drafting the clause will apply to the interpretation or enforcement of this Lease.

## **26.24. Counterparts**

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

## **26.25. Effective Date**

This Lease will be effective on the date on that (a) City's Board of Supervisors and the Mayor, in their sole and absolute discretion, adopt a resolution approving this Lease in accordance with all applicable Legal Requirements and (b) this Lease is duly executed and delivered by the parties.

## **27. CITY REQUIREMENTS**

### **27.1. Public Transit Information**

At its sole expense, Tenant will establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Tenant employed on the Premises, including the distribution of written materials to personnel explaining the convenience and availability of public transportation facilities adjacent or near the Premises and encouraging use of them.

### **27.2. Taxes, Assessments, Licenses, Permit Fees, and Liens**

(a) Tenant recognizes and understands that this Lease may create a possessory interest subject to property taxation and Tenant may be subject to the payment of property taxes levied on its possessory interest.

(b) Tenant will pay taxes of any kind, including possessory interest taxes, lawfully assessed on the leasehold interest created by this Lease and to pay all other taxes, excises, licenses, permit charges, and assessments based on Tenant's use of the Premises and imposed on Tenant by Legal Requirements, all of which will be paid when they become due and payable and before delinquency.

(c) Tenant will not allow or suffer a lien for any taxes to be imposed on the Premises or on any equipment or property located in the Premises without promptly discharging the lien, provided that Tenant, if it desires, may have reasonable opportunity to contest the validity of the same.

(d) San Francisco Administrative Code Sections 23.38 and 23.39 require that certain information relating to the creation, renewal, extension, assignment, sublease, or other transfer of this Lease be provided to the County Assessor within sixty (60) days after the transaction. Accordingly, Tenant must provide a copy of this Lease to the County Assessor not later than sixty (60) days after the Effective Date, and any failure of Tenant to timely provide a copy of this Lease to the County Assessor will be a default under this Lease. Tenant will also timely provide any information that City may request to ensure compliance with this or any other reporting requirement.

### **27.3. Non-Discrimination in City Contracts and Benefits Ordinance**

(a) **Covenant Not to Discriminate.** In the performance of this Lease, Tenant will not discriminate against any employee, any City employee working with Tenant, or applicant for employment with Tenant, 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 protected classes, or in retaliation for opposition to discrimination against protected classes.

(b) **Subleases and Other Subcontracts.** Tenant will include in all Subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to the Subtenant or other subcontractor in substantially the form of subsection (a) above. In addition, Tenant will incorporate by reference in all subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and require all subtenants and other subcontractors to comply with those provisions. Tenant's failure to comply with the obligations in this subsection will constitute a material breach of this Lease.

(c) **Non-Discrimination in Benefits.** Tenant does not as of the date of this Lease and will not during the Term, in any of its operations in San Francisco, on real property owned by City, or where the work is being performed for City 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 the employees, where the domestic partnership has been registered with a governmental entity under the Legal Requirements authorizing that 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, Tenant will 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. Tenant represents that before execution of this Lease, (i) Tenant executed and submitted to the CMD Form CMD-12B-101 with supporting documentation, and (ii) the CMD approved the 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 City property are incorporated in this Section by reference and made a part of this Lease as though fully set forth in this Lease. Tenant will

comply fully with and be bound by all of the provisions that apply to this Lease under those Chapters of the Administrative Code, including the remedies provided in those Chapters. Without limiting the foregoing, Tenant understands that under 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 the person was discriminated against in violation of the provisions of this Lease may be assessed against Tenant and/or deducted from any payments due Tenant.

#### **27.4. No Relocation Assistance; Waiver of Claims**

Tenant acknowledges that it will not be a displaced person at the time this Lease is terminated or expires by its own terms, and Tenant fully RELEASES AND DISCHARGES forever any and all Claims against, and covenants not to sue, City, its departments, commissions, officers, directors, and employees, and all persons acting by, through or under each of them, under any Legal Requirements, including any and all claims for relocation benefits or assistance from City under federal and state relocation assistance Legal Requirements (including California Government Code Section 7260 et seq.), except as otherwise specifically provided in this Lease with respect to a Taking.

