

## Penick, Andrico

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**From:** Penick, Andrico  
**Sent:** Friday, December 31, 2021 1:02 PM  
**To:** Carroll, Maryellen (DEM)  
**Cc:** Bechelli, Adrienne (DEM); Bruss, Andrea (MYR); Chu, Carmen (ADM)  
**Subject:** RE: Lease for 1170 Market  
**Attachments:** 1170\_Market\_Street\_12-30-21\_Final\_with\_Exhibits.pdf

To All: The fully executed 1170 Market lease for your information and records. AQP

### Andrico Q. Penick

Director of Real Estate  
City and County of San Francisco

(415) 554-9860 (direct)  
[Andrico.Penick@sfgov.org](mailto:Andrico.Penick@sfgov.org)

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**From:** Penick, Andrico  
**Sent:** Thursday, December 30, 2021 10:48 AM  
**To:** Carroll, Maryellen (DEM) <maryellen.carroll@sfgov.org>  
**Cc:** Bechelli, Adrienne (DEM) <Adrienne.Bechelli@sfgov.org>; Bruss, Andrea (MYR) <andrea.bruss@sfgov.org>; Chu, Carmen (ADM) <carmen.chu@sfgov.org>  
**Subject:** RE: Lease for 1170 Market  
**Importance:** High

Hi Maryellen.

- 1) Exactly where we are in this process and what, if any, are sticking points with the building owner. The draft lease has had 2 turns. We are down to 6 minor open issues: utility invoicing, termination due to interference with use; return condition; cure period; indemnification standard; and notice by email. The draft is in their court and I expect their comments today. These are minor drafting issues and I don't see them as sticking points that would put the deal at risk. We have already discussed the fact that we want to ink the lease by COB on Friday and I think we will make that deadline. The lease will be routed via DocuSign and the signatories are available.
- 2) Once the owner approves the lease can we sign or does City Attorney need to review or is this being done concurrently? Charles Sullivan from the City Attorney's office has already reviewed the prior drafts. Assuming the landlord accepts our latest draft or that we can accept their new language, if any, then Charles is ready to sign off.

3) Estimated time to have lease signed/ratified? COB Friday via DocuSign if not before. I'll send the executed final to all on this email. AQP

## Andrico Q. Penick

Director of Real Estate  
City and County of San Francisco

(415) 554-9860 (direct)  
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**From:** Carroll, Maryellen (DEM)  
**Sent:** Thursday, December 30, 2021 9:32 AM  
**To:** Penick, Andrico <[andrico.penick@sfgov.org](mailto:andrico.penick@sfgov.org)>  
**Cc:** Bechelli, Adrienne (DEM) <[adrienne.bechelli@sfgov.org](mailto:adrienne.bechelli@sfgov.org)>; Bruss, Andrea (MYR) <[andrea.bruss@sfgov.org](mailto:andrea.bruss@sfgov.org)>; Chu, Carmen (ADM) <[carmen.chu@sfgov.org](mailto:carmen.chu@sfgov.org)>  
**Subject:** Lease for 1170 Market

Good morning Andrico.

Thank you for working so closely with Adrienne on this lease. As of last week, and as I testified at the BOS last Thursday, we expected that we would have the lease ready to sign on Friday (12/24). We are now a week later and I know there has been back and forth with the owner and that you have been working around the clock on this, but I need to know :

- 1) Exactly where we are in this process and what, if any, are sticking points with the building owner.
- 2) Once the owner approves the lease can we sign or does City Attorney need to review or is this being done concurrently?
- 3) Estimated time to have lease signed/ratified?

I will be asked to report out to the BOS on this on Tuesday, January 4. Since we are going into a 3 day holiday weekend, I would like to get a full update today.

Thank you,

Mary Ellen Carroll  
Executive Director  
City and County of San Francisco  
Department of Emergency Management  
1011 Turk Street  
San Francisco, CA 94102  
Tel.: 415-558-2745

LEASE

between

1170 Market Street LLC,  
as Landlord

and

CITY AND COUNTY OF SAN FRANCISCO,  
as Tenant

For the lease of  
1170 Market Street, San Francisco, California

January 3, 2022

LIST OF EXHIBITS

EXHIBIT A — Floor Plans of Premises

EXHIBIT B — Notice of Commencement Date

EXHIBIT C — Proclamation By The Mayor Declaring The Existence Of A Local Emergency dated December 17, 2021, First Supplement to Mayor Proclamation Declaring The Existence Of A Local Emergency dated December 27, 2021 and Motion M21-183, Board of Supervisor Resolution Concurring in Proclamation of Local Emergency – Drug Overdoses in the Tenderloin, approved 12/23/2021.

## OFFICE LEASE

THIS OFFICE LEASE (this "**Lease**"), dated for reference purposes only as of January 3, 2022, is by and between 1170 Market Street LLC, a California limited liability company ("**Landlord**"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**" or "**Tenant**").

Landlord and City hereby agree as follows:

### 1. BASIC LEASE INFORMATION

The following is a summary of basic lease information (the "**Basic Lease Information**"). Each item below is deemed to incorporate all of the terms in this Lease pertaining 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:	January 3, 2022
Landlord:	1170 Market Street, LLC
Tenant:	CITY AND COUNTY OF SAN FRANCISCO
Building ( <u>Section 2.1</u> ):	1170 Market Street, San Francisco, CA
Premises ( <u>Section 2.1</u> ):	Entire Building
Rentable Area of Premises ( <u>Section 2.1</u> ):	Approximately 37,102 rentable square feet
Term ( <u>Section 3</u> ):	Estimated commencement date: January 3, 2022  Expiration date: June 30, 2022
Extension Options ( <u>Section 3.4</u> ):	Three (3) additional terms of two (2) months each, exercisable by City by notice to Landlord given not less than thirty (30) days in advance, with rent of Seventy-Five Thousand Dollars (\$75,000) per month.
Base Rent ( <u>Section 4.1</u> ):	Monthly payments: \$75,000 (\$2.022 per sq. ft.)
Use ( <u>Section 5.1</u> ):	Operation of a linkage center for City programs and services, as described in <u>Section 5.1</u>
Leasehold Improvements ( <u>Section 6</u> ):	None
Utilities ( <u>Section 9.1</u> ):	Those utilities listed in <u>Section 9.1</u> as Landlord responsibility will be provided by Landlord; all utility costs are included in Base Rent except electrical consumption on each floor (which is separately metered), which will be reimbursed

by City as part of the monthly Rent.

Services (Section 9.2): Those services described as Landlord responsibility in Section 9.1, except City will provide janitorial and security services at no cost to Landlord

Notice Address of Landlord (Section 24.1): 1170 Market Street, LLC  
1801 Van Ness Avenue, Suite 320  
San Francisco, CA 94109  
Attn: Haig G Mardikian, Manager  
Email: [Betty@haigmardikian.com](mailto:Betty@haigmardikian.com)  
(415) 986-0785

Landlord's Key Contact: Robin Levitt  
[Robin@haigmardikian.com](mailto:Robin@haigmardikian.com)

Landlord Contact Telephone No.: (415) 722-3038

Tenant's Notice Address (Section 24.1): Real Estate Division  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102  
Attn: Director of Property  
Re: 1170 Market Street  
  
Email: [Andrico.penick@sfgov.org](mailto:Andrico.penick@sfgov.org)

with a copy to: Department of Emergency Management  
1011 Turk Street  
San Francisco, CA 94102  
Attn: Adrienne Bechelli, Deputy Director  
Re: 1170 Market Street  
  
Email: [Adrienne.bechelli@sfgov.org](mailto:Adrienne.bechelli@sfgov.org)

and to: Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4682  
Attn: Real Estate & Finance Team  
Re: 1170 Market Street  
Email: [Charles.sullivan@sfcityattty.org](mailto:Charles.sullivan@sfcityattty.org)  
Fax No. (415) 5540-4757

Tenant's Key Contact: Adrienne Bechelli

Tenant Contact Telephone No.: (415) 554-4843

Tenant's Alternate Contact: Andrico Q. Penick

Alternate Contact Telephone No.: (415) 554-9860

Brokers (Section 24.8):

Steven A. Anderson, JLL

## 2. PREMISES

### 2.1 Lease Premises

Landlord leases to City and City leases from Landlord, subject to the provisions of this Lease, those premises in the building identified in the Basic Lease Information (the “**Building**”) and shown on the floor plans attached as Exhibit A (the “**Premises**”). The Premises contain the rentable area specified in the Basic Lease Information, and all of the floors of the Building. As used in this Lease, the term “**rentable area**” means that measurement of interior floor area computed in accordance with the “Office Buildings: Standard Methods of Measurements” (ANSI/BOMA Z65.1-2017) “**METHOD B**”, adopted by the Building Owners and Managers Association (the “**BOMA Standard**”). For clarity, Base Rent is not determined based upon rentable area of the Premises. The Building, the land on which the Building is located, and all other improvements on or appurtenances to the land are referred to collectively as the “**Property**.”

### 2.2 Common Areas

City has the exclusive right to use the lobbies, corridors, elevators, stairways, and other public areas of the Building and the Property (collectively, the “**Common Areas**”), and the exclusive right of access to and from the Premises by the main entrances to the Building and the Property, subject to Landlord’s right and obligation to make repairs and provide services as set forth in this Lease.

### 2.3 Condition of the Premises on Delivery

Landlord will deliver the Premises to City in “as is” condition, demised, water tight, with all Building Systems (as defined in Section 8.1 (Landlord’s Repairs)) in operable order, and all other systems in and serving the Premises in operable condition, and the Premises, the Building, and the Common Areas in compliance with all applicable Laws, as provided in Section 10.1 (Landlord’s Compliance with Laws; Premises Condition).

### 2.4 Disability Access

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. Landlord discloses (i) Landlord has not been issued a disability access inspection certificate as described in California Civil Code (“**CC**”) Section 55.53(e), (ii) pursuant to CC Section 1938, that Landlord has not ordered, performed, or caused to be performed, a Certified Access Specialist (“**CASp**”) inspection of the Premises (sometimes referred to as “premises” or “subject premises” for the herein disclosures), and (iii) Landlord makes the following statutory disclosure per CC Section 1938 (the required “**CASp Disclosure**”):

“A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or



tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."

If City elects to obtain an inspection, City and Landlord 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 any repairs necessary to correct violations of construction-related accessibility standards shall be borne by the City.

### **3. TERM**

#### **3.1 Term of Lease**

The Premises are leased for a term (the "**Term**") commencing on the date that Landlord has delivered and City has accepted the Premises in the condition required under this Lease (Effective Date). The Term will end on the expiration date specified in the Basic Lease Information, or the date that this Lease is earlier terminated under the provisions of this Lease, unless City extends the Term pursuant to Section 3.4 (Extension Options).

#### **3.2 Commencement Date and Expiration Date**

The dates that the Term commences and expires under this Lease are the "**Commencement Date**" and the "**Expiration Date**." If the Commencement Date occurs on a date other than the Estimated Commencement Date provided in the Basic Lease Information, then Landlord will promptly deliver to City a notice substantially in the form of the attached **Exhibit B** confirming the actual Commencement Date, but Landlord's failure to do so will not affect the dates of commencement or expiration of the Term.

#### **3.3 Delay in Delivery of Possession**

Landlord will use diligent and good faith efforts to deliver possession of the Premises in the condition required under this Lease, on or before the Estimated Commencement Date. If Landlord is unable to deliver possession of the Premises by the Estimated Commencement Date, then, subject to the provisions of this Section below, the validity of this Lease will not be affected by Landlord's inability to deliver possession except that City's obligations to pay Rent will not commence until the Commencement Date. If the Commencement Date is later or earlier than the Estimated Commencement Date, this Lease will still expire on the Expiration Date, unless sooner terminated under the provisions under this Lease. If Landlord is unable to deliver possession of the Premises to City as required under this Lease within fifteen (15) days after the Estimated Commencement Date, then, by written notice to Landlord, City may terminate this Lease, without any further liability to Landlord or City.

#### **3.4 Extension Options**

Landlord grants City the right to extend the Term (the "**Extension Options**") for the additional terms specified in the Basic Lease Information (the "**Extended Terms**"). The Extended Terms will be on all of the terms and conditions contained in this Lease. Landlord acknowledges and agrees that City's exercise of an Extension Option will be conditioned on and subject to the Board of Supervisors and the Mayor enacting a resolution, at their respective sole and absolute discretion, approving and authorizing the extension ("**Exercise Approval**"). Accordingly, City's exercise of each Extension Option will occur, if at all, in two steps. City may exercise an Extension Option, if at all, by giving first written notice to Landlord of the



City's intent to extend the Lease (the "**Exercise Notice**") no later than thirty (30) days before expiration of the Term; provided, however, if there is an uncured Event of Default on the date City gives an Exercise Notice, then Landlord may reject City's Exercise Notice if City fails to cure the Event of Default within ten (10) days after Landlord's written demand for City to cure the Event of Default. City will have twenty (20) days after the date the City delivers the Exercise Notice to Landlord to obtain Exercise Approval. City makes no representation or warranty at the time of giving the Exercise Notice that City will receive Exercise Approval, and Landlord agrees that the Lease will not be extended if the City does not receive Exercise Approval for any reason or cause, including any alleged failure of advocacy. If the Exercise Approval is not received within the twenty (20)-day period, then Landlord may reject City's exercise upon written notice to City at any time before City receives the Exercise Approval. On receipt of the Exercise Approval, Tenant shall notify Landlord and the Extension Option will be deemed exercised and binding on the parties. If City extends the Term as provided in this Section, then the word "Term" will mean and include any Extended Terms.

#### **4. RENT**

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

Beginning on the Commencement Date, City will pay to Landlord the monthly Base Rent specified in the Basic Lease Information (the "**Base Rent**"). The Base Rent is payable each month at the address specified for Landlord in the Basic Lease Information, or other place as Landlord may designate in writing on not less than thirty (30) days' advance notice. City will pay the Base Rent monthly within thirty (30) days after invoice from Landlord and without any deductions or setoff except as otherwise provided in this Lease. At Landlord's election, Base Rent shall be sent electronically to an ACH account designated by Landlord.

##### **4.2 Intentionally Omitted**

##### **4.3 Base Rent for the Extended Term**

During any Extended Term, the Base Rent will remain the same (\$75,000 per month).

##### **4.4 Additional Charges**

City will pay to Landlord any charges or other amounts required under this Lease as additional rent ("**Additional Charges**"), including charges for Additional Services under Section 4.18 and for floor electrical as set forth in Section 9.1. All Additional Charges are payable to Landlord at the place where the Base Rent is payable. The Base Rent and Additional Charges are sometimes collectively referred to "**Rent**."