#### **27.5. MacBride Principles—Northern Ireland**

The provisions of San Francisco Administrative Code Section 12F are incorporated by this reference and made part of this Lease. By signing this Lease, Tenant confirms that Tenant has read and understood that City 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.

#### **27.6. Tropical Hardwood and Virgin Redwood Ban; Preservative-Treated Wood Containing Arsenic**

City 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 product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Tenant will not provide any items to the construction of Tenant Improvements or the Alterations, or otherwise in the performance of this Lease, that are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. If Tenant fails to comply with any of the provisions of Chapter 8 of the San Francisco Environment Code, Tenant will be liable for liquidated damages for each violation in any amount equal to Tenant's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater. Tenant 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.

#### **27.7. Restrictions on the Use of Pesticides**

(a) Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or “**IPM Ordinance**”) describes an integrated pest management (“**IPM**”) policy to be implemented by all City departments. Tenant may not use or apply or allow the use or application of any pesticides on the Premises or contract with any party to provide pest abatement or control services to the Premises without first receiving City's written approval of an IPM plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the Term, (ii) describes the steps Tenant will take to meet City's IPM Policy described in Section 300 of the IPM Ordinance, and (iii) identifies, by name, title, address, and telephone number, an individual to act as the Tenant's

primary IPM contact person with City. Tenant will comply, and will require all of Tenant's contractors to comply, with the IPM plan approved by City and will comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Tenant were a City department. Among other matters, the provisions of the IPM Ordinance: (i) provide for the use of pesticides only as a last resort, (ii) prohibit the use or application of pesticides on City property, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City's Department of the Environment), (iii) impose certain notice requirements, and (iv) require Tenant to keep certain records and to report to City all pesticide use at the Premises by Tenant's staff or contractors.

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

#### **27.8. First Source Hiring Agreement**

Tenant and City are parties to the First Source Agreement attached to this Lease as **Exhibit E** under San Francisco Administrative Code, Chapter 83 (the "**First Source Agreement**"). Any default by Tenant under the First Source Agreement will be a default under this Lease.

#### **27.9. Sunshine Ordinance**

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

#### **27.10. Conflicts of Interest**

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

#### **27.11. Charter Provisions**

This Lease is governed by and subject to the provisions of City's Charter.

#### **27.12. Drug-Free Workplace**

Tenant acknowledges that under the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, possession, or use of a controlled substance under federal

Legal Requirements is prohibited on City premises. Any violation of this prohibition by Tenant, its Agents, or assigns will be a material breach of this Lease.

### **27.13. Prohibition of Tobacco Sales and Advertising**

No advertising or sale of cigarettes or tobacco products is allowed on the Premises. This advertising prohibition includes the placement of the name of a company producing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product.

### **27.14. Prohibition of Alcoholic Beverage Advertising**

No advertising of alcoholic beverages is allowed on the Premises. For purposes of this section, “alcoholic beverage” is defined as set forth in California Business and Professions Code Section 23004, and does not include cleaning solutions, medical supplies, and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product.

### **27.15. Requiring Health Benefits for Covered Employees**

(a) Unless exempt, Tenant will comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (“**HCAO**”), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as they may be amended from time to time. The provisions of Chapter 12Q are incorporated into this Lease by reference and made a part of this Lease as though fully set forth. The text of the HCAO is available on the web at <http://www.sfgov.org/olse/hcao>. Capitalized terms used in this Section and not defined in this Lease have the meanings assigned to those terms in Chapter 12Q.

(b) For each Covered Employee, Tenant will provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Tenant chooses to offer the health plan option, the health plan must meet the minimum standards set forth by the San Francisco Health Commission.

(c) Notwithstanding the above, if the Tenant is a small business as defined in Section 12Q.3(e) of the HCAO, it will have no obligation to comply with subsection (a) above.

(d) Tenant’s failure to comply with the HCAO will constitute a material breach of this Lease. City may notify Tenant if a breach has occurred. If, within thirty (30) days after receiving City’s written notice of a breach of this Lease for violating the HCAO, Tenant fails to cure the breach or, if the breach cannot reasonably be cured within the thirty (30) days period, and Tenant fails to commence efforts to cure within that period, or fails diligently to pursue the cure to completion, then City will have the right to pursue the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies will be exercisable individually or in combination with any other rights or remedies available to City.

(e) Any Subcontract entered into by Tenant will require the Subcontractor to comply with the requirements of the HCAO and contain contractual obligations substantially the same as those set forth in this Section. Tenant will notify City’s Purchasing Department when it enters into a Subcontract and will certify to the Purchasing Department that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Tenant will be responsible for its Subcontractors’ compliance with this Chapter. If a Subcontractor fails to comply, City may pursue the remedies

set forth in this Section against Tenant based on the Subcontractor's failure to comply, provided that City has first provided Tenant with notice and an opportunity to cure the violation.

(f) Tenant may not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City regarding Tenant's compliance or anticipated compliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(g) Tenant represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

(h) Tenant will keep itself informed of the current requirements of the HCAO.

(i) Tenant will provide reports to City in accordance with any reporting standards promulgated by City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

(j) Tenant will provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least five (5) business days to respond.

(k) City may conduct random audits of Tenant to ascertain its compliance with HCAO. Tenant will cooperate with City when it conducts the audits.

(l) If Tenant is exempt from the HCAO when this Lease is executed because its amount is less than Twenty-Five Thousand Dollars (\$25,000), but Tenant later enters into an agreement or agreements that cause Tenant's aggregate amount of all agreements with City to reach Seventy-Five Thousand Dollars (\$75,000), then all the agreements will be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Tenant and the Contracting Department to be equal to or greater than Seventy-Five Thousand Dollars (\$75,000) in the fiscal year.

#### **27.16. Notification of Prohibition on Contributions**

By executing this Lease, Tenant acknowledges its obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who leases, or seeks to lease, to or from any department of the City any land or building from making any campaign contribution to (a) a City elected official if the lease must be approved by that official, (b) a candidate for that City elective office, or (c) a committee controlled by that elected official or a candidate for that office, at any time from the submission of a proposal for the lease until the later of either the termination of negotiations for the lease or twelve (12) months after the date the City approves the lease. Tenant acknowledges that the foregoing restriction applies only if the lease or a combination or series of leases or other contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of one hundred thousand dollars (\$100,000) or more. Tenant further acknowledges that (i) the prohibition on contributions applies to each prospective party to the lease; any person with an ownership interest of more than 10 percent (10%) in Tenant; any subtenant listed in the lease; and any committee that is sponsored or controlled by Tenant; and (ii) within thirty (30) days of the submission of a proposal for the Lease, the City department with whom Tenant is leasing is obligated to submit to the Ethics Commission the parties to the lease and any subtenant. Additionally, Tenant certifies that it has informed each such person of the limitation on contributions imposed by

Section 1.126 by the time it submitted a proposal for the lease, and has provided the names of the persons required to be informed to the City department with whom it is leasing.

**27.17. Resource-Efficient City Buildings**

Tenant acknowledges that City has enacted San Francisco Environment Code Sections 700 to 713 relating to green building requirements for the design, construction, and operation of buildings owned or leased by City. Tenant will comply with all applicable provisions of those code sections.