##### **4.5 Intentionally Omitted**

##### **4.6 Intentionally Omitted**

##### **4.7 Intentionally Omitted**

##### **4.8 Operating Costs and Real Estate Taxes**

This Lease is fully serviced except janitorial, security and floor electrical as set forth in Article 9. Thus, the Base Rent includes all fees and charges for Tenant's use and occupancy of the Premises, and there will be no other pass throughs to Tenant for operating expenses, taxes, or assessments except as set forth above.

**4.9 Intentionally Omitted****4.10 Intentionally Omitted****4.11 Intentionally Omitted****4.12 Intentionally Omitted****4.13 Intentionally Omitted****4.14 Audits**

After not less than five (5) business days' notice to Landlord, City may audit the books and records of the Building related to the Additional Services, the floor electrical costs or any charges made by Landlord to City under this Lease. If the audit discloses any discrepancies that would result in a reduction of moneys paid to Landlord, Landlord will immediately refund to City the amount of any overpayment by City. City will pay the cost of the audit, but if an audit discloses any discrepancies that shows an overpayment of five percent (5%) or more, then Landlord will pay the costs of the audit.

**4.15 Records**

Landlord will maintain at the Building or at its offices in San Francisco in a safe, complete, and organized manner all of its records related to this Lease, the floor electrical billing, Additional Services under Section 4.18, and any other charges paid by City under this Lease, for at least three (3) years after the Expiration Date or earlier termination of the Term. Landlord will maintain the records on a current basis and in sufficient detail to facilitate adequate review and audit. All books and records will be available for inspection, copying, and audit by City and its representatives, at City's expense, subject to the provisions of Section 4.14 (Audits).

**4.16 Payments by City**

Landlord acknowledges that City cannot make any payments to Landlord unless Landlord is qualified as an approved vendor in City's financial and payment system. Therefore, City will not be in default of any monetary obligation under this Lease and no interest or late charge will apply, if Landlord is not an approved vendor with City. More information about being an approved vendor with City is available at <https://sfcitypartner.sfgov.org/Vendor/BecomeSupplier>. All Rent that has accrued while Landlord was not an approved vendor will be payable within twenty (20) after City receives Landlord's written notice and the Contract Monitoring Division confirms that Landlord has been approved as a City vendor. Notwithstanding the foregoing, pursuant to the Mayor's Declaration of Emergency attached as Exhibit C (the **Emergency Declaration**), the City will waive all requirements necessary to become a City approved vendor except that Landlord must provide to the City, in advance of the Commencement Date, its W-9 Taxpayer Identification and Certification Form, its San Francisco Business Tax ID information and any similar information or documents reasonably requested by the City in order to comply with tax reporting requirements.

**4.17 Landlord's Compliance with City Business and Tax Regulations Code**

Landlord acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the withholding of payments to any vendor that is delinquent in the payment of any amounts that the vendor is

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

#### **4.18 Additional Services**

City may request that Landlord provide or arrange for additional services for the Premises, which Landlord may provide or arrange in its reasonable discretion. If Landlord elects to provide the requested additional services and City has approved the cost and scope of those services in advance (the "**Additional Services**"), then City will pay Landlord as Additional Charges the cost of those Additional Services at the agreed upon price. Landlord may not contract for or provide any services (and City will not be obligated to pay for such services) without City's prior written approval of the cost of the Additional Services (which may be the known costs, or an hourly rate and maximum number of hours, or a cost estimate with a not-to-exceed maximum amount) in writing before Landlord incurs any costs. City will pay for the cost of the Additional Services within thirty (30) days after receipt of an invoice with supporting data, sent with the next rent invoice. Any additional terms for the Additional Services will be memorialized by a written agreement, which, upon execution by Landlord and City, will be considered a part of this Lease.

### **5. USE**

#### **5.1 Permitted Use**

City may use the Premises for general office uses, and the operation of a Linkage Center for City programs and services and for no other use without Landlord's prior written consent, which may not be unreasonably withheld, conditioned, or delayed. The Premises may not be used for any overnight residential purposes including, without limitation, any overnight sleeping or "hoteling" accommodations. The Linkage Center is a component of the Tenderloin Emergency Intervention Plan that aims to mitigate the widespread open-air drug use and lack of easily accessible pop-up resources for people in need in the Tenderloin. This center is a services-focused location where people can voluntarily go to find respite from the streets and gain access to a wide variety of resources from the City and its partners. The purpose of this Linkage Center is to:

1. Provide a safe, welcoming space for people who suffer from substance use disorder in the Tenderloin to go where they can access hygiene resources and social space.
2. Be a "one stop shop" for people who are ready to access City health and human services resources to link to those services easily and quickly.

#### **5.2 Intentionally Omitted**

#### **5.3 Interference with Access**

Landlord will provide to City uninterrupted access to the Building and the Premises twenty-four (24) hours per day, seven (7) days per week, including during any power outages affecting the Premises or any portion of the Building; but Landlord may, after consultation with City's Administrator, interrupt City's access to the Premises or the Building if there is an immediate threat that will render the Premises, the Common Areas, or any other portion of the



Building unsafe for human occupancy. If City's use of any of the Premises is interrupted because the Premises, the Common Areas, or any other portion of the Building is unsafe for human occupancy due to Landlord's failure to comply with its obligations under this Lease, or for any reason not caused by the City, its Agents or Invitees, then Landlord will immediately undertake all necessary steps to correct the condition. If the condition impairs City's ability to carry on its business in the Premises, then the Rent will be abated based on the extent to which the condition interferes with City's ability to normally and safely carry on its business at the Premises. If the condition continues for thirty (30) days or more after City's use is interrupted or impaired then, without limiting any of its other rights under this Lease, City may terminate this Lease, unless Landlord supplies City with evidence that City's normal and safe use will be restored within thirty (30) days after the date City's use was interrupted or impaired, and City's full use is actually restored within that thirty (30)-day period. City acknowledges that, since it effectively has access to and control of the entire usable and occupiable portions of the Building, City will control and be responsible for security and access to the Building. Nothing in this Section will limit City's rights with respect to any disruption due to casualty under Section 12 (Damage and Destruction).

## **6. LEASEHOLD IMPROVEMENTS**

### **6.1 Intentionally Omitted**

### **6.2 Intentionally Omitted**

### **6.3 Installation of Telecommunications and Other Equipment**

Landlord and City acknowledge that Landlord will not install telecommunications, data, and computer cabling facilities and equipment. City is responsible for installing those facilities and equipment to the extent needed and setting up its own Wi-Fi network. Landlord will furnish access to City and its consultants and contractors to the main communications service serving the floor(s) on which the Premises are located and all other parts of the Building where access is needed for proper installation of Wi-Fi and/or communication facilities and data equipment including wiring. City will have the right to install Wi-Fi and/or communication facilities and data equipment. City and Landlord will use their good faith efforts to coordinate any all activities to allow the installation of Wi-Fi and/or communication facilities and data equipment to be completed in a timely and cost-effective manner. Upon the expiration or termination of this Lease, City shall remove any communications and data equipment that City installs in the Premises.

### **6.4 Construction of Improvements that Disturb or Remove Exterior Paint**

Landlord, on behalf of itself and its successors, assigns, and Agents, will comply with all requirements of the San Francisco Building Code Chapter 34 and all other applicable local, state, and federal laws, including the California and United States Occupational and Health Safety Acts and their implementing regulations, when Landlord disturbs or removes exterior or interior lead-based or "presumed" lead-based paint (as defined below). Landlord and its Agents must give to City three (3) business days' prior written notice of any disturbance or removal of exterior or interior lead-based or presumed lead-based paint. Landlord acknowledges that the required notification to the Department of Building Inspection regarding the disturbance or removal of exterior lead-based paint under San Francisco Building Code Chapter 34 does not constitute notification to City as Tenant under this Lease and similarly that notice under this Lease does not constitute notice under San Francisco Building Code Chapter 34. Further, Landlord and its Agents, when disturbing or removing exterior or interior lead-based or presumed lead-based paint, will not use or cause to be used any of the following methods:

(a) acetylene or propane burning and torching; (b) scraping, sanding, or grinding without containment barriers or a High Efficiency Particulate Air filter ("HEPA") local vacuum exhaust tool; (c) hydroblasting or high-pressure wash without containment barriers; (d) abrasive blasting or sandblasting without containment barriers or a HEPA vacuum exhaust tool; and (e) heat guns operating above 1,100 degrees Fahrenheit. Landlord will comply with the requirements of California Code of Regulations Title 17 when taking measures that are designed to reduce or eliminate lead hazards. Under this Section, paint on the exterior or interior of buildings built before January 1, 1979 is presumed to be lead-based paint unless a lead-based paint test, as defined by San Francisco Building Code Chapter 34, demonstrates an absence of lead-based paint on the interior or exterior surfaces of the buildings. Under this Section, lead-based paint is "disturbed or removed" if the work or alteration involves any action that creates friction, pressure, heat, or a chemical reaction on any lead-based or presumed lead-based paint on a surface so as to abrade, loosen, penetrate, cut through, or eliminate paint from that surface.

## 7. ALTERATIONS

### 7.1 Alterations by City

City may not make or permit any alterations, installations, additions, or improvements (collectively, "Alterations") to the Premises without first obtaining Landlord's written consent, which Landlord will not unreasonably withhold, condition, or delay. Installation of furnishings, fixtures, equipment, or decorative improvements that do not affect the Building Systems or structural integrity of the Building, and the repainting and recarpeting of the Premises do not constitute Alterations and do not require Landlord's consent. Any Alterations permitted under this Lease will be made at City's cost in compliance with applicable Laws (as defined in Section 10.1 (Landlord's Compliance with Laws)). Without cost to itself, Landlord will cooperate with City in securing building and other permits and authorizations needed for any permitted Alterations. Landlord will not be entitled to any construction or other administrative fee in connection with any Alteration. City will not be required to remove any Alterations on the expiration or sooner termination of this Lease unless Landlord notifies City in writing at the time Landlord approves the Alterations that they must be removed. City is not required to remove any improvements not requiring Landlord's consent.

### 7.2 Title to Improvements

Except for City's Personal Property (as defined in the next Section), all appurtenances, fixtures, improvements, equipment, additions, and other property permanently installed in the Premises as of the Commencement Date or during the Term will be and will remain Landlord's property. City may not remove Landlord's property without Landlord's written approval.

### 7.3 City's Personal Property

(a) All furniture, furnishings, equipment, trade fixtures, and articles of movable personal property installed in the Premises by or for City and that can be removed without structural damage to the Premises (collectively, "City's Personal Property") are and will remain City's property. If City requests, Landlord may assist City by ordering and installing City's Personal Property and City will reimburse Landlord for all fees, costs, and expenses approved by City in advance within thirty (30) days after receipt of an invoice with supporting documentation and submitted with the next rent invoice; provided, however, that City may elect to provide any deposit or other expense required at the time of ordering City's Personal Property. To the extent possible, any maintenance contract or warranty in connection with the purchase or lease of tangible personal property will be optional (namely, City may, but is not required to, purchase a maintenance contract or warranty). To the extent feasible, Landlord and any vendors

of Landlord will separately itemize any shipping charges. Although Landlord may order and install City's Personal Property, all items will remain City's Personal Property and not be considered Leasehold Improvements or constitute any component of the Leasehold Improvements. With regard to any personal property purchased by Landlord on behalf of City or leased by City under this Lease, (a) Landlord represents that it is fully compliant with the California Sales and Use Tax Law and warrants to City that Landlord that it will fulfill its use tax obligations under that law with respect to the subject transaction; (b) Landlord will accept a Use Tax Direct Payment Exemption Certificate in lieu of any use tax payment if the City, in its sole discretion, elects to provide such Certificate to Landlord; (c) If the City pays use tax to Landlord, Landlord will remit the entire amount of the use tax payment to the state and provide the City with a receipt in accordance with the California Sales and Use Tax Law; and (d) Landlord will be liable to the City for all amounts of use tax paid to Landlord that Landlord fails to remit to the State. This obligations of Landlord under the foregoing sentence will survive and termination or expiration of the Lease.

(b) At any time during the Term, City may remove any of City's Personal Property, and City will repair any damage to the Premises resulting from that removal. On the expiration or earlier termination of this Lease, City will remove City's Personal Property from the Premises in accordance with Section 20 (Surrender of Premises). Landlord acknowledges that some of City's Personal Property may be financed by an equipment lease financing otherwise subjected to a security interest, or owned by an equipment company and leased to City ("Secured Personal Property"). Landlord recognizes the rights of any supplier, lessor, or lender who has an interest in any items of Secured Personal Property to enter the Premises and remove that Secured Personal Property at any time during the Term or within thirty (30) days after the Expiration Date. On City's reasonable request, Landlord will execute and deliver any document required by any supplier, lessor, or lender in connection with the installation of any items of Secured Personal Property in the Premises, under which Landlord waives any rights it may have or acquire with respect to the Secured Personal Property, so long as the supplier, equipment supplier, lessor, or lender agrees that it (i) will remove the Secured Personal Property from the Premises within thirty (30) days after the Expiration Date (and if it does not remove the Secured Personal Property within that time the equipment supplier, lessor, or lender will have waived any rights it may have had to the Secured Personal Property), and (ii) will repair any damage caused by the removal of the Secured Personal Property.

#### **7.4 Alteration by Landlord**

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

### **8. REPAIRS AND MAINTENANCE**

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

City acknowledges that the Building is currently in acceptable condition ("Current Condition"). At its cost, Landlord will repair and maintain the exterior and structural portions of the Building in its Current Condition, including only the roof, foundation, bearing and exterior walls and subflooring, and the heating, ventilating, air conditioning, plumbing, electrical, fire protection, life safety, security, and other mechanical, electrical, and communications systems of the Building (collectively, the "Building Systems"). Without limiting the foregoing, City will maintain the Building in its Current Condition, normal wear and tear excepted and will provide exterior graffiti removal with reasonable frequency.

## 8.2 City's Repairs

Subject to Landlord's warranty under Section 10.1 (Premises Condition), and Landlord's repair and maintenance obligations under this Lease, City will repair and maintain at its cost the interior portions of the Premises and will keep the Premises in good working order and in a safe and sanitary condition, except for ordinary wear and tear and damage by casualty or condemnation. City will make any required repairs and replacements to the interior of the Premises (a) at City's cost, (b) by contractors or mechanics selected by City and reasonably approved by Landlord, (c) so that the interior portions of the Premises will be at least substantially equal in quality, value, and utility to the original work or installation before the damage, (d) in a manner and using equipment and materials that will not materially interfere with or impair the operations, use, or occupation of the Building or the Building Systems, and (e) in compliance with all applicable Laws, including any applicable contracting requirements under City's Charter and Administrative Code. At all times during the Term, promptly after City's reasonable notice, Landlord will provide City and its Agents with access to those portions of the Building that are necessary to maintain or repair the telecommunications and data and computer cabling facilities and equipment installed by City, if any.

## 8.3 Liens

City will keep the Premises free from liens arising out of any work performed, material furnished, or obligations incurred by City during the Term. Landlord may post on the Premises any notices permitted or required by Laws or that are needed for the protection of Landlord, the Premises, or the Building, from mechanics' and material suppliers' liens. City will give Landlord at least five (5) days' prior written notice of commencement of any repair or construction by City on the Premises.

# 9. UTILITIES AND SERVICES

## 9.1 Landlord's Provision of Utilities

Landlord will furnish only the following utilities and services to the Premises at no cost to City, except as set forth in (b) below: (a) heating, air conditioning, and ventilation twenty-four (24) hours a day, seven (7) days a week ("**Daily Basis**"); (b) electric current up to the existing electrical capacity of the Building, on a Daily Basis except that City will reimburse Landlord for floor electrical (without markup) based upon actual costs, as evidenced by electric bills from PG&E; (c) elevator service on a Daily Basis; and (d) water for lavatory, kitchen, and drinking purposes on a Daily Basis. During the Term, Landlord will provide freight elevator service on City's reasonable request. Without limiting Landlord's obligations under this Section, Landlord will furnish all utilities and services required under this Lease in a manner consistent with utilities and services normally provided in comparable buildings in the San Francisco Civic Center District.

## 9.2 Services

At its cost, City will provide such janitorial and security services that City requires during the Term.

## 9.3 Conservation

Landlord may establish reasonable measures to conserve energy and water, including automatic light shut off after hours and efficient lighting forms on unused floors, including but



not limited to the basement, so long as these measures do not unreasonably interfere with City's use of the Premises.

#### **9.4 Disruption in Essential Utilities or Services**

If any failure, stoppage, or interruption of any utilities or services to be furnished by Landlord occurs, Landlord will immediately notify City of the failure, stoppage, or interruption; diligently attempt to restore service as promptly as possible; and keep City apprised of its efforts. If Landlord is unable to supply any of the Building's sanitary, electrical, heating, air conditioning, water, elevator, fire protection and hazard detection and alarm, or other essential services serving the Premises (collectively, "**Essential Services**") and, if such failure, stoppage or interruption is not caused by City, its Agents or Invitees, and that inability of Landlord impairs City's ability to carry on its business in the Premises for (a) one (1) or more business days and it is in Landlord's reasonable control to restore the Essential Services or (b) five (5) or more consecutive business days if the failure is not within Landlord's reasonable control and City, in fact, does not use or occupy that portion of the Premises, then the Rent will be abated based on the extent that the lack of the Essential Services impairs City's ability to normally carry on its business in the Premises, or, alternatively at City's election, City may provide the Essential Services and offset the reasonable cost against the Rent next due under this Lease. The abatement or right to provide the Essential Services and offset against Rent will continue until the Essential Services have been restored so that the lack of any remaining Essential Services no longer materially impairs City's ability to carry on its business in the Premises. Landlord will use its reasonable and diligent efforts to restore disrupted Essential Services as soon as practicable. If the failure to provide any Essential Services occurs for any reason (other than acts or omissions of City (solely as Tenant but not City in its regulatory role), City's Agents or Invitees) for more than thirty (30) days, and that failure interferes with City's ability to normally carry on its business in the Premises and City, in fact, does not use or occupy that portion of the Premises, then, without limiting any of its other rights or remedies under this Lease or at law or in equity, City may terminate this Lease on written notice to Landlord, unless Landlord supplies City with evidence reasonably satisfactory to City that the Essential Services will be reliably restored within forty-five (45) days after the date City's use was first interrupted, and the Essential Services are actually restored and reliable within the forty-five (45)-day period. City will not be entitled to any abatement of Rent or right to terminate if Landlord's inability to supply Essential Services to City results solely to the negligent acts or omissions of City (solely as Tenant but not City in its regulatory role) and City's Agents.

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

#### **10.1 Landlord's Compliance with Laws; Premises Condition**

Subject to City's obligation under Section 8.2 (City's Repairs), Landlord will at all times during the Term maintain, at its cost, the Property, Building, Common Areas, and the Building Systems in compliance with applicable present or future federal, state, local, and administrative laws, rules, regulations, orders, and requirements (collectively, "**Laws**"). Landlord represents and warrants to City, and covenants with City, as follows: to Landlord's actual knowledge, without inquiry: (a) the physical structure, fixtures, and permanent improvements of the Premises (including the Leasehold Improvements) and all portions of the Property and the Building along the path of travel to the Premises (including the Building entrances, Common Areas, restrooms, elevators, lobbies, telephone banks, and drinking fountains) are now, and as of the Commencement Date will be, in compliance with the requirements of the Americans With Disabilities Act of 1990, California Code of Regulations Title 24, and all other applicable Laws intended to provide equal accessibility for persons with disabilities (collectively, "**Disabilities Laws**"); (b) the Building is not an unreinforced masonry building, and is now, and as of the

Commencement Date will be, in compliance with all applicable Laws relating to seismic safety (collectively, "**Seismic Safety Laws**"); (c) the Building, the Common Areas, and Building Systems serving the Premises are now, and as of the Commencement Date will be, in full compliance with all applicable Laws relating to fire and life safety (including the San Francisco High-Rise Sprinkler Ordinance) (collectively, "**Life Safety Laws**"); (d) the Building, the Common Areas, and Building Systems serving the Premises are now, and as of the Commencement Date will be, in compliance with all other applicable Laws; and (e) there are not now, and as of the Commencement Date will not be, any material physical or mechanical defects in the Premises, Building, or the Building Systems that would materially adversely affect City's intended use of the Premises.

## 10.2 City's Compliance with Laws

City will use the Premises during the Term in compliance with applicable Laws, as modified or waived by the Emergency Declaration (Exhibit C), except that City will not be required to make any structural alterations, additions, or other modifications in order to comply with applicable Laws unless the modifications are necessary solely because of any Alterations to the Premises made by City under Section 7 (Alterations) and the modifications are not otherwise Landlord's responsibility under this Lease. City will be responsible for complying with any requirement of the Disabilities Laws relating to the placement of City's furniture or other City Personal Property and the operation of any programs in the Premises, other than any requirement relating to the physical structure, fixtures, and permanent improvements of the Premises or portions of the Property or Building along the path of travel to the Premises, which are Landlord's obligation as provided in Section 10.1 (Premises Condition).

## 11. SUBORDINATION

(a) Subject to subsection (b) below, this Lease is subject and subordinate at all times to the following (each an "**Encumbrance**"): (i) any reciprocal easement agreements, ground leases, or other underlying leases that may later be executed affecting Landlord's interest in the Property (or any portion of it), and (ii) the lien of any mortgages or deeds of trust and renewals, modifications, consolidations, replacements, and extensions of any of the foregoing that may be executed by Landlord at any time in any amount for which any part of the Property, any ground lease, or underlying lease, or Landlord's interest or estate in them is subject. But, if the ground lessor, mortgagee, trustee, or holder of any mortgage or deed of trust (each an "**Encumbrancer**") elects to have City's interest in this Lease be superior to its Encumbrance, then, on City's receipt of a notice from the Encumbrancer, this Lease will be deemed superior, whether this Lease was executed before or after the date of the Encumbrance or the date of its recording. The provisions of this subsection 11(a) are self-operative and no further instrument will be required. At Landlord's request, however, City will enter into a subordination, nondisturbance, and attornment agreement ("**SNDA**") with Encumbrancer in a form reasonably acceptable to City and Encumbrancer evidencing the subordination or superiority of this Lease. City's covenant under this subsection (a) to subordinate this Lease to any Encumbrance is conditioned on each senior instrument containing the commitments in subsection (b) below.

(b) If any mortgage or deed of trust to which this Lease is subordinate is foreclosed or a deed in lieu of foreclosure is given to the mortgagee or beneficiary, or if any ground lease or underlying lease to which this Lease is subordinate is terminated, then this Lease will not be barred, terminated, cut off, or foreclosed and the rights and possession of City under this Lease will not be disturbed unless an Event of Default has occurred and is continuing. City will attorn to and become the tenant of the successor-in-interest to Landlord, provided that City has received proper written notice of the succession and the name and address of the successor landlord. The provisions of this Section 11(b) are self-operative and no further instrument will be

required. Landlord agrees, however, upon request by City and in a form reasonably acceptable to City to cause any Encumbrancer to execute an SNDA evidencing the foregoing non-disturbance provisions together with the priority or subordination of this Lease with respect to any such Encumbrance.

## **12. DAMAGE AND DESTRUCTION**

(a) If the Premises, the Building, or any Building Systems are damaged by fire or other casualty, and the resulting damage or destruction will take more than 60 days to repair; then either party can terminate the Lease upon 30 days written notice to the other party. If the parties do not terminate the Lease within 30 days then the Lease continues in full force and effect for the portions of the Premises unaffected by the damage/destruction, with the Rent abated as set forth in Section 5.3.

(b) The parties intend that the provisions of this Section fully govern their rights and obligations in the event of damage or destruction. Accordingly, Landlord and City each waives and releases any right to terminate this Lease in whole or in part under Section 1932, subdivision 2, Section 1933, subdivision 4, and Sections 1941 and 1942 of the Civil Code of California or under any similar Law now or later in effect, to the extent those rights are inconsistent with the provisions of this Section.

## **13. EMINENT DOMAIN**

### **13.1 Definitions**

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

“**Date of Taking**” means the earlier of (a) the date on which title to the portion of the Property taken passes to and vests in the condemnor or (b) the date on which City is dispossessed.

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

### **13.2 General**

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

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

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

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

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

(b) If a partial Taking of a substantial portion of the Building occurs, a but subsection (a) above does not apply, then within thirty (30) days after the Date of Taking either City or Landlord may terminate this Lease by written notice to the other, provided that, as a condition to City's right to terminate, the portion of the Building taken must, in City's reasonable judgment, render the Premises unsuitable for continued use by City for its intended purposes or otherwise materially adversely affect City's normal operations in the Premises or access to the Premises.

(c) If either party elects to terminate this Lease under this Section, then this Lease will terminate on the later of the thirtieth (30<sup>th</sup>) day after the written notice is given or the Date of Taking.

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

On termination of this Lease in its entirety under Section 13.3 (Total Taking; Automatic Termination) or under Section 13.4 (Partial Taking; Continuation of Lease), then: (a) City's obligation to pay Rent will continue up until the date of termination and then will cease, and (b) Landlord will be entitled to the entire Award, except that City will receive any portion of the Award for the unamortized cost of any Leasehold Improvements paid for by City and any Award made specifically for City's relocation expenses or the interruption of or damage to City's business or damage to City's Personal Property.

### **13.6 Partial Taking; Continuation of Lease**

If there is a partial Taking of the Premises and this Lease is not terminated in its entirety under Section 13.4 (Partial Taking; Continuation of Lease) above, then this Lease will terminate as to the portion of the Premises taken, but will remain in effect as to the portion not taken, and the rights and obligations of the parties will be as follows: (a) Rent will be equitably reduced depending on the configuration of the Premises and the portion taken (for instance, if the area of the Premises taken has no special or significant use, then the reduction may be by an amount that is in the same ratio to the Rent as the area of the Premises taken bears to the area of the Premises before the Date of Taking), and (b) Landlord will be entitled to the entire Award in connection therewith, provided that City will receive any portion of the Award for the unamortized cost of any Leasehold Improvements paid for by City in the portion of the Premises taken and any Award made specifically for City's relocation expenses or the interruption of or damage to City's business or damage to City's Personal Property.

### **13.7 Temporary Taking**

Notwithstanding anything to contrary in this Section, if a Taking of the Premises occurs for sixty (60) consecutive days or fewer, this Lease will remain unaffected by the temporary Taking, and City will continue to pay Rent and to perform all of the terms, conditions, and



covenants of this Lease. In the event of a temporary Taking, City will be entitled to receive that portion of any Award representing compensation for the use or occupancy of the Premises during the Term up to the total Rent owing by City and any out-of-pocket costs incurred by City due to the temporary Taking for the period of the Taking.

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

Except as provided in this Section, City may not directly or indirectly sell, assign, encumber, pledge, or otherwise transfer or hypothecate all or any part of its interest in or rights with respect to the Premises or its leasehold estate created by this Lease or permit all or any portion of the Premises to be occupied by anyone other than itself or sublet all or any portion of the Premises, without Landlord's prior written consent in each instance, which will not be unreasonably withheld, conditioned, or delayed. From time to time, on notice to Landlord, but without Landlord's consent, City may transfer this Lease or use and occupancy of all or any of the Premises to any department, commission, or agency of the City and County of San Francisco for uses permitted by applicable Law.

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

##### **15.1 Events of Default by City**

Any of the following will constitute an "**Event of Default**" by City:

(a) City fails to make any timely payment of Rent and to cure the nonpayment within five (5) business days after receipt of written notice of nonpayment from Landlord, provided that for the first monthly payment of Rent at the beginning of the Term, City will have twenty (20) days after written notice from Landlord to cure any nonpayment.

(b) City's abandons the Premises (within the meaning and under the requirements of California Civil Code Section 1951.3).

(c) City's failure to perform any other of its covenants or obligations under this Lease (not involving the payment of money) and failure to cure the non-performance within thirty (30) days of the date of receipt of Landlord's notice of the failure, provided that if more than thirty (30) days are reasonably required for the cure, no Event of Default will occur if City commences the cure within the thirty (30)-day period and diligently prosecutes the cure to completion.

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

On the occurrence and during the continuance of any Event of Default by City, Landlord will have all rights and remedies available under law or granted pursuant to this Lease, including the following:

(a) The rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including the right to terminate City's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that City proves could be reasonably avoided, as computed under subsection (b) of Section 1951.2.

(b) The rights and remedies provided by California Civil Code Section 1951.4 (continuation of lease after breach and abandonment), which allows Landlord to continue this

Lease in effect and to enforce all of its rights and remedies under this Lease, including the right to recover Rent as it becomes due, for so long as Landlord does not terminate City's right to possession, if City has the right to sublet or assign, subject only to reasonable limitations.

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

If Landlord fails to perform any of its obligations under this Lease, then (without limiting any of City's other cure rights under this Lease), at its sole option, City may cure the default at Landlord's expense if the default continues after ten (10) days after the date City gives notice to Landlord of City's intention to perform the cure. However, if a default occurs because of a cause beyond Landlord's control (excluding any financial inability to perform), and Landlord cannot with due diligence cure the default within the ten (10)-day period, then the ten (10)-day period will be extended if, promptly on receipt of City's notice, Landlord advises City of Landlord's intention to take all steps required to cure the default, and Landlord promptly commences the cure and diligently prosecutes the cure to completion. But if any default by Landlord continues for thirty (30) days and impairs City's ability to carry on its normal business in the Premises and City, in fact, does not use or occupy that portion of the Premises, then City may terminate this Lease on written notice to Landlord within thirty (30) days after the expiration of the thirty (30)-day period. Subject to the other provisions of this Lease relating to abatement of Rent, if Landlord fails to cure any default within the ten (10)-day cure period provided above (as it may be extended as provided above), then, whether or not City elects to cure Landlord's default, the Rent will be abated based on the extent to which the default makes a portion of the Premises unusable, but only to the extent City was actually using that portion of the Premises at the time of the damages. City's rights under this Section and under any other provisions of this Lease will not limit in any way any of its other rights and remedies under this Lease or at law or in equity.