**27.18. Food Service and Packaging Waste Reduction Ordinance**

Tenant will comply with and is bound by all of the provisions of the Food Service and Packaging Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated into this Lease by reference and made a part of this Lease as though fully set forth. This provision is a material term of this Lease. By entering into this Lease, Tenant agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine. Without limiting City's other rights and remedies, Tenant agrees that the sum of One Hundred Dollars (\$100.00) for the first breach, Two Hundred Dollars (\$200.00) for the second breach in the same year, and Five Hundred Dollars (\$500.00) for subsequent breaches in the same year is a reasonable estimate of the damage that City may incur based on the violation, established in light of the circumstances existing at the time this Lease was made. These amounts will not be considered a penalty, and do not limit City's other rights and remedies available under this Lease, at law, or in equity.

**27.19. San Francisco Packaged Water Ordinance**

Tenant will comply with San Francisco Environment Code Chapter 24 ("**Chapter 24**"). Tenant may not sell, provide, or otherwise distribute Packaged Water, as defined in Chapter 24 (including bottled water), in the performance of this Lease or on City property unless Tenant obtains a waiver from City's Department of the Environment. If Tenant violates this requirement, City may exercise all remedies in this Lease and the Director of City's Department of the Environment may impose administrative fines as set forth in Chapter 24.

**27.20. Criminal History in Hiring and Employment Decisions**

(a) Unless exempt, Tenant will comply with and be bound by all of the provisions of San Francisco Administrative Code Chapter 12T (Criminal History in Hiring and Employment Decisions), as amended from time to time ("**Chapter 12T**"), which are incorporated into this Lease as if fully set forth, with respect to applicants and employees of Tenant who would be or are performing work at the Premises.

(b) Tenant will incorporate by reference the provisions of Chapter 12T in all subleases of some or all of the Premises, and require all subtenants to comply with those provisions. Tenant's failure to comply with the obligations in this subsection will constitute a material breach of this Lease.

(c) Tenant and subtenants may not inquire about, require disclosure of, or if the information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (i) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (ii) participation in or completion of a diversion or a deferral of judgment program; (iii) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (iv) a



Conviction or any other adjudication in the juvenile justice system; (v) a Conviction that is more than seven years old, from the date of sentencing; or (vi) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

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

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

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

(g) Tenant and subtenants understand and agree that on any failure to comply with the requirements of Chapter 12T, City will have the right to pursue any rights or remedies available under Chapter 12T or this Lease, including a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant, or other person as to whom a violation occurred or continued, or termination of this Lease in whole or in part.

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

#### **27.21. Vending Machines; Nutritional Standards**

Tenant may not install or permit any vending machine on the Premises without the prior written consent of the Director of Property. Any permitted vending machine will comply with the food and beverage nutritional standards and calorie labeling requirements set forth in San Francisco Administrative Code Section 4.9-1(c), as may be amended from time to time (the “**Nutritional Standards Requirements**”). Tenant will incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the Premises or for the supply of food and beverages to that vending machine. Failure to comply with the Nutritional Standards Requirements or to otherwise comply with this Section 27.21 will be a material breach of this Lease. Without limiting Landlord’s other rights and remedies under this Lease, Landlord will have the right to require the immediate removal of any vending machine on the Premises that is not permitted or that violates the Nutritional Standards Requirements.

#### **27.22. All-Gender Toilet Facilities**

If applicable, Tenant will comply with San Francisco Administrative Code Section 4.1-3 requiring at least one all-gender toilet facility on each floor of the Building where extensive renovations are made. An “all-gender toilet facility” means a toilet that is not restricted to use by persons of a specific sex or gender identity by means of signage, design, or the installation of

fixtures, and “extensive renovations” means any renovation where the construction cost exceeds 50% of the cost of providing the toilet facilities required by Administrative Code Section 4.1-3. If Tenant has any question about applicability or compliance, Tenant should contact the Director of Property for guidance.