## **16. INDEMNITIES**

### **16.1 City's Indemnity**

City will indemnify, defend, and hold harmless ("**Indemnify**") Landlord and its Agents from and against any and all claims, losses, damages, costs, and expenses, including reasonable attorneys' fees (collectively, "**Claims**"), incurred as a result of (a) default by City in the performance of any obligations under this Lease or any breach of any representations or warranties made by City under this Lease, or (b) any willful misconduct or negligent acts or omissions of City or its Agents or Invitees in, on, or about the Premises or the Property, or (c) any third party lawsuits against Landlord based in whole or in part on the operation of a Linkage Center in the Building or the presence of people in need in or around the Building; provided, however, City will not be obligated to Indemnify Landlord or its Agents to the extent any Claim arises out of the acts or omissions by Landlord or its Agents. In any action or proceeding brought against Landlord or its Agents because of a Claim Indemnified by City under this Section, at its sole option, City may elect to defend the Claim by attorneys in City's Office of the City Attorney, by other attorneys selected by City, or both. City will have the right to control the defense and to determine the settlement or compromise of any action or proceeding, provided that Landlord will have the right, but not the obligation, to participate in the defense of the Claim at its sole cost. City's obligations under this Section will survive the termination of the Lease.

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

Landlord will Indemnify City and its Agents against any and all Claims incurred as a result of (a) any default by Landlord in the performance of any of its obligations under this Lease or any breach of any representations or warranties made by Landlord under this Lease, or (b) any

willful misconduct or negligent acts or omissions of Landlord or its Agents in, on, or about the Premises or the Property; provided, however, Landlord will not be obligated to Indemnify City or its Agents to the extent any Claim arises out of the acts or omissions of City or its Agents or Invitees. In any action or proceeding brought against City or its Agents because of a Claim Indemnified by Landlord under this Section, at its sole option, Landlord may elect to defend the Claim by attorneys selected by Landlord. Landlord will have the right to control the defense and to determine the settlement or compromise of any action or proceeding, provided that City will have the right, but not the obligation, to participate in the defense of any Claim at its sole cost. Landlord's obligations under this Section will survive the termination of this Lease.

## **17. INSURANCE**

### **17.1 City's Self-Insurance**

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

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

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

(b) In addition, at no cost to City, Landlord will procure and keep in effect at all times during the Term insurance as follows: (i) commercial general liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including contractual liability, independent contractors, broad-form property damage, fire damage legal liability (of not less than Fifty Thousand Dollars (\$50,000)), personal injury, products and completed operations, and explosion, collapse, and underground (XCU); and (ii) worker's compensation insurance in the amounts required by applicable Laws and employer's liability with limits not less than One Million Dollars (\$1,000,000) each accident. All insurance policies required by this Lease to be maintained by Landlord must be endorsed to provide for thirty (30) days' prior written notice of cancellation for any reason, intended non-renewal, or reduction in coverage to Landlord and City (or, if such endorsement is not available from the insurer, Landlord will provide such notice to City).

### **17.3 Waiver of Subrogation**

Notwithstanding anything to the contrary in this Lease, Landlord waives any right of recovery against City for any loss or damage relating to the Building or the Premises or any operations or contents in the Building, whether or not the loss is caused by City's fault or negligence, to the extent the loss or damage is covered by Landlord insurance that is required under this Lease or any excess coverage otherwise held by Landlord or its Agents. Landlord will



obtain a waiver of subrogation endorsement from applicable insurance carriers issuing policies relating to the Building or the Premises, but Landlord's failure to do so will not affect the above waiver.

## **18. ACCESS BY LANDLORD**

Landlord reserves for itself and any of its designated Agents the right to enter the Premises at all reasonable times and, except in cases of emergency (in which event Landlord will give any reasonable notice), after giving City at least twenty four (24) hours' advance written notice, to (a) inspect the Premises, (b) supply any service to be provided by Landlord under this Lease, (c) show the Premises to any prospective purchasers, mortgagees or, during the last six (6) months of the Term, tenants, (d) post notices of non-responsibility, and (e) alter, improve, or repair the Premises and any portion of the Building, and, for that purpose, Landlord may erect, use, and maintain necessary structures in and through the Premises where reasonably required by the work to be performed, provided that the entrance to the Premises may not be blocked. Landlord may not interfere with City's use of the Premises.

## **19. ESTOPPEL CERTIFICATES**

From time to time during the Term, by not less than thirty (30) days' prior written notice to the other party, either party may request the other party to execute, acknowledge, and deliver to the persons or entities designated by the other party a certificate stating: (a) the Commencement Date and Expiration Date of this Lease, (b) that this Lease is unmodified and in full force and effect (or, if there have been modifications, this the Lease is in full force and effect as modified and stating the modifications), (c) that there are no defaults under this Lease (or if so, specifying the same), and (d) the date to which Rent has been paid.

## **20. SURRENDER OF PREMISES**

On the expiration or sooner termination of this Lease, City will surrender the Premises to Landlord in its Current Condition, excepting reasonable use and wear and damage by fire or other casualty or condemnation. Within ten (10) days after the Expiration Date, City will remove from the Premises all of City's Personal Property and any Alterations City desires or is required to remove from the Premises under the provisions of Section 7.1 (Alterations by City). City will repair (or at City's option) pay to Landlord the cost of repairing any damage to the Premises or the Building resulting from that removal or City's use of the Building under the Lease. City's obligations under this Section will survive the expiration or earlier termination of this Lease.

In order to document the condition of the Premises at the start and at the end of the Term (at the end, following City's removal of Personal Property and any Alterations), Landlord and Tenant agree to conduct a walk-through, at a mutually agreeable time but in no event later than 3 days following the request of either party, with representatives of both Landlord and City present. The parties may document the condition with video, photographs and/or other evidence or written materials that describe and document any issues relative to the condition of the Property. If Landlord believes that City must make any repairs to the Premises upon the expiration or termination of this Lease, Landlord shall notify City of such repairs within thirty (30) days following the Lease expiration or termination, together with reasonable backup documentation to show that City caused the damage that Landlord believes City should repair (the "**Premises Repair Notice**"). To the extent there is any dispute regarding the condition of the Premises, the parties agree to meet and confer in good faith for a period of not less than 30 days following Landlord's delivery of the Premises Repair Notice. As to those repairs contained in the Premises Repair Notice that the parties agree are the responsibility of the City, then City

will repair (or at City's option) pay to Landlord the cost of repairing any damage to the Premises or the Building. The repair period shall not be construed as a holdover of the City's occupancy of the Premises.

## **21. HAZARDOUS MATERIALS**

### **21.1 Definitions**

As used in this Lease, the following terms are defined below:

**"Environmental Laws"** means any Law relating to industrial hygiene, environmental conditions, or Hazardous Material, whether now in effect or later adopted.

**"Hazardous Material"** means any material that, because of its quantity, concentration, or physical or chemical characteristics, is deemed by any federal, state, or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes any material or substance defined as a "hazardous substance," or "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 California Health & Safety Code Section 25316; any "hazardous waste" listed under California Health & Safety Code Section 25140; any asbestos and asbestos containing materials whether or not those materials are part of the structure of the Building or are naturally occurring substances on or about the Property; and petroleum, including crude oil or any fraction thereof, natural gas, or natural gas liquids.

**"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 Building, or in, on, under, or about the Property.

### **21.2 Landlord's Representations and Covenants**

Landlord represents and warrants to City that the following statements are true and correct and will be true and correct as of the Commencement Date: **(a)** the Property is not in violation of any Environmental Laws; **(b)** the Property is not now, and has not been, used for the manufacture, use, storage, discharge, deposit, transportation, or disposal of any Hazardous Material, except for the use of Hazardous Material in limited quantities as are customarily used in offices, which limited use is and has been in compliance with Environmental Laws; **(c)** the Property does not consist of any landfill or contain any underground storage tanks; **(d)** the Building does not contain any asbestos-containing materials or have building materials that contain any other Hazardous Material, and the Premises or the common areas of the Building do not contain any lead-based paints; **(e)** there is and has been no Release of any Hazardous Material in the Building or in, on, under, or about the Property; and **(f)** the Property is not subject to any claim by any governmental regulatory agency or third party related to the Release of any Hazardous Material, and there is no inquiry by any governmental agency (including the California Department of Toxic Substances Control or the Regional Water Quality Control Board) with respect to the presence of Hazardous Material in the Building or in, on, under, or about the Property, or the migration of Hazardous Material from or to other real property. Subject to City's obligations under this Section below, Landlord will maintain the Property throughout the Term in compliance with all Environmental Laws that could affect the health, safety, and welfare of City's employees or City's use, occupancy, or enjoyment of the Premises for their intended purposes.

### **21.3 Landlord's Environmental Indemnity**

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

### **21.4 City's Covenants**

Neither City nor its Agents or Invitees will cause any Hazardous Material to be brought on, kept, used, stored, generated, or disposed of in, on or about the Premises or the Property, or transported to or from the Premises or the Property, in violation of any Environmental Laws.

### **21.5 City's Environmental Indemnity**

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

## **22. Intentionally Omitted**

## **23. CITY PROVISIONS**

### **23.1 MacBride Principles - Northern Ireland**

The provisions of San Francisco Administrative Code Section 12F are incorporated into this Lease by this reference and made part of this Lease. Landlord confirms that Landlord 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.

### **23.2 Controller's Certification of Funds**

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

### **23.3 Prevailing Wages and Working Conditions**

Any undefined, initially-capitalized term used in this Section has the meaning given to that term in San Francisco Administrative Code section 23.61. Landlord will require its Contractors and Subcontractors performing (i) labor in the construction of a "public work" as defined in California Labor Code Section 1720 *et seq.* (which includes certain construction, alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling if paid for in whole or part out of public funds), or (ii) Covered Construction at the Premises to (A) pay workers performing the 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**"). Landlord will cooperate with City in any action or proceeding against a Contractor or Subcontractor that fails to comply with the Prevailing Wage Requirements.

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

### **23.4 Non Discrimination in City Contracts and Benefits Ordinance**

#### **(a) Covenant Not to Discriminate**

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

#### **(b) Subcontracts**

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

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



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

**(d) CMD Form**

As a condition to this Lease, Landlord 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 (the "CMD"). Landlord represents that before execution of the Lease: **(i)** Landlord 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 San Francisco Administrative Code Chapters 12B and 12C relating to non-discrimination by parties contracting for the lease of property to City are incorporated into this Section by reference and made a part of this Lease as though fully set forth. Landlord will comply fully with and be bound by all of the provisions that apply to this Lease under Administrative Code Chapters 12B and 12C, including the remedies provided in those Chapters. Without limiting the foregoing, Landlord understands that under San Francisco Administrative Code Section 12B.2(h) a penalty of Fifty Dollars (\$50) for each person for each calendar day during which that person was discriminated against in violation of the provisions of this Lease may be assessed against Landlord and/or deducted from any payments due Landlord.

**23.5 Intentionally Omitted**

**23.6 Intentionally Omitted**

**23.7 Intentionally Omitted**

**23.8 Sunshine Ordinance**

In accordance with San Francisco Administrative Code Section 67.24(e), 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.

**23.9 Conflicts of Interest**

Through its execution of this Lease, Landlord acknowledges that it is familiar with the provisions of City's Campaign and Governmental Conduct Code Article III, Chapter 2 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. If Landlord becomes aware of any such fact during the Term of this Lease, Landlord will immediately notify City.

### **23.10 Notification of Prohibition on Contributions**

By executing this Lease, Landlord 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. Landlord 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. Landlord 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 Landlord; any subcontractor listed in the lease; and any committee that is sponsored or controlled by Landlord; and (ii) within thirty (30) days of the submission of a proposal for the Lease, the City department with whom Landlord is leasing is obligated to submit to the Ethics Commission the parties to the lease and any subcontractor. Additionally, Landlord 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.

### **23.11 Preservative-Treated Wood Containing Arsenic**

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

## **24. GENERAL PROVISIONS**

### **24.1 Notices**

Except as otherwise specifically provided in this Lease, any notice given under this Lease must be in writing and given by delivering the notice by email (sent during normal business hours (Monday through Friday, 9:00 am – 5:00 pm, excluding City holidays; if email is sent after normal business hours by either party, the notice will be deemed sent at 9:00 am the next business day) or in person or by commercial courier, or by sending it by first-class mail, certified mail, return receipt requested, or Express Mail, return receipt requested, with postage prepaid, to: (a) City at City's address set forth in the Basic Lease Information; or (b) Landlord at Landlord's

address set forth in the Basic Lease Information; or (c) any other address designated by as either Landlord or City as its new address for notices by notice given to the other in accordance with this Section. A properly addressed notice transmitted by one of the foregoing methods will be deemed received upon confirmed delivery, attempted delivery, or rejected delivery. Notices may also be given by email to the email address number set forth in the Basic Lease Information or any other email address as may be provided from time to time, provided the sender concurrently sends notice by one of the other specified means, in which event notice shall be deemed given when the email is sent.

#### **24.2 No Implied Waiver**

No failure by either party to insist on the strict performance of any obligation of the other party under this Lease or to exercise any right, power, or remedy after a breach of this Lease will constitute a waiver of any breach or of term, covenant, or condition. No acceptance of full or partial Rent by Landlord while City is in default will constitute a waiver of the default by Landlord. No express written waiver of any default or the performance of any provision if this Lease will affect any other default or performance, or cover any other period of time, other than the default, performance, or 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. The consent of Landlord or City given in one instance under the terms of this Lease will not relieve the other party of any obligation to secure the consent to any other or future instance under the terms of the Lease.

#### **24.3 Amendments**

The terms and provisions of this Lease may only be changed, waived, discharged, or terminated by a written instrument signed by both parties. No waiver of any breach will affect or alter this Lease, and each and every term, covenant, and condition of this Lease will continue in full force and effect with respect to any other then-existing or subsequent breach. 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 Law, including the Charter of the City and County of San Francisco. City's agreement to any amendments or modifications to this Lease (including the exhibits) may be made on the sole approval of the Director of Property, or his or her designee; provided, however, material amendments or modifications to this Lease (a) changing the legal description of the Premises, (b) increasing the Term, (c) increasing the Rent, (d) changing the general use of the Premises from the use authorized under Section 5.1 (Permitted Use), and (e) any other amendment or modification that materially increases City's liabilities or financial obligations under this Lease will also require the approval of City's Board of Supervisors.