**27.23. Tenant’s Compliance with City Business and Tax and Regulations Code**

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

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, TENANT ACKNOWLEDGES AND AGREES THAT NO CITY OFFICER OR EMPLOYEE HAS AUTHORITY TO COMMIT CITY TO THIS LEASE UNLESS AND UNTIL CITY’S BOARD OF SUPERVISORS HAS DULY ADOPTED A RESOLUTION APPROVING THIS LEASE AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY CITY OBLIGATIONS OR LIABILITIES UNDER THIS LEASE ARE CONTINGENT ON ADOPTION OF A RESOLUTION, AND THIS LEASE WILL BE NULL AND VOID IF CITY’S MAYOR AND THE BOARD OF SUPERVISORS DO NOT APPROVE THIS LEASE, IN THEIR RESPECTIVE SOLE DISCRETION. APPROVAL OF THIS LEASE BY ANY CITY DEPARTMENT, COMMISSION, OR AGENCY WILL NOT BE DEEMED TO IMPLY THAT A RESOLUTION WILL BE ENACTED, AND NO APPROVAL WILL CREATE ANY BINDING CITY OBLIGATIONS.

*SIGNATURES ON FOLLOWING PAGE*

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

**TENANT:**

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

Its: Manager

**CITY:**

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_  
ANDRICO Q. PENICK  
Director of Property

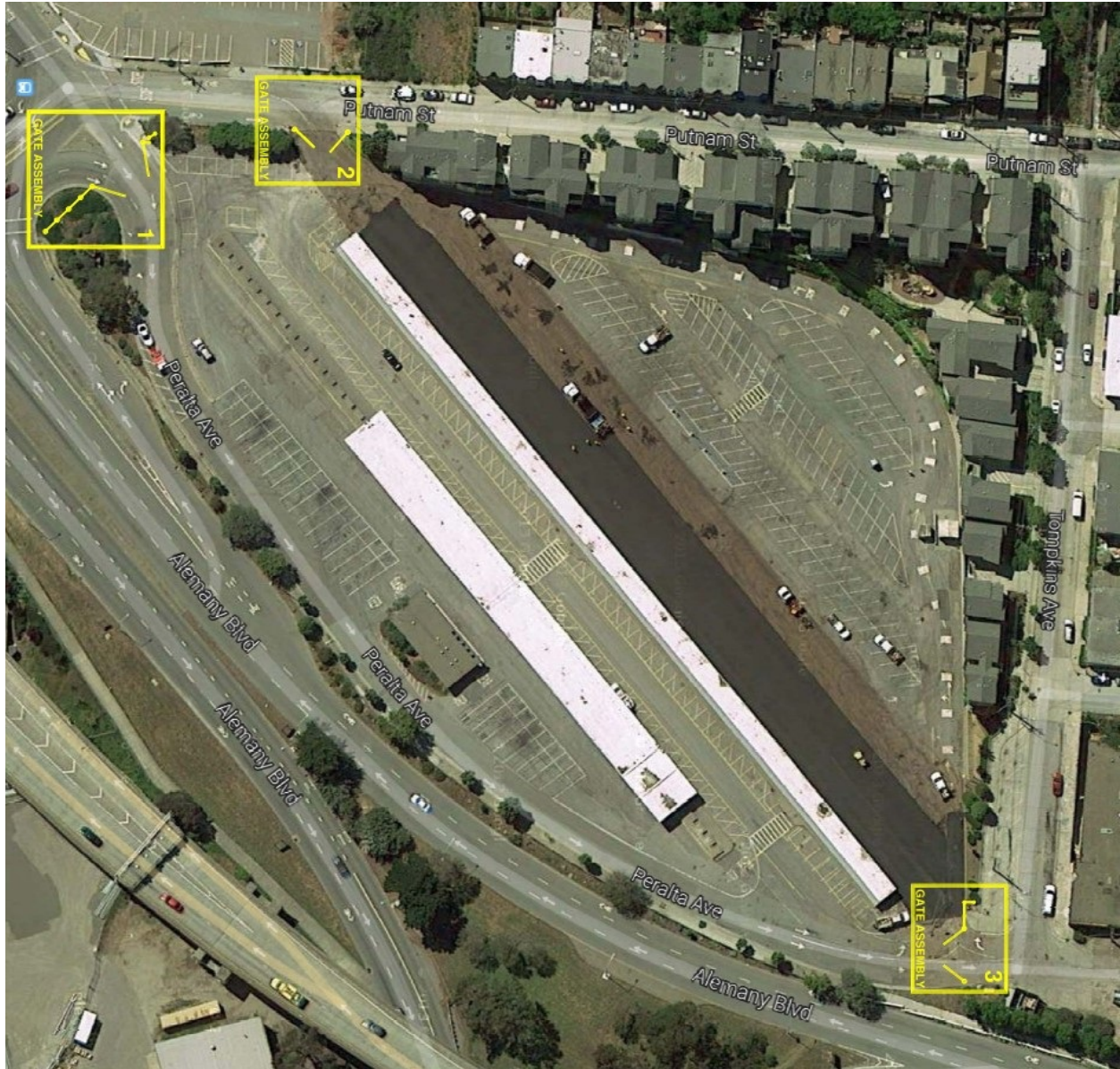
APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

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

Deputy City Attorney

**EXHIBIT A**  
**DESCRIPTION OF PREMISES**





**EXHIBIT B**

**NOTICE OF COMMENCEMENT DATE**

[Date]

Mr. Andrico Q. Penick  
Director of Property  
Real Estate Division  
City and County of San Francisco  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102

RE: Acknowledgement of Commencement Date, Lease Between

Dear Mr. Penick:

This letter will confirm that for all purposes of the Lease, the Commencement Date (as defined in Section 3.2 of the Lease) is \_\_\_\_\_, 2024.

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

Very truly yours,

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

Accepted and Agreed:

By: \_\_\_\_\_  
Andrico Q. Penick  
Director of Property

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

## EXHIBIT C

### Alemany Farmers' Market Parameters

1. Tenant shall uphold and maintain the Alemany Farmers' Market's certifications.
2. Tenant shall operate a weekly certified farmers' market no less than every Saturday, rain or shine. The longest market operations period possible each Saturday is preferred.
3. Tenant will offer, manage, and accept food assistance programs for, at a minimum, the certified farmers' market.
4. An abundant blend of market vendors is already engaged at AFM. Tenant will ensure a balance amongst new and current vendors as well as permit vendors to operate at AFM based on the existing state and local regulations.
5. Services and all written materials must be available in at least English, Spanish, Mandarin, and Cantonese.
6. Community outreach to publicize the Alemany Farmers' Market ("AFM") will be performed by the Tenant, including, but not limited to, signage (with prior approval from the City and County of San Francisco) and advertisements.
7. Up to twenty-five (25) days a year with notice and/or if no other event is scheduled, the City and County of San Francisco's agencies and departments ("City"), as approved by the Real Estate Division's Director of Property, shall be allowed to use the premises of the AFM at no cost to the City.
8. As approved by the Director of Property, no fewer than two (2) spaces or stalls may be selected by and allocated to the City free of charge for distributing information and/or taking registrations for City programs during events at the AFM.
9. Tenant shall provide reports regarding the AFM property and operations upon request by the Director of Property.
10. At no cost to City, Tenant shall provide all necessary equipment, supplies and utilities it requires during the Term and for all events, including water, sewer, electricity, trash and recycling removal. Tenant shall not use, borrow, and/or take any of City's supplies or utilities without the written approval from the Director of Property or his/her designee. Tenant may install certain temporary and removable facilities and improvements, including, but not limited to, movable tents, canopies, chairs, lights, speakers, and tables, in the Property during the Term. Immediately following the Term, Tenant shall remove all debris and facilities and restore the Property to the satisfaction of City.