#### **24.4 Authority**

Landlord represents and warrants to City that it is the sole owner of the Property and the execution and delivery of this Lease by Landlord does not violate any provision of any agreement or any applicable Laws. If Landlord is a corporation, limited liability company, or a partnership, each person executing this Lease on behalf of Landlord, by their signature, covenants and warrants that Landlord is a duly authorized and existing entity, that Landlord is qualified to do business in California, that Landlord has the full right and authority to enter into this Lease, and that each person signing on behalf of Landlord is authorized to do so. On City's request, Landlord will provide City with evidence reasonably satisfactory to City confirming these representations and warranties.

#### **24.5 Parties and Their Agents; Approvals**



If applicable, the word "**Landlord**" will include the plural as well as the singular. The term "**Agents**" when used with respect to either party includes the agents, employees, officers, and contractors of the party, and the term "**Invitees**" when used with respect to City will include the clients, customers, invitees, guests, licensees, assignees, or subtenants of City including, without limitation, those parties described in Section 5.1 who are being provided services. All approvals, consents, or other determinations permitted or required by City under this Lease, including City's exercise of any option, must be made by or through City's Director of Property unless otherwise provided in this Lease, subject to any applicable limitations in City's Charter. If there is more than one entity that comprises Landlord, the obligations and liabilities under this Lease imposed on Landlord are joint and several.

#### **24.6 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 will in no way define or limit the scope or intent of any provision of this Lease. Except as otherwise specifically provided in this Lease, wherever Landlord or City is required or requested to give its consent or approval to any matter or action by the other, the consent or approval will not be unreasonably withheld or delayed and the reasons for disapproval of consent will be stated in reasonable detail in writing. Provisions in this Lease relating to number of days will be calendar days, unless otherwise specified. If the last day of any period to give notice, reply to a notice, or to take any other action occurs on a Saturday, Sunday, or a bank or City holiday, then the last day for taking the action or giving or replying to the notice will be the next succeeding business day. The words "**include**" or "**including**" or similar words will not be construed to limit any general term, statement, or other matter in this Lease or any of its attached exhibits, whether or not language of non-limitation, such as "without limitation" or similar words, are used.

#### **24.7 Successors and Assigns**

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

#### **24.8 Brokers**

Except for Landlord's broker Steven A. Anderson, neither party has had any contact or dealings or communications regarding leasing the Premises through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the lease of the Premises, except for the broker, if any, identified in the Basic Lease Information. That broker's commission is Landlord's sole responsibility under a separate written agreement between Landlord and the broker, and City has no liability for that commission. If any other broker or finder perfects a claim for a commission or finder's fee based on any contact, dealings, or communication, the party through whom the broker or finder makes his 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. The provisions of this Section will survive any termination of this Lease.

#### **24.9 Severability**

If any provision of this Lease or its application to any person, entity, or circumstance is found to be invalid or unenforceable, 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 by that finding, and each other provision of this Lease will be valid and be enforceable to the full extent permitted by Law, except to the extent that enforcement of this Lease without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this Lease.

#### **24.10 Governing Law**

This Lease will be construed and enforced in accordance with the laws of the State of California and City's Charter. Any legal suit, action, or proceeding arising out of or relating to this Lease shall be instituted in the Superior Court for the City and County of San Francisco, and each party agrees to the exclusive jurisdiction of such court in any such suit, action, or proceeding (excluding bankruptcy matters). The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such court and irrevocably waive and agree not to plead or claim that any suit, action, or proceeding brought in San Francisco Superior Court relating to this Lease has been brought in an inconvenient forum. The Parties also unconditionally and irrevocably waive any right to remove any such suit, action, or proceeding to Federal Court.

#### **24.11 Entire Agreement; Incorporation of Exhibits**

The parties intend that this Lease (including all of the attached exhibits, which are made a part of this Lease by this reference) are the final expression of their agreement with respect to the lease of the Premises and may not be contradicted by evidence of any prior or contemporaneous written or oral agreements or understandings. The parties further intend that this Lease will constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts and changes) may be introduced in any judicial, administrative, or other legal proceeding involving this Lease.

#### **24.12 Holding Over**

If City holds over in possession of the Premises after the expiration of the Term with Landlord's consent, that holding over will not be deemed to extend the Term or renew this Lease, and City's tenancy will continue as a month-to-month tenancy until the tenancy is terminated by either party by giving least thirty (30) days' prior written notice of termination. The month-to-month tenancy will be on all the terms and conditions of this Lease and at the monthly Base Rent in effect during the last month of the Term or as Landlord and City may mutually agree in writing. If City holds over without Landlord's consent, the rent payable by City during the period of holding over will be one hundred ten percent (110%) of the monthly Base Rent in effect during the last month of the Term of this Lease, and the tenancy will otherwise be on the terms and conditions contained in this Lease.

#### **24.13 Cumulative Remedies**

All rights and remedies of either party set forth in this Lease are cumulative, except as otherwise specifically provided in this Lease.

#### **24.14 Time of Essence**

Time is of the essence for all provisions of this Lease.

#### **24.15 Survival of Indemnities**

Termination of this Lease will not affect the right of either party to enforce any indemnities and representations and warranties given or made to the other party, and it will not affect any provision of this Lease that expressly states it will survive termination. With respect to each of the indemnities contained in this Lease, the indemnitor has an immediate and independent obligation to defend the indemnitees from any claim that actually or potentially falls within the indemnity provision even if the claim is or may be groundless, fraudulent, or false, and the obligation to defend arises at the time the claim is tendered to the indemnitor by the indemnitee and continues at all times until resolved.

#### **24.16 Signs**

City may erect or post exterior signs on or about the Premises with Landlord's prior approval. Landlord reserves the right to review and approve the placement, design, and plan for before erecting or posting any sign, which review and approval will not be unreasonably withheld or delayed. Interior signs not visible from the exterior of the Premises are permitted as provided under Article 7 (Alterations).

#### **24.17 Quiet Enjoyment and Title**

Landlord covenants and represents that it has full right, power, and authority to grant the leasehold estate as provided in this Lease, and covenants that City, on paying the Rent and performing the covenants contained in this Lease, will peaceably and quietly have, hold, and enjoy the Premises and all related rights during the Term as against all persons or entities or on account of any action, inaction, or agreement of Landlord or its Agents. Without limiting the provisions of Section 16.2 (Landlord's Indemnity), Landlord will indemnify City and its Agents against Claims arising out of any assertion that would interfere with City's right to quiet enjoyment as provided in this Section.

#### **24.18 Bankruptcy**

Landlord represents and warrants to City that Landlord has neither filed nor been the subject of any filing of a petition under the federal bankruptcy law or any federal or state insolvency laws or laws for composition of indebtedness or for the reorganization of debtors, and, to the best of Landlord's knowledge, no such filing is threatened. City's leasehold estate under this Lease includes all rights to receive and enjoy all services, facilities, and amenities of the Premises and the Building as provided in this Lease. If any of the services, facilities, or amenities are terminated, or materially limited or restricted because of any such case or proceeding, or for any other reason, City may (a) contract directly with any third-party provider of those services, facilities, or amenities, and (b) offset against the Rent all reasonable costs and expenses incurred by City in obtaining those services, facilities, or amenities.

#### **24.19 Transfer of Landlord's Interest**

Landlord may transfer its interest in the Property, the Building, or this Lease to any other financially responsible person or entity. If Landlord transfers its interest in the Property, the Building, or this Lease to another other financially responsible person or entity, then Landlord will be relieved of Landlord's obligations under this Lease accruing from and after the date of the transfer when (a) Landlord has provided notice to City of the name and address of Landlord's successor, (b) Landlord has provided City with supporting documentation reasonably acceptable to City demonstrating the transferee's financial ability to assume this obligations transferred to it by Landlord, (c) Landlord has transferred the Security Deposit to the transferee, and (d) Landlord has delivered to City an express written assumption by the transferee of all of Landlord's obligations under this Lease.

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

Notwithstanding anything to the contrary in this Lease, no elected or appointed board, commission, member, officer, employee, or other Agent of City will be personally liable to Landlord, its successors, or its assigns for any City default or breach or for any amount that may become due to Landlord or its successors or assigns, or for any obligation of City under this Lease.

#### **24.21 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.

#### **24.22 Effective Date**

This Lease will become effective on the date (the “**Effective Date**”) that this Lease is duly executed by Landlord and City as authorized by the Emergency Declaration (Exhibit C).

#### **24.23 Certification by Landlord**

By executing this Lease, Landlord certifies that neither Landlord nor any of its officers or members have been suspended, disciplined, or disbarred by, or prohibited from contracting with, any federal, state, or local governmental agency. If Landlord or any of its officers or members have been suspended, disbarred, disciplined, or prohibited from contracting with any governmental agency, it will immediately notify City of that fact and the reasons for the suspension, disbarment, discipline, or prohibition together with any relevant facts or information requested by City. If there is any suspension, disbarment, discipline, or prohibition that may result in the termination or suspension of this Lease, City may terminate this Lease on written notice to Landlord. Landlord acknowledges that this certification is a material term of this Lease.

#### **24.24 Intentionally Omitted**

#### **24.25 Intentionally Omitted**

#### **24.26 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 Landlord. 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.

#### **24.27 Contractor Vaccination Requirements**

Landlord shall comply with the requirements of the 38th Supplement to Mayoral Proclamation Declaring the Existence of a Local Emergency dated February 25, 2020, and the Contractor Vaccination Policy for City Contractors issued by the City Administrator (“**Contractor Vaccination Policy**”), as those documents may be amended from time to time. The requirements stated in the Contractor Vaccination Policy are material terms and conditions of this Lease, which include but are not limited to, the following:

(a) Landlord shall identify its Covered Employees who are or will be performing Work or Services under this Lease, and shall inform them of the COVID-19 vaccination requirements stated in the City's Contractor Vaccination Policy and the Emergency Declaration.

(b) Landlord shall maintain a list of its Covered Employees by name and position, which list shall not include the employees' vaccination status. Landlord shall update the list as needed to show all current Covered Employees, and Landlord shall provide that list to the City on request.

(c) Landlord shall be responsible for determining the vaccination status of any Covered Employees working under this Lease, including any subcontractors working for Landlord. Landlord shall ensure that its covered subcontractors submit required information to the Landlord respecting their compliance with the Contractor Vaccination Policy.

(d) In conjunction with this Lease, Landlord has submitted to the City the Attestation Form confirming its compliance with the Contractor Vaccination Policy.

(e) Attachment A to the Attestation Form:

(i) If Landlord has previously submitted Attachment A to the Attestation Form identifying Covered Employee for whom the Landlord has granted a medical or religious vaccination exemption, Landlord shall ensure the form is continuously updated with the names of newly identified exempt Covered Employees and that such updates are promptly provided to City.

(ii) If Landlord has not previously submitted Attachment A to the Attestation Form identifying Covered Employee for whom the Landlord has granted a medical or religious vaccination exemption but does so after contract execution, Landlord shall ensure the form is continuously updated with the names of newly identified Exempt Covered Employees and that such updates are promptly provided to City.

(iii) With respect to subsections (i) and (ii) above, Landlord shall first coordinate with the City to confirm that the City can safely accommodate at its worksite any Covered Employee for whom the Landlord has granted a medical or religious vaccination exemption, which may include ensuring that exempt employees who are accommodated comply with any required health and safety protocols.

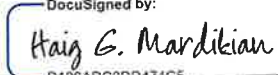
NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, LANDLORD ACKNOWLEDGES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS LEASE UNLESS CITY'S BOARD OF SUPERVISORS HAS DULY ADOPTED A RESOLUTION OR THE MAYOR ADOPTS AN EMERGENCY DECLARATION AUTHORIZING CONSUMMATION OF THE TRANSACTION CONTEMPLATED BY THIS LEASE. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY UNDER THIS LEASE ARE CONTINGENT ON ADOPTION OF THAT RESOLUTION OR EMERGENCY DECLARATION, AND THIS LEASE WILL BE NULL AND VOID UNLESS CITY'S MAYOR AND BOARD OF SUPERVISORS ADOPT A RESOLUTION OR EMERGENCY DECLARATION AS SET FORTH ABOVE.



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

LANDLORD:

1170 Market Street LLC, a California limited liability company

By:   
D108ADC8DD474C5

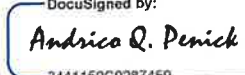
Its: Manager

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

Its: \_\_\_\_\_

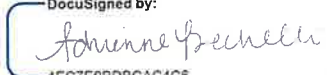
CITY:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By:   
3441150C0287459  
ANDRICO Q. PENICK  
Director of Property

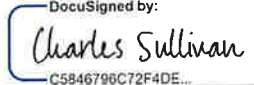
Pursuant to the authority granted to the  
Director of Property under the Emergency  
Declaration (Exhibit C)

RECOMMENDED:

  
4EC7E9BD8CAC4C8  
Adriene Bechelli  
Deputy Director

APPROVED AS TO FORM:

DAVID CHIU, City Attorney

By:   
C5846796C72F4DE  
Charles Sullivan  
Deputy City Attorney

**EXHIBIT A**

**Legal Description of Property/Floor Plans**

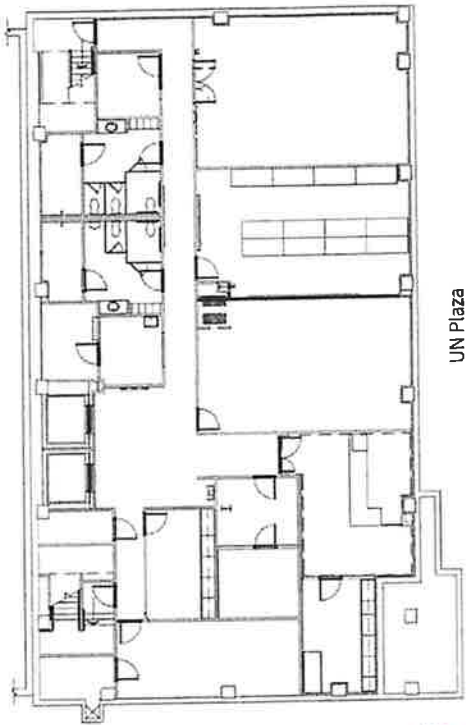
*1170 Market Street*

AVAILABLE NOW

4,527 RSF | Lower Level

**SUITE FEATURES**

- Full height office use ceiling
- 5 Large multipurpose rooms
- Showers



STEVEN A. ANDERSON  
STEVE.ANDERSON@AM.JLL.COM  
LICENSE #00869389  
+1 415 395 7265

CHARLIE HANAFIN  
CHARLIE.HANAFIN@AM.JLL.COM  
LICENSE #01996121  
+1 415 395 4951

Market Street



James Lang LaSalle Brokerage, Inc. Real Estate License # 01656280



## 1170 Market Street

AVAILABLE NOW

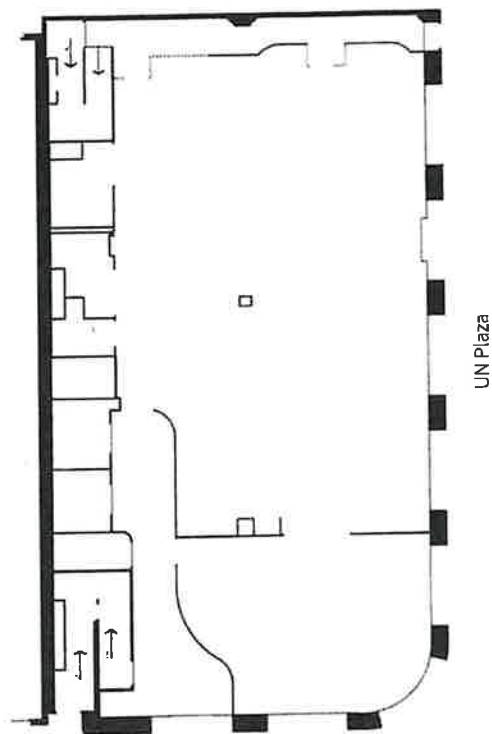
3,939 RSF | Ground Floor

### SUITE FEATURES

- 7 Rooms
- Open area
- Separate Plaza entry (optional)
- High ceilings

STEVEN A. ANDERSON  
STEVE.ANDERSON@AM.JLL.COM  
LICENSE #00869389  
+1 415 395 7265

CHARLIE HANAFIN  
CHARLIE.HANAFIN@AM.JLL.COM  
LICENSE #01996121  
+1 415 395 4951



Market Street



Jones Lang LaSalle Brokerage, Inc. Real Estate License #01536280

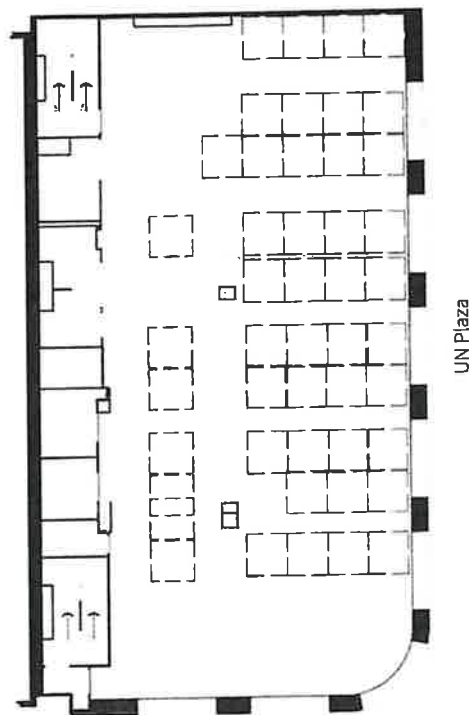
## 1170 Market Street

AVAILABLE NOW

4,734 RSF | 2<sup>nd</sup> Floor

### SUITE FEATURES

- 4 Private offices
- Open area
- Floor to ceiling arched windows



STEVEN A. ANDERSON  
STEVE.ANDERSON@AM.JLL.COM  
LICENSE #00869389  
+1 415 395 7265

CHARLIE HANAFIN  
CHARLIE.HANAFIN@AM.JLL.COM  
LICENSE #01956121  
+1 415 395 4951

Market Street



Jones Lang LaSalle Brokerage, Inc. Real Estate License #01630280

1170 Market Street

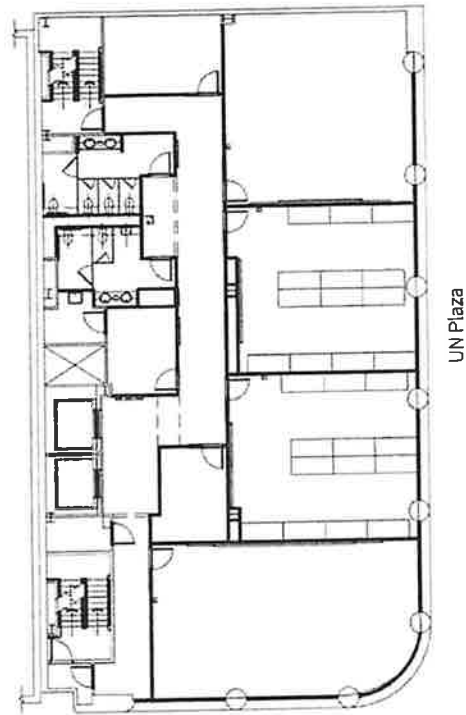
AVAILABLE NOW  
4,734 RSF | 3<sup>rd</sup> Floor

SUITE FEATURES

- 4 Large rooms
- 2 Small offices

STEVEN A. ANDERSON  
STEVE.ANDERSON@AM.JLL.COM  
LICENSE #00869389  
+1 415 395 7265

CHARLIE HANAFIN  
CHARLIE.HANAFIN@AM.JLL.COM  
LICENSE #01996121  
+1 415 395 4951



Market Street

JLL  
Jones Lang LaSalle Brokers, Inc. Real Estate License #01856250

## 1170 Market Street

AVAILABLE NOW

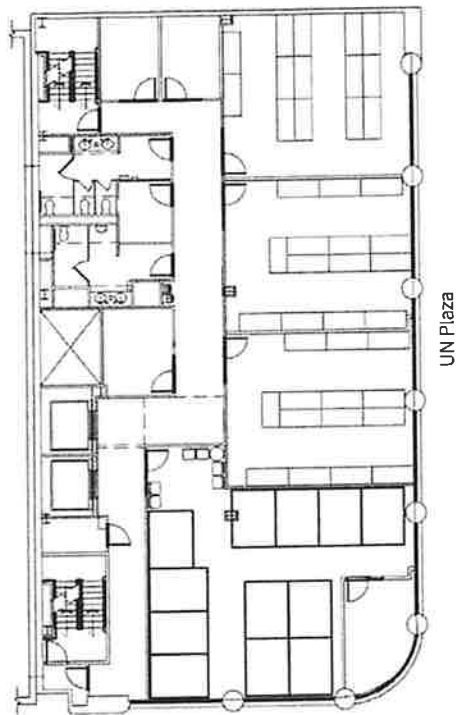
4,734 RSF | 4<sup>TH</sup> FLOOR

### SUITE FEATURES

- 3 Large rooms
- 4 Private offices
- Open area

STEVEN A. ANDERSON  
STEVE.ANDERSON@AM.JLL.COM  
LICENSE #00069309  
+1 415 395 7265

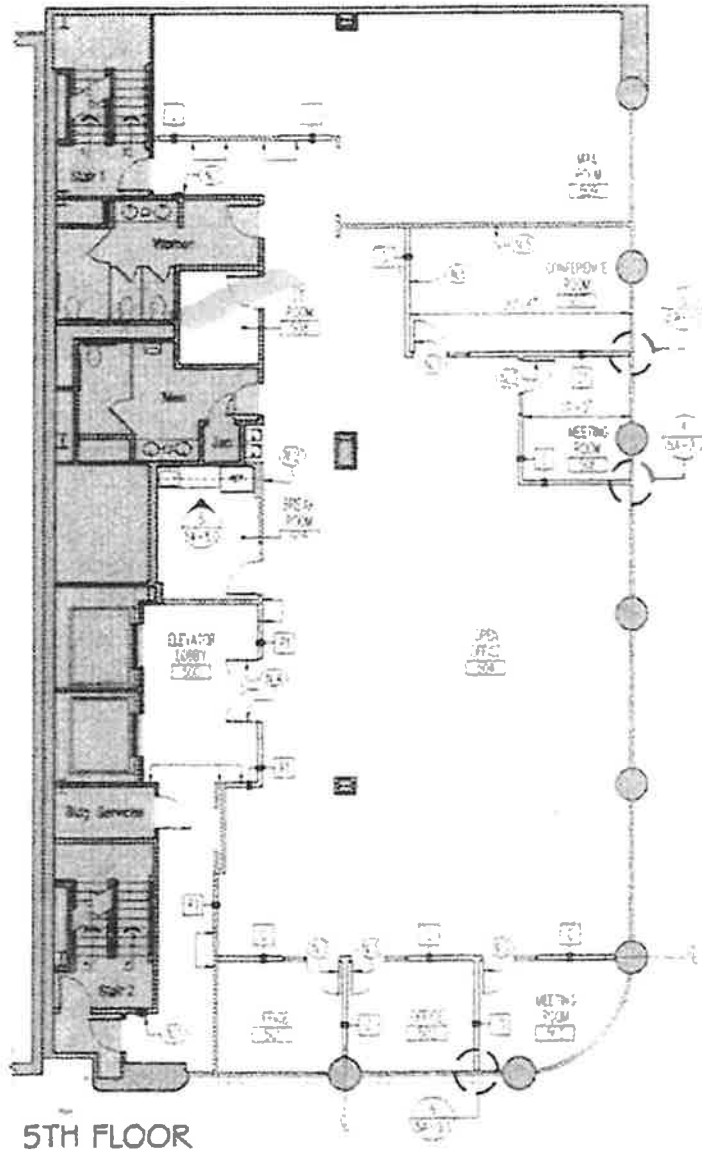
CHARLIE HANAFIN  
CHARLIE.HANAFIN@AM.JLL.COM  
LICENSE #01996121  
+1 415 395 4951



Market Street



Jones Lang LaSalle Brokerage, Inc. Real Estate License # 01536700





## 1170 Market Street

AVAILABLE NOW

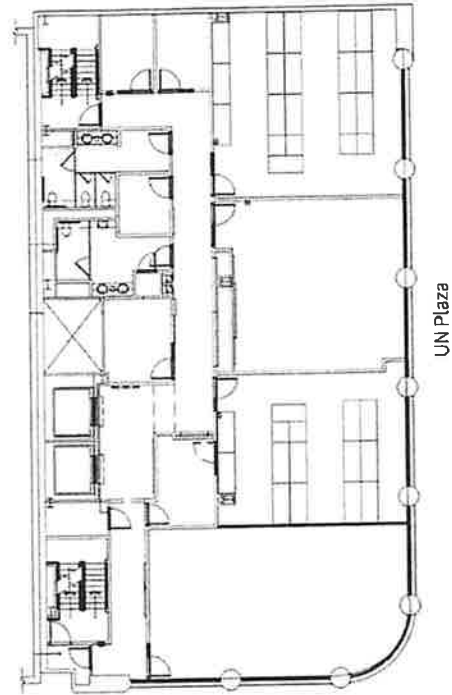
4,734 RSF | 6<sup>TH</sup> Floor

### SUITE FEATURES

- Excellent Natural Light
- Efficient side-core and column free layout
- 4 Large meeting rooms
- 2 Private Offices

STEVEN A. ANDERSON  
STEVE.ANDERSON@AM.JLL.COM  
LICENSE #00869389  
+1 415 395 7265

CHARLIE HANAFIN  
CHARLIE.HANAFIN@AM.JLL.COM  
LICENSE #01996121  
+1 415 395 4951



Market Street

UN Plaza



Jonas Lang LaSalle Brokerage, Inc. Real Estate License #01856260

## 1170 Market Street

AVAILABLE NOW

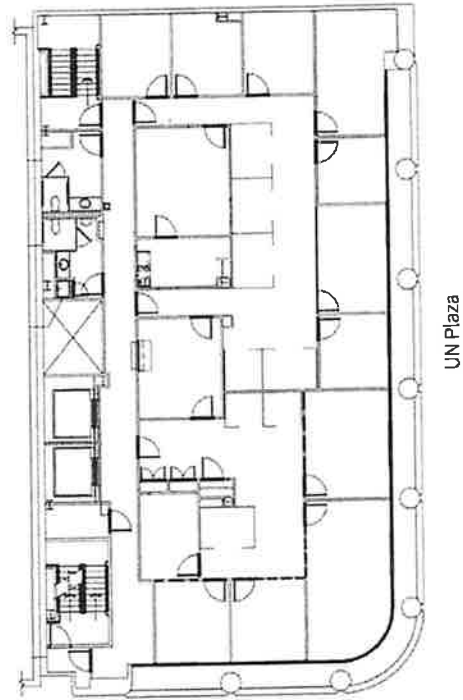
4,966 RSF | 7<sup>TH</sup> Floor

### SUITE FEATURES

- 14 Rooms
- Private balconies
- Kitchenette
- Open area

STEVEN A. ANDERSON  
STEVE.ANDERSON@AM.JLL.COM  
LICENSE #00869389  
+1 415 395 7265

CHARLIE HANAFIN  
CHARLIE.HANAFIN@AM.JLL.COM  
LICENSE #01996121  
+1 415 395 4951



Market Street



Jones Lang LaSalle Brokerage, Inc. Real Estate License # 01486260

**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 1170 Market Street, LLC (Landlord), and the CITY AND COUNTY OF SAN FRANCISCO (Tenant), for premises known as 1170 Market Street, San Francisco, CA 94102

Dear Mr. Penick:

This letter confirms that for all purposes of the Lease, the Commencement Date (as defined in Section 3.2 of the Lease) is \_\_\_\_\_, 2022.