**EXHIBIT D**

DRAFT



**EXHIBIT E**

**FIRST SOURCE HIRING AGREEMENT**

**Please access the link below for First Source Hiring information, forms, and agreements:**

**<https://www.sf.gov/comply-first-source-hiring-program>**

DRAFT

DRAFT

**EXHIBIT C**  
**PROPOSER CERTIFICATE**

Proposer acknowledges receipt of the RFP for Lease for the Alemany Farmers' Market, and Exhibits A through D, and hereby submits the attached proposal for consideration under the terms and conditions outlined herein. By submitting a proposal, the Proposer certifies to the City that (i) the only persons or parties interested in the proposal as principals are those named therein; (ii) the proposal is tendered without collusion with any other person, including partnerships, firms and corporations; (iii) the Proposer has not paid nor agreed to pay and will not pay or agree to pay any fee or commission, or any other thing of value contingent on the award of a lease agreement for the Premises to any City employee or official, or to any contracting consultant hired by the City for purposes of this project, or to any agent of the City; (iv) if the proposal is accepted, Proposer will execute a Lease for the Premises on or before the deadline specified by the City; and (v) the Proposer understands and accepts all conditions and requirements contained in this RFP.

Authorized Signator(s) for Proposer, dated this \_\_\_\_ of \_\_\_\_\_, 2024:

\_\_\_\_\_  
By: \_\_\_\_\_  
As: \_\_\_\_\_  
For: \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_  
As: \_\_\_\_\_  
For: \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_  
As: \_\_\_\_\_  
For: \_\_\_\_\_

RFP for ALEMANY FARMERS' MARKET

**EXHIBIT D**

**Enterprise Experience and Qualifications Questionnaire**

Name of Proposer: \_\_\_\_\_

Telephone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_

Email Address: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Type of Entity (corporation, joint venture, etc.): \_\_\_\_\_

Full Name, Title and Contact Information for all principal personnel of Proposer:

Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Address: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Address: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Address: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Address: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Address: \_\_\_\_\_

**I. Proposer's Financial Information (attach separate sheets as necessary):**

a) In addition to audited financial statements requested in the RFQ, annual reports, financial ratings, and other supportive information indicating the financial condition of the Proposer, all subsidiary units and the parent organization, for the last five years.

b) Names, addresses and telephone numbers of banks, financial and lending institutions and individuals who have provided financial assistance to the Proposer or who have participated financially in any of the Proposer's major projects during the past five years.

c) Properly certified statements by the appropriate officer or other individual attesting to the accuracy of and completeness of all financial information submitted.

**II. Proposer's Team Qualifications & Experience (attach separate sheets)**

a) Names, addresses, telephone, facsimile numbers and e-mail addresses of all Proposer team members and entities, including a project organization chart indicating key personnel, responsibilities, and relationships within the Proposer's organization and the designated lead for project coordination.

## RFP for ALEMANY FARMERS' MARKET

- b) Names and qualifications of all members of Proposer's Board of Directors if applicable.
- c) Names and qualifications of members of Proposer's staff who Proposer currently believes will be involved with the project.
- d) Names, employers, addresses, and qualifications of all known professional consultants to be used on the project (California state and local licenses for professionals and contractors will be required as mandated by law). In addition, identify the expected role for each professional consultant (i.e. – designer, planner, public relations, business consultant, career counselor, etc.).
- e) Name and address of Proposer's insurance carrier and description of Proposer's proposed insurance coverage for the project.
- f) Completed non-collusion affidavit form and corporate certificate form.

### **III. Litigation Information (attach separate sheets)**

Each Proposer shall provide a complete description of the status and resolution of any pending or prior litigation (within the past five years) involving the activities of any of Proposer's staff, team members, or team members' staff, to the extent that the subject matter of the litigation is material to the evaluation of the submittal. Examples of litigation issues material in this instance include, but are not limited to, fraud and breach of contract.