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**

**Emergency Declaration**

OFFICE OF THE MAYOR  
SAN FRANCISCO



LONDON N. BREED  
MAYOR

**PROCLAMATION BY THE MAYOR DECLARING  
THE EXISTENCE OF A LOCAL EMERGENCY**

**Drug Overdoses in the Tenderloin**

**WHEREAS**, California Government Code Sections 8550 et seq., San Francisco Charter Section 3.100(14), and Chapter 7 of the San Francisco Administrative Code empower the Mayor to proclaim the existence of a local emergency, subject to concurrence by the Board of Supervisors as provided in the Charter, in the case of an emergency threatening the lives, property or welfare of the City and County of San Francisco (the "City") or its citizens; and

**WHEREAS**, Deaths from drug overdose are at epidemic levels in San Francisco. While the problem has gotten worse over the past few years and particularly over the course of the pandemic, recently the threat to public health, safety and welfare has become much graver and more imminent in the Tenderloin (as defined below) and demands emergency action; and

**WHEREAS**, Deaths attributable to drug overdose in San Francisco have increased over 200% since 2018. In 2020, over 700 individuals died from drug overdoses. The number of deaths in 2020 from drug overdose far exceeded the number of individuals who died of COVID-19; and

**WHEREAS**, The COVID-19 pandemic exacerbated the overdose epidemic in San Francisco. In the eight months before the Health Officer issued the Shelter-In-Place Order (March 2020), the median number of weekly overdose deaths was 10, which increased to 15 after the Order, representing a 50% increase. During this period, there was a significant increase in the number of people experiencing homelessness dying from drug overdoses; and

**WHEREAS**, A main contributor to the rapid rise in drug overdoses and deaths in San Francisco is the recent increase in the prevalence of fentanyl in the illegal drug market. Fentanyl is highly addictive and potent, and it is more likely to lead to overdose than other drugs in common use today. There has been a significant increase in the deaths attributable to fentanyl since the onset of the COVID-19 pandemic. Fentanyl was a factor in more than 70% of overdose deaths between January and October 2021, an increase of nearly 20% since 2019. Over the past year, the San Francisco Police



OFFICE OF THE MAYOR  
SAN FRANCISCO



LONDON N. BREED  
MAYOR

Department has confiscated over 23 kilos of fentanyl – more than four times the year before; and

**WHEREAS**, As the situation with the COVID-19 pandemic has begun to improve, the drug overdose crisis in the City has continued unabated. Between January and November 2021, nearly 600 San Franciscans died of a drug overdose; and

**WHEREAS**, The Tenderloin neighborhood and the surrounding area, including the South of Market neighborhood, are the epicenter of the overdose crisis in the City. Between January and October 2021, 21% of overdose deaths occurred in the Tenderloin, with an additional 20% of deaths occurring in the South of Market neighborhood. These areas make up only 7% of the City's population; and

**WHEREAS**, Contacts between clients and the City's non-profit partners running needle exchange programs in the Tenderloin increased nearly 30% in the period between July and September 2021 compared to the previous three months; and

**WHEREAS**, The crisis in the Tenderloin has worsened in recent months. One of the City's non-profit partners reported an over 35% increase in the distribution of Narcan in the Tenderloin between October 2021 and November 2021. Narcan is used to revive someone experiencing an overdose; and

**WHEREAS**, Emergency medical calls for service designated as calls for a "sick person" in the Tenderloin have increased more than 150% between June and November 2021 compared to the same period in 2020, and medical calls for service for all reasons during this time period also increased, indicative of serious public health issues likely attributable to the opioid crisis in the area; and

**WHEREAS**, Other indicators of the opioid crisis in the Tenderloin are also present; street conditions in the Tenderloin and surrounding area have deteriorated in recent months. Calls to 311 concerning human waste, needles, and garbage on streets and sidewalks increased significantly between the fall of 2020 and the fall of 2021; and

**WHEREAS**, There was a 38% increase in calls to the City's Street Overdose Response Team between October and November 2021, and a 44% increase in calls regarding drug overdoses in the same period; and

OFFICE OF THE MAYOR  
SAN FRANCISCO



LONDON N. BREED  
MAYOR

**WHEREAS**, The rapidly deteriorating conditions in the Tenderloin caused by the opioid crisis put the lives of San Franciscans at serious risk, and the City must take action beyond the City's ordinary response capabilities, including re-appropriating resources to address the crisis, directing personnel from City departments to assist with the response, implementing crisis response sites for individuals to obtain medical help and services, and quickly procuring goods and services to address the crisis; and

**WHEREAS**, Conditions of extreme peril to the safety of persons and property have arisen; and

**WHEREAS**, The Mayor proclaims that all of these conditions of extreme peril warrant and necessitate the proclamation of the existence of a local emergency,

**NOW, THEREFORE,**

I, London N. Breed, Mayor of the City and County of San Francisco, proclaim the existence, effective immediately on December 17, 2021 and for limited duration specified below, of an emergency within the City threatening the lives, property or welfare of the City and County and its citizens.

**It is further ordered that:**

(1) All City officers and employees take all steps requested by the Executive Director of the Department of Emergency Management to address the emergency conditions of the overdose and overdose death crisis in the Tenderloin. For purposes of this Proclamation, the "Tenderloin" means the San Francisco Police Department's Tenderloin District and the additional area within a one-block perimeter of that District.

(2) All City officers and employees take all steps requested by the Executive Director of the Department of Emergency Management to qualify the City for reimbursement from the Federal Emergency Management Agency and for other state and federal relief as may be available to reimburse the City for the expenses it incurs in addressing this emergency.

(3) Notwithstanding any other restriction in local law except Charter Section 9.118, City departments entering agreements related to the City's response to the emergency, including contracts for the procurement of commodities or services, contracts for public works, and grant agreements, shall comply with the procedural requirements of Section 21.15 of the Administrative Code (for agreements that are otherwise subject to

OFFICE OF THE MAYOR  
SAN FRANCISCO



LONDON N. BREED  
MAYOR

Chapter 21 or Chapter 21G) or Section 6.60 of the Administrative Code (for agreements that are otherwise subject to Chapter 6). Civil Service Commission approval of such agreements is waived. Within 30 days of execution of the agreement departments must report any agreement that would have required approval by the Civil Service Commission to the Civil Service Commission.

(4) Temporary facilities implemented for purposes of offering services as part of the emergency response, such as public health, behavioral health, social, or housing services, as recommended by the Director of the Department of Emergency Management or the Director's designee and authorized by the Mayor or the Mayor's designee, shall be allowed in the Tenderloin, including on any City sidewalks or parks; any provision in City law that limits or restricts the City's deployment of such facilities is waived, and any applicable local requirements for public notice, the filing or approval of a permit application, or payment of fees related to that response are waived.

**I further proclaim and order that:**

By the terms of this emergency declaration the City's government is organized under the provisions of the Incident Command System (ICS), which system forms an essential part of the City's Emergency Response Plan and is located in the Emergency Operations Center of the City and County of San Francisco. All City departments are ordered to cooperate strictly with the requests for material and personnel resources that may emanate from the ICS staff of the City. Under Charter Section 3.100(14), the Mayor may direct department personnel and resources, including reallocating and expending available funds within a department's budget or among and between departments, and expending available unappropriated funds, as necessary to meet the emergency. At least once every 30 days during this emergency, and again within 30 days after the termination of the emergency, the Controller shall report to the Board of Supervisors any transfer of appropriated or unappropriated funds adopted pursuant to this proclamation;

OFFICE OF THE MAYOR  
SAN FRANCISCO



LONDON N. BREED  
MAYOR

**And I further proclaim and order that:**

This declaration of a local emergency shall continue to exist for no longer than 90 days from the effective date of this Proclamation and may be terminated earlier by the Mayor or the Board of Supervisors.

DATED: December 17, 2021

A handwritten signature in blue ink, reading "London N. Breed", written over a horizontal line.

London N. Breed  
Mayor of San Francisco

OFFICE OF THE MAYOR  
SAN FRANCISCO



LONDON N. BREED  
MAYOR

**FIRST SUPPLEMENT TO MAYORAL PROCLAMATION DECLARING THE  
EXISTENCE OF A LOCAL EMERGENCY DATED DECEMBER 17, 2021**

**Drug Overdoses in the Tenderloin**

**WHEREAS**, California Government Code Sections 8550 et seq., San Francisco Charter Section 3.100(14), and Chapter 7 of the San Francisco Administrative Code empower the Mayor to proclaim the existence of a local emergency, subject to concurrence by the Board of Supervisors as provided in the Charter, in the case of an emergency threatening the lives, property or welfare of the City and County of San Francisco (the "City") or its citizens; and

**WHEREAS**, On December 17, 2021, the Mayor issued a Proclamation (the "Proclamation") declaring a local emergency to exist in connection with drug overdoses in the Tenderloin; and

**WHEREAS**, To quickly address the overdose crisis in the Tenderloin and mount a response that will reduce the overdoses and deaths occurring on our streets, the City must hire employees to fill vacant positions in the Department of Public Health, the Human Services Agency, and the Department of Homelessness and Supportive Housing who will participate directly in the emergency response. Employees in these departments will provide behavioral health and substance abuse services, housing services, street outreach, overdose response, and other services aimed at helping individuals in danger of overdose death. It is in the public interest to waive local law that could delay the rapid hiring of employees to fill these crucial emergency response needs; and

**WHEREAS**, Also to address the emergency, the City plans to open a linkage center in the Tenderloin, at least initially on a temporary basis, where individuals in crisis may go to be connected to City services for mental health and substance abuse treatment, housing, and other benefits and for referral to medical attention, with the goal of breaking the cycle of addiction and reducing the prevalence of drug overdoses in the Tenderloin. To quickly implement the opening of such a facility, it is in the public interest to suspend local law that would delay the execution of a short-term lease of an appropriate location for this purpose; and

**WHEREAS**, Conditions of extreme peril to the safety of persons and property continue to exist;



OFFICE OF THE MAYOR  
SAN FRANCISCO



LONDON N. BREED  
MAYOR

**NOW, THEREFORE,**

I, London N. Breed, Mayor of the City and County of San Francisco, proclaim that there continues to exist an emergency within the City and County threatening the lives, property or welfare of the City and County and its citizens;

**In addition to the measures outlined in the Proclamation, it is further ordered that:**

(1) The Human Resources Director or designee is delegated authority during the local emergency to temporarily waive provisions of Civil Service Commission Rules and provisions of the Charter regarding hiring, if the Human Resources Director deems in writing that such waiver is necessary or appropriate to expedite the hiring of employees in the Department of Public Health, the Human Services Agency, and the Department of Homelessness and Supportive Housing who will perform duties in direct response to the drug overdose emergency in the Tenderloin, including behavioral health employees.

(2) Upon recommendation of the Executive Director of the Department of Emergency Management, the Director of Real Estate is authorized to enter into a lease on behalf of the City as tenant for real property necessary to establish facilities to respond to the drug overdose emergency in the Tenderloin. Any such lease shall be for a period not to exceed the 90-day emergency term specified in the Proclamation, unless the Director of Real Estate determines that the City is unable to secure a suitable property without agreeing to a longer term not to exceed a total of six months. Except for Charter Section 9.118, the Director of Real Estate may waive any provision of City law that would limit or delay execution of a lease authorized by this Order, including, without limitation, Chapter 23 of the Administrative Code. If a lease executed by the Director of Real Estate under this Order provides the City an option to extend the term beyond a six-month period, the City's decision to exercise such option shall be subject to such approvals as may be required by Chapter 23 of the Administrative Code and any other applicable law, including, without limitation, prior approval by the Board of Supervisors.

DATED: December 27, 2021

A handwritten signature in blue ink, reading "London N. Breed", written over a horizontal line.

London N. Breed  
Mayor of San Francisco

FILE NO. 211320

MOTION NO. M21-183

1 [Concurring in Proclamation of Local Emergency - Drug Overdoses in the Tenderloin]

2

3 **Motion concurring in the December 17, 2021, Proclamation by the Mayor Declaring the**  
4 **Existence of a Local Emergency in connection with the sudden increase in drug**  
5 **overdoses in the Tenderloin, and concurring in actions taken to meet the emergency**  
6 **to: 1) require City employees and officers to take all steps requested by the Executive**  
7 **Director of the Department of Emergency Management ("DEM") to address the**  
8 **emergency conditions; 2) require all City employees and officers to take all steps**  
9 **requested by the Executive Director of DEM to qualify the City for funding as may be**  
10 **available to reimburse the City for the expenses it incurs in addressing this emergency;**  
11 **3) allow departments to procure services, goods, and public works relating to the**  
12 **emergency using emergency procurement procedures, and waive any applicable**  
13 **requirement of Civil Service Commission approval of such contracts; and 4) allow the**  
14 **implementation in the Tenderloin of temporary facilities for purposes of offering**  
15 **services as part of the emergency response, and waive any provision in City law that**  
16 **limits or restricts the City's deployment of such facilities, and any applicable local**  
17 **requirements for public notice, the filing or approval of a permit application, or**  
18 **payment of fees related to that response.**

19

20 WHEREAS, On December 17, 2021, Mayor London N. Breed declared a local  
21 emergency to exist in connection with the sudden increase of drug overdoses in the  
22 Tenderloin; and

23 WHEREAS, The Mayor has transmitted a copy of that Proclamation Declaring the  
24 Existence of a Local Emergency ("Proclamation") to the Board of Supervisors, and such copy  
25 is on file with the Clerk of the Board of Supervisors in File No. 211320; and

1 WHEREAS, Government Code, Sections 8550 et seq. and Charter, Section 3.100  
2 provide for the concurrence by members of the Board of Supervisors in such emergency  
3 declaration and in actions taken by the Mayor to meet the emergency; and

4 WHEREAS, Deaths from drug overdose are at epidemic levels in San Francisco; while  
5 the problem has gotten worse over the past few years and particularly over the course of the  
6 pandemic, recently the threat to public health, safety and welfare has become much graver  
7 and more imminent in the Tenderloin and demands emergency action; and

8 WHEREAS, Deaths attributable to drug overdose in San Francisco have increased  
9 over 200% since 2018, and in 2020, over 700 individuals died from drug overdoses; the  
10 number of deaths in 2020 from drug overdose far exceeded the number of individuals who  
11 died of COVID-19; and

12 WHEREAS, The COVID-19 pandemic exacerbated the overdose epidemic in San  
13 Francisco; in the eight months before the Health Officer issued the Shelter-In-Place Order  
14 (March 2020), the median number of weekly overdose deaths was 10, which increased to 15  
15 after the Order, representing a 50% increase; and

16 WHEREAS, A main contributor to the rapid rise in drug overdoses and deaths in San  
17 Francisco is the recent increase in the prevalence of fentanyl in the illegal drug market; there  
18 has been a significant increase in the deaths attributable to fentanyl since the onset of the  
19 COVID-19 pandemic, with fentanyl serving as a factor in more than 70% of overdose deaths  
20 between January and October 2021, an increase of nearly 20% since 2019.

21 WHEREAS, As the situation with the COVID-19 pandemic has begun to improve, the  
22 drug overdose crisis in the City has continued unabated; between January and November  
23 2021, nearly 600 San Franciscans died of a drug overdose; and

24  
25

1 WHEREAS, Between January and October 2021, 21% of overdose deaths occurred in  
2 the Tenderloin, with an additional 20% of deaths occurring in the South of Market  
3 neighborhood; and

4 WHEREAS, Contacts between clients and the City's non-profit partners running needle  
5 exchange programs in the Tenderloin increased nearly 30% in the period between July and  
6 September 2021 compared to the previous three months; and

7 WHEREAS, The crisis in the Tenderloin has worsened in recent months; one of the  
8 City's non-profit partners reported an over 35% increase in the distribution of Narcan (which is  
9 used to revive someone experiencing an overdose) in the Tenderloin between October 2021  
10 and November 2021; and

11 WHEREAS, Emergency medical calls for service designated as calls for a "sick person"  
12 in the Tenderloin have increased more than 150% between June and November 2021  
13 compared to the same period in 2020, and medical calls for service for all reasons during this  
14 time period also increased, indicative of serious public health issues likely attributable to the  
15 opioid crisis in the area; and

16 WHEREAS, Other indicators of the opioid crisis in the Tenderloin are also present;  
17 street conditions in the Tenderloin and surrounding area have deteriorated in recent months,  
18 and calls to 311 concerning human waste, needles, and garbage on streets and sidewalks  
19 increased significantly between the fall of 2020 and the fall of 2021; and

20 WHEREAS, There was a 38% increase in calls to the City's Street Overdose Response  
21 Team between October and November 2021, and a 44% increase in calls regarding drug  
22 overdoses in the same period; and

23 WHEREAS, The rapidly deteriorating conditions in the Tenderloin caused by the opioid  
24 crisis put the lives of San Franciscans at serious risk, and the City must take action beyond  
25 the City's ordinary response capabilities, including re-appropriating resources to address the

1 crisis and directing personnel from City departments to assist with the response, which the  
2 Proclamation authorizes the Mayor to do under Charter, Section 3.100(14); and

3 WHEREAS, The Mayor has found the aforesaid conditions of extreme peril justify and  
4 require a proclamation of the existence of a local emergency; and

5 WHEREAS, As part of the Proclamation, the Mayor took additional steps to meet the  
6 emergency by ordering four actions to meet the emergency; and

7 WHEREAS, For purposes of the Proclamation, the Tenderloin is defined as the San  
8 Francisco Police Department's Tenderloin District and the additional area within a one-block  
9 perimeter of that District; now, therefore, be it

10 MOVED, That the Board of Supervisors concurs with the Proclamation by the Mayor  
11 Declaring the Existence of Local Emergency issued on December 17, 2021, and, be it

12 FURTHER MOVED, That the Board of Supervisors concurs with the following actions  
13 taken by the Mayor to meet the local emergency, as such actions are described in full in  
14 December 17, 2021 Proclamation and summarized as follows:

15 **Action 1:** Requiring all City officers and employees to take all steps  
16 requested by the Executive Director of the Department of Emergency Management ("DEM") to  
17 address the emergency conditions of the overdose and overdose death crisis in the  
18 Tenderloin;

19 **Action 2:** Requiring all City officers and employees to take all steps  
20 requested by the Executive Director of DEM to qualify the City for reimbursement from the  
21 Federal Emergency Management Agency and for other state and federal relief as may be  
22 available to reimburse the City for the expenses it incurs in addressing this emergency;

23 **Action 3:** Allowing departments to procure services, goods, and public works  
24 relating to the emergency using emergency procurement procedures, waiving any applicable  
25 requirement of Civil Service Commission approval of such contracts, and requiring



1 departments to report to the Civil Service Commission any agreement that would have  
2 required its approval;

3 **Action 4:** Allowing the implementation in the Tenderloin, including on any  
4 City sidewalks or parks, of temporary facilities for purposes of offering services as part of the  
5 emergency response, such as public health, behavioral health, social, or housing services, as  
6 recommended by the Director of DEM or the Director's designee and authorized by the Mayor  
7 or the Mayor's designee, and waiving any provision in City law that limits or restricts the City's  
8 deployment of such facilities, and any applicable local requirements for public notice, the filing  
9 or approval of a permit application, or payment of fees related to that response.

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## City and County of San Francisco

### Tails

### Motion: M21-183

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

**File Number:** 211320

**Date Passed:** December 23, 2021

Motion concurring in the December 17, 2021, Proclamation by the Mayor Declaring the Existence of a Local Emergency in connection with the sudden increase in drug overdoses in the Tenderloin, and concurring in actions taken to meet the emergency to: 1) require City employees and officers to take all steps requested by the Executive Director of the Department of Emergency Management ("DEM") to address the emergency conditions; 2) require all City employees and officers to take all steps requested by the Executive Director of DEM to qualify the City for funding as may be available to reimburse the City for the expenses it incurs in addressing this emergency; 3) allow departments to procure services, goods, and public works relating to the emergency using emergency procurement procedures, and waive any applicable requirement of Civil Service Commission approval of such contracts; and 4) allow the implementation in the Tenderloin of temporary facilities for purposes of offering services as part of the emergency response, and waive any provision in City law that limits or restricts the City's deployment of such facilities, and any applicable local requirements for public notice, the filing or approval of a permit application, or payment of fees related to that response.

December 23, 2021 Board of Supervisors - APPROVED

Ayes: 8 - Chan, Haney, Mandelman, Mar, Melgar, Ronen, Safai and Stefani

Noes: 2 - Preston and Walton

Excused: 1 - Peskin

File No. 211320

I hereby certify that the foregoing Motion was APPROVED on 12/23/2021 by the Board of Supervisors of the City and County of San Francisco.

A handwritten signature in blue ink, appearing to read "Angela Calvillo", written over a horizontal line.

Angela Calvillo  
Clerk of the Board

## Penick, Andrico

---

**From:** Carroll, Maryellen (DEM)  
**Sent:** Thursday, December 30, 2021 2:10 PM  
**To:** Bechelli, Adrienne (DEM); Bruss, Andrea (MYR); Penick, Andrico  
**Cc:** Chu, Carmen (ADM)  
**Subject:** Re: Lease for 1170 Market

Many thanks Andrico for getting this done for us.

Mary Ellen Carroll  
Executive Director  
City and County of San Francisco  
Department of Emergency Management  
1011 Turk Street  
San Francisco, CA 94102  
Tel.: 415-558-2745

---

**From:** Bechelli, Adrienne (DEM) <adrienne.bechelli@sfgov.org>  
**Date:** Thursday, December 30, 2021 at 1:55 PM  
**To:** Bruss, Andrea (MYR) <andrea.bruss@sfgov.org>, Penick, Andrico <andrico.penick@sfgov.org>, Carroll, Maryellen (DEM) <maryellen.carroll@sfgov.org>  
**Cc:** Chu, Carmen (ADM) <carmen.chu@sfgov.org>  
**Subject:** RE: Lease for 1170 Market

Andrico, thanks for discussing with me just now. This is great news. Thank you so much for your work on this.

Yes, let's plan to take possession on Monday morning 9:00am regardless of the state of repairs. I believe DEM has already issued the PO for the security services and I will confirm their start date of preferably Monday.

Please let me know what else you need from me. Looking forward to seeing the final document signed sealed delivered.



---

**Adrienne Bechelli** (she/her)  
Department of Emergency Management  
(415) 806-2058 cell *\*text message is the best way to reach me\**

**From:** Bruss, Andrea (MYR) <andrea.bruss@sfgov.org>  
**Sent:** Thursday, December 30, 2021 1:29 PM  
**To:** Penick, Andrico <andrico.penick@sfgov.org>; Carroll, Maryellen (DEM) <maryellen.carroll@sfgov.org>  
**Cc:** Bechelli, Adrienne (DEM) <adrienne.bechelli@sfgov.org>; Chu, Carmen (ADM) <carmen.chu@sfgov.org>  
**Subject:** Re: Lease for 1170 Market

Thank you for all your work on getting this done Andrico.

My thought is we take possession while repairs are in process as I would expect there are other things that can occur at the property in the meantime that would facilitate getting it ready for use that don't require delay. But I will let Adrienne decide as she is operationally so much closer to it than me.

---

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**Subject:** RE: Lease for 1170 Market

To All: Concluded conference call with Landlord and their lawyer. **We have a deal. The lease will be signed tomorrow. We are shooting for noon.**

**Additional issue:** The building has been vacant and idle for 2 years. Landlord let us know that when they turned on the boiler they found a leak. It is being repaired but may not be done by 9:00am Monday morning. We can take possession while repairs are underway or wait until they are done. The delay in possession would be about 48 hours. I'll discuss the pros and cons with Adrienne and proceed accordingly. AQP

## Andrico Q. Penick

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City and County of San Francisco

(415) 554-9860 (direct)

[Andrico.Penick@sfgov.org](mailto:Andrico.Penick@sfgov.org)

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**Importance:** High

Update. Landlord's comments just came in. Reviewing now. AQP

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**Subject:** RE: Lease for 1170 Market

**Importance:** High

Hi Maryellen.

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I will be asked to report out to the BOS on this on Tuesday, January 4. Since we are going into a 3 day holiday weekend, I would like to get a full update today.

Thank you,

Mary Ellen Carroll  
Executive Director  
City and County of San Francisco  
Department of Emergency Management  
1011 Turk Street  
San Francisco, CA 94102  
Tel.: 415-558-2745



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**Subject:** RE: Lease for 1170 Market

**Importance:** High

To All: Concluded conference call with Landlord and their lawyer. **We have a deal. The lease will be signed tomorrow. We are shooting for noon.**

**Additional issue:** The building has been vacant and idle for 2 years. Landlord let us know that when they turned on the boiler they found a leak. It is being repaired but may not be done by 9:00am Monday morning. We can take possession while repairs are underway or wait until they are done. The delay in possession would be about 48 hours. I'll discuss the pros and cons with Adrienne and proceed accordingly. AQP

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**Subject:** Lease for 1170 Market

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Thank you,

Mary Ellen Carroll  
Executive Director  
City and County of San Francisco  
Department of Emergency Management  
1011 Turk Street  
San Francisco, CA 94102  
Tel.: 415-558-2745

## Penick, Andrico

---

**From:** Carroll, Maryellen (DEM)  
**Sent:** Thursday, December 30, 2021 11:53 AM  
**To:** Bechelli, Adrienne (DEM); Bruss, Andrea (MYR); Penick, Andrico  
**Cc:** Chu, Carmen (ADM)  
**Subject:** Re: Lease for 1170 Market

Thanks everyone for the updates.

Mary Ellen Carroll  
Executive Director  
City and County of San Francisco  
Department of Emergency Management  
1011 Turk Street  
San Francisco, CA 94102  
Tel.: 415-558-2745

---

**From:** Bechelli, Adrienne (DEM) <adrienne.bechelli@sfgov.org>  
**Date:** Thursday, December 30, 2021 at 11:37 AM  
**To:** Bruss, Andrea (MYR) <andrea.bruss@sfgov.org>, Penick, Andrico <andrico.penick@sfgov.org>  
**Cc:** Carroll, Maryellen (DEM) <maryellen.carroll@sfgov.org>, Chu, Carmen (ADM) <carmen.chu@sfgov.org>  
**Subject:** RE: Lease for 1170 Market

Hi everyone, quick update from this morning:

1. We have received the 12B waiver for the landlord. Document attached.
2. The supplier ID was supposed to be generated no later than yesterday by CON, I'm waiting for them to get back to me with the number.

Let me know if there's anything else needed.

---

**Adrienne Bechelli** (she/her)  
Department of Emergency Management  
(415) 806-2058 cell *\*text message is the best way to reach me\**

**From:** Bruss, Andrea (MYR) <andrea.bruss@sfgov.org>  
**Sent:** Thursday, December 30, 2021 11:24 AM  
**To:** Penick, Andrico <andrico.penick@sfgov.org>  
**Cc:** Carroll, Maryellen (DEM) <maryellen.carroll@sfgov.org>; Bechelli, Adrienne (DEM) <adrienne.bechelli@sfgov.org>; Chu, Carmen (ADM) <carmen.chu@sfgov.org>  
**Subject:** Re: Lease for 1170 Market

Thanks Andrico. As I mentioned if there are things we can help with to get this done we are ready. Happy to jump on a call to troubleshoot any remaining issues as well.

On Dec 30, 2021, at 10:51 AM, Penick, Andrico <[andrico.penick@sfgov.org](mailto:andrico.penick@sfgov.org)> wrote:

Update. Landlord's comments just came in. Reviewing now. AQP

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Director of Real Estate  
City and County of San Francisco

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[Andrico.Penick@sfgov.org](mailto:Andrico.Penick@sfgov.org)

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**From:** Carroll, Maryellen (DEM)  
**Sent:** Thursday, December 30, 2021 9:32 AM  
**To:** Penick, Andrico <[andrico.penick@sfgov.org](mailto:andrico.penick@sfgov.org)>  
**Cc:** Bechelli, Adrienne (DEM) <[adrienne.bechelli@sfgov.org](mailto:adrienne.bechelli@sfgov.org)>; Bruss, Andrea (MYR) <[andrea.bruss@sfgov.org](mailto:andrea.bruss@sfgov.org)>; Chu, Carmen (ADM) <[carmen.chu@sfgov.org](mailto:carmen.chu@sfgov.org)>  
**Subject:** Lease for 1170 Market

Good morning Andrico.

Thank you for working so closely with Adrienne on this lease. As of last week, and as I testified at the BOS last Thursday, we expected that we would have the lease ready to sign on Friday (12/24). We are now a week later and I know there has been back and forth with the owner and that you have been working around the clock on this, but I need to know :

- 1) Exactly where we are in this process and what, if any, are sticking points with the building owner.
- 2) Once the owner approves the lease can we sign or does City Attorney need to review or is this being done concurrently?
- 3) Estimated time to have lease signed/ratified?

I will be asked to report out to the BOS on this on Tuesday, January 4. Since we are going into a 3 day holiday weekend, I would like to get a full update today.

Thank you,

Mary Ellen Carroll  
Executive Director  
City and County of San Francisco  
Department of Emergency Management  
1011 Turk Street  
San Francisco, CA 94102



## Penick, Andrico

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**From:** Penick, Andrico  
**Sent:** Thursday, December 30, 2021 10:48 AM  
**To:** Carroll, Maryellen (DEM)  
**Cc:** Bechelli, Adrienne (DEM); Bruss, Andrea (MYR); Chu, Carmen (ADM)  
**Subject:** RE: Lease for 1170 Market

**Importance:** High

Hi Maryellen.

- 1) Exactly where we are in this process and what, if any, are sticking points with the building owner. The draft lease has had 2 turns. We are down to 6 minor open issues: utility invoicing, termination due to interference with use; return condition; cure period; indemnification standard; and notice by email. The draft is in their court and I expect their comments today. These are minor drafting issues and I don't see them as sticking points that would put the deal at risk. We have already discussed the fact that we want to ink the lease by COB on Friday and I think we will make that deadline. The lease will be routed via DocuSign and the signatories are available.
- 2) Once the owner approves the lease can we sign or does City Attorney need to review or is this being done concurrently? Charles Sullivan from the City Attorney's office has already reviewed the prior drafts. Assuming the landlord accepts our latest draft or that we can accept their new language, if any, then Charles is ready to sign off.
- 3) Estimated time to have lease signed/ratified? COB Friday via DocuSign if not before. I'll send the executed final to all on this email. AQP

### Andrico Q. Penick

Director of Real Estate  
City and County of San Francisco

(415) 554-9860 (direct)  
[Andrico.Penick@sfgov.org](mailto:Andrico.Penick@sfgov.org)

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**To:** Penick, Andrico <[andrico.penick@sfgov.org](mailto:andrico.penick@sfgov.org)>

**Cc:** Bechelli, Adrienne (DEM) <adrienne.bechelli@sfgov.org>; Bruss, Andrea (MYR) <andrea.bruss@sfgov.org>; Chu, Carmen (ADM) <carmen.chu@sfgov.org>

**Subject:** Lease for 1170 Market

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Mary Ellen Carroll  
Executive Director  
City and County of San Francisco  
Department of Emergency Management  
1011 Turk Street  
San Francisco, CA 94102  
Tel.: 415-558-2745

## Penick, Andrico

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**To:** Penick, Andrico  
**Cc:** Bechelli, Adrienne (DEM); Bruss, Andrea (MYR); Chu, Carmen (ADM)  
**Subject:** Lease for 1170 Market

